

I. CHAPTER 209

1. Association Books and Records

HB 2761 AMENDS TPC 209.005

Effective January 1, 2012

Single Family HOA ONLY

- A. Association books and records, including financial records must be available for examination by owners and owners' agents.
- B. Owner may obtain copies of information contained in the books and records.
- C. All records are producible, except attorney-client communications and attorney work product documents.
- D. Written request by the owner (or agent) by certified mail required. Email is not sufficient.
- E. The request must contain "sufficient detail" describing the records requested.
- F. The request can either ask to inspect the records or obtain copies of the records.
- G. 10 business day rule. HOA shall respond within 10 business days with dates that the inspection of records can occur. NOTE: The right to inspect does not need to occur within 10 days, but only the response must be sent within 10 days.
- H. If copies are requested, such copies shall be produced to the owner within 10 *business days*.
- I. If copies can not be produced in 10 business days, then notice of delay must be sent within the 10 day period, and a maximum of additional 15 business days is allowed.
- J. The HOA may produce requested records in hard copy, electronic, or other format available to the Association.
- *K. The HOA must adopt and record a "Records Production and Copying Policy" that explains all costs.
- L. Advance payment of costs can be required. Adjustment of costs can be made subsequent to production.
- M. Certain owner's records may be maintained as confidential and not disclosed unless approval is given by the owner.
- *N. The HOA (over 14 units) must adopt and record a Document Retention Policy for the years specified in the new statute.
- O. Action for denial of access to books and records can now be brought in JP court.

- P. Attorney fees and costs are awardable to the owner and HOA in a JP court record case.
- Q. 10 day advance written and certified notice is required for an owner, prior to bringing the JP case.

2. **Open Board Meetings**

HB 2761 AMENDS TPC 209.0051

Effective January 1, 2012

Single Family HOAs ONLY

- A. Regular and special board meetings must be open to owners.
- B. Executive session still permitted.
- C. Board decisions after executive session must be summarized orally and placed in the minutes.
- D. Records and minutes shall be made of every regular and special board meeting, which shall be available for owner inspection and copying.
- E. Notice of all regular and special board meetings shall be given to all the members.
- F. Notice of all board meetings shall either be mailed to each owner or posted in the common area or on an internet website and sent by email to each owner who registered an email address with the Association.
- G. Boards may still meet by conference call or act by unanimous consent on routine and administrative matters or unforeseen emergency or urgent matters, but must disclose any action orally and in the minutes of the next board meeting.
- H. Certain matters identified in the statute may not be voted on by the Board without prior notice to the owners.
- I. No Board meetings or Board voting by email allowed.

3. **Notice of Election or Association Vote**

HB 2761 ADDS 209.0056

Effective January 1, 2012

Single Family HOAs ONLY

- A. Notice must be sent 10-60 days prior to election or vote by owners to all owners.

4. **Recount of Votes**

HB 2761 ADDS 209.0057

Effective January 2, 2012

Single Family HOAs ONLY

- A. Owners may demand a recount of votes by written demand within 15 days of a meeting where vote was taken.
- B. Cost of recount to be paid by owner requesting the recount.
- C. Certain types of people are authorized to conduct the recount.
- D. Recount must be conducted within 30 days of request.
- E. If recount changes the results of the vote, the HOA must reimburse the owner for all costs paid.
- F. Any action taken by the Board during recount is not affected by recount results.

5. **Ballots**

HB 2761 ADDS 209.0058

Effective September 1, 2011 (SB 42)

Single Family HOAs ONLY

- A. All ballots must be in writing and signed, except for uncontested races or electronic balloting.

6. **Right to Vote**

HB 2761 and SB 472

Effective September 1, 2011

Single Family HOAs ONLY

- A. All owners have a right to vote and cannot be disqualified for any reason.

7. **Board Members**

HB 2761 and SB 472

Effective September 1, 2011

Single Family HOAs ONLY

- A. All owners can run for board except those convicted of a felony or crime involving moral turpitude (also automatically removed from Board and future service is prohibited).
- B. No more term limits.

8. Voting and Quorum

HB 2761 and SB 472

Effective September 1, 2011

Single Family HOAs ONLY

- A. Voting permitted by person or proxy, by absentee ballot, by electronic ballot, or according to governing documents.
- B. Absentee or electronic ballot
 - * part of quorum for ballot items only
 - * not allowed if owner attends meeting
 - * not allowed for amended ballot matters
- C. Solicitation for votes by absentee ballot has specific requirements and required language.
- D. Electronic ballot (email, fax, or on internet website) has specific requirements.

9. Election of Board Members

HB 2761 ADDS TPC 209.00593

Effective January 1, 2012

Single Family HOAs ONLY

- A. Any Board member whose terms has expired must be elected by owners to continue on Board.
- B. Board can fill vacancy created by resignation, death, or disability, or is void.
- C. Board may amend Bylaws to provide for elections of Board members whose terms has expired.

10. Tabulation of and Access to Ballots

SB 472 209.00594

Effective September 1, 2011

Single Family HOAs ONLY

- A. Restricts who can count votes.
- B. Restricts disclosure of how an individual voted.
- C. Access to ballots only permitted in official recount process (what about access to books and records?)

11. Notice Required Before Enforcement Action

HB 1127 209.006
Effective January 1, 2012
Single Family HOAs ONLY

- A. Adds required sentence to alert military personnel to special protections. New to required "209 letters".

12. Payment Plans Required

HB 1228 and HB 1821 209.0062
Effective January 1, 2012
Single Family HOAs ONLY (14+ lots)

- A. HOA must adopt payment plan guidelines for owners to make partial payment to regular or special assessments without penalty.
- B. Reasonable costs and interest do not constitute penalty.
- C. 3 months in minimum payment term.
- D. Payment plan not allowed for any amount older than 18 months from date payment plan requested.
- E. No payment plan required if owner defaulted in prior plan within past 2 years.
- F. Payment plan terms must be in writing and recorded. Failure to do so has no penalty.

13. Payment Priorities

HB 1228 209.0063
Effective January 1, 2012
Single Family HOAs ONLY

- A. All payments received by an HOA must be applied to the owner's debt as follows:
- (1) any delinquent assessment
 - (2) any current assessment
 - (3) any attorney fees due to delinquent assessment
 - (4) any other attorney fees
 - (5) any fines
 - (6) any other amounts owed.
- B. If payment received and the owner is in default under a payment plan, the priority of payment requirement does not apply.

14. **Third Party Collections**

HB 1228 209.0064
Effective January 1, 2012
Single Family HOAs ONLY

- A. This is the new 209 demand letter requirement for assessment collection.
- B. This assumes an attorney is a "debt collector" under FDCPA.
- C. Advance written notice required prior to demand letter and legal fees by attorney.
- D. New statute describes what must be in new pre-attorney demand letter.
- E. The Agreement between the HOA and collection agent can not prohibit the owner from contacting the Board or Manager regarding the delinquency. (Does this require that owners be permitted to go around the attorney?)

15. **Notice to Subordinate Lienholders**

HB 1228 209.0091
Effective January 1, 2012
Single Family HOAs ONLY

- A. Prohibits non-judicial foreclosure or suit to foreclose lien unless prerequisites are first performed.
- B. Written notice to inferior lien holders required.
- C. 61 day right to cure to subordinate lienholders.

16. **Judicial Foreclosure Required**

HB 1228 209.0092
Effective January 1, 2012
Single Family HOAs ONLY

- A. No non-judicial foreclosures permitted.
- B. Court order required.
- C. Expedited foreclosure process required.

QUESTION: What about constable sale after January 1, 2012 on judgment obtained prior to January 1, 2012?

17. **Removal of Foreclosure Authority**

HB 1228 209.0093
Effective January 1, 2012
Single Family HOAs ONLY

- A. Owners may remove the right of HOA foreclosure by a 67% vote.
- B. 10% of voting interest may call for vote.

18. **Assessment Lien Notice**

HB 1228 209.0094
Effective January 1, 2012
Single Family HOAs ONLY

- A. Notice of lien is legal document which must be drafted by attorney.

19. **Mandatory Election Required After Failure to Call Regular Meeting**

HB 2761 209.014
Effective January 1, 2012
Single Family HOAs ONLY

- A. Annual meeting must be called by a HOA
- B. Owners may demand an annual meeting if one not called. Copy to all owners required.
- C. Annual meeting required not later than 30 days from demand receipt.
- D. Election committee formed by 3 or more owners if no annual meeting held after demand and 30 days.
- E. Notice of election committee must be filed with county clerk.
- F. Election committee may call meeting to elect Board members.

II. CHAPTER 207

1. Resale Certificate

HB 1821 207.003

Effective January 1, 2012

Single Family HOA ONLY

- A. May be requested by purchaser of property too (may request copy of contract).
- B. Must be current within 60 days.
- C. Adds requisite to list all lawsuits that HOA is a party (not just defendant).
- D. Add requisite to list all fees associated with transfer of title.

QUESTION: Also see amendment to Section 5.012 with changes to the Notice of Membership in POA.

2. Website Availability

HB 1821 207.006

Effective January 1, 2012

Single Family HOAs ONLY

- A. All HOA governing documents must be available on HOA's website, if HOA maintains a "publicly accessible website".

QUESTION: What about restricted website?

III. CHAPTER 202

1. Public Record Filing of All Governing Documents

HB 1821 **202.006**
Effective January 1, 2012
Single Family HOA AND Condos

- A. All HOA governing documents must be filed in the county where the HOA is located or will have no effect.

2. Rain Barrels Permitted

HB 3391 **202.007**
Effective September 1, 2011
Single Family HOAs AND Condos

- A. Permits rain barrels.
- B. Certain regulations permitted.

3. Solar Panels Permitted

HB 362 **202.010**
Effective June 20, 2011
Single Family HOAs AND Condos

- A. Permits solar energy device.
- B. Reasonable regulations permitted.

4. Regulation of Certain Roofing Materials

HB 362 **202.011**
Effective June 20, 2011
Single Family HOAs AND Condos

- A. Permits certain roof shingles.
- B. Reasonable regulations permitted.

5. Flag Display

HB 2779 **202.012**
Effective September 1, 2011
Single Family HOAs AND Condos

- A. Allows the display of the USA, Texas, and U.S. Armed Forces flags.
- B. Reasonable regulations permitted.

6. Regulation of Religious Items

HB 1278 202.018

Effective June 20, 2011

Single Family HOAs AND Condos

- A. Allows religious items on the entry door.
- B. *Permits reasonable regulations.*
- C. Permits HOA self-help remedy.

IV. MISCELLANEOUS OTHER NEW LAWS

1. Transfer Fee Statute

HB 8 5.201
Effective June 17, 2011
Single Family HOAs AND Condos

- A. Certain private transfer fees are void and others permitted
- B. Requires the recording of a “Notice of Private Transfer Fee Obligation”.
- C. *Must refile the Transfer Fee Notice every 3 years.*
- D. Transfer Fees must be disclosed in contract for sale.

2. Speed Feedback Signs

HB 1737 430.002
Effective September 1, 2011

- A. Permits the installation of a speed feedback sign on road or street in HOA’s subdivision under certain circumstances.

3. Mixed-Use POAs

HB 2869 Chapter 215
Effective September 1, 2011

- A. Extensive new provisions apply in a mixed-use POA (see new law)

Plat Phase I	Plat Phase II	Plat Phase III	Replat Section I	Plat Phase IV
Filed for Record 02/06/87 Recorded in Volume 6, Pages 207-208	Filed for Record 11/01/90 Recorded in Volume 6, Pages 289-290	Filed for Record 09/09/96 Recorded in Volume 6, Pages 393-394	Filed for Record 2/1/2000 Recorded in Volume 6, Pages 207-208	Filed for Record 08/15/01 Recorded in Volume 7, Pages 133-134
Now, therefore, be it known that we the aforesaid do hereby adopt this plat designated as a final plat of Rustling Oaks Estates, Navarro County, Texas, and <u>do hereby dedicate to the public use forever all streets and easements shown hereon in so far as any interest may appear,</u> "	"That I, Kathryn Loper, the owner of the property shown hereon do hereby adopt this plat as "Rustling Oaks Phase 2", a subdivision located on Richland Chambers Reservoir, in Navarro County, TX, and <u>do hereby dedicate to the public use forever all streets shown hereon in so far as his interest may appear,</u> "	"That Kathryn Loper is the owner of that certain tract designated as Rustling Oaks, Inc. Phase III in the Samuel Moore survey A-582, Navarro County, Texas. Now therefore be it known that the aforesaid, do hereby adopt this plat designated as a final plat of Rustling Oaks, Inc. Phase III and <u>do hereby reserve as private all streets and easements shown hereon, in so far as our interest may appear.</u> "	"That Emmett Marshall is the owner of that certain tract designated as Lbts 8, 9, 10, 11, Block D, Section One, Rustling Oaks Part Green Belt and Park Area in Navarro County, Texas. Now therefore be it known that the aforesaid do hereby adopt this as shown and <u>all streets and easements shown hereon are hereby dedicated for private use in so far as our interest may appear.</u> "	"That Kathryn Loper is the owner of that certain tract designated as Rustling Oaks, Inc. Phase IV, in the Samuel Moore survey A-582, Navarro County, Texas. Now therefore be it known that the aforesaid, do hereby adopt this plat designated as a plat of the Rustling Oaks, Inc. Phase IV subdivision and <u>do hereby reserve as public all streets and easements shown hereon, in so far as our interest may appear.</u> "
public streets / easements	public streets / easements	private streets / easements	private streets / easements	public streets / easements
N/A	Tarrant County Water Control and Improvement Dist. No. 1 sign-off 01/07/91	Tarrant County Water Control and Improvement Dist. No. 1 sign-off 08/29/96	Tarrant County Regional Water Dist. sign-off on 01/13/00	Tarrant County Regional Water Dist. sign-off on 08/02/01
N/A	Navarro County P & Z Commission approval on 01/09/91	Navarro County P & Z Commission approval on 08/29/96	Navarro County P & Z Commission approval on Unknown Date	Navarro County P & Z Commission approval on 08/02/01
Approved by Navarro County Commissioners Court on 02/07/87	Approved by Navarro County Commissioners Court on Unknown Date in 1991	Approved by Navarro County Commissioners Court on 09/09/96	Approved by Navarro County Commissioners Court on Unknown Date	Approved by Navarro County Commissioners Court on Unknown Date
Plat Note 4: Green Belt and Park Areas will be maintained by the Home Owners Association.	POA never claimed that certain tract designated as the green belt and park area of Rustling Oaks Sec. 1			Never approved by Navarro County Sanitarian