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## 2017 TEXAS HOA LAW LEGISLATIVE UPDATE

On May 29, 2017, the Texas Legislature concluded the 2017 legislative session. For the first time since the enactment of Chapter 82 of the Texas Property Code in 1993, the Legislature made no modifications to Title VII of the Texas Property Code (which governs condominiums) or Title XI of the Texas Property Code (which governs all property owners associations). In short, there are no new statutory laws that directly impact Texas condominiums and property owners associations.

That being said, the Texas Legislature did enact a few new statutory laws that indirectly affect Texas condominiums and property owners associations, and such new statutory laws are summarized as follows:

### HOUSE BILL 561

House Bill 561 adds a new Subchapter G (entitled “Package Delivery Vehicles”) to Chapter 551 of the Texas Transportation Code, which governs the operation of bicycles, mopeds, and play vehicles, including golf carts and utility vehicles, on highways or other roadways. More specifically, House Bill 561 adds Section 551.452 to the Transportation Code, which authorizes the Texas Department of Motor Vehicles to issue distinguishing license plates for all-terrain vehicles, golf carts, neighborhood electric vehicles, recreation off-highway vehicles and utility vehicles operated by a motor carrier for the purpose of picking up and delivering mail, parcels, and packages, provided such vehicles are equipped with headlamps, taillamps, reflectors, a parking brake, and mirror. House Bill 561 also adds Section 551.453 to the Transportation Code, which authorizes motor carriers to operate such licensed package delivery vehicles on public highways that have a speed limit of 35 mph or less.

Finally, House Bill 561 adds Section 551.454 to the Transportation Code, which authorizes condominium and property owners associations to adopt reasonable safety and use rules for the operation of such licensed package delivery vehicles on property owned or regulated by such associations, and authorizes the use of such licensed package delivery vehicles on property owned or regulated by condominium or property owners associations by motor carriers for the purpose of picking up or delivering mail, parcels, or packages, provided such vehicles are operated in compliance with the adopted reasonable safety and use rules.

### **SENATE BILL 873**

Senate Bill 873 modifies Sections 13.501 and 13.505 of the Texas Water Code, which regulates the charging for submetered and nonsubmetered water and wastewater services in apartments, condominiums and other multiple use facilities. Although Chapter 13 of the Texas Water Code previously used the term “condominium manager,” such term was not defined by the statute. Senate Bill 873 corrects any confusion over the meaning of such term by adding a new Subsection (1-a) to Section 13.501, which now defines the terms “condominium manager” or “manager of a condominium”, as used within Chapter 13 of the Texas Water Code, to mean a condominium unit owners’ association organized under Section 82.101 of the Texas Property Code or an incorporated or unincorporated entity comprising the council of owners under Chapter 81 of the Texas Property Code. In other words, the term “condominium manager” means the condominium association, not a property manager employed by the condominium association.

In addition, prior to 2017, Section 13.505 of the Texas Water Code provided that if a condominium manager (ie. condominium association) violated a rule promulgated by the Texas Utility Commission related to charging an occupant of a condominium unit for submetered or unsubmetered water or waste water services, the occupant could recover from the condominium manager: (a) three times the amount of any overcharge; (b) a civil penalty equal to one month’s rent; (c) reasonable attorneys fees, and (d) court costs. Senate Bill 873 modified Section 13.505 so as to now require occupants of condominium units who have been overcharged for submetered or unsubmetered water or waste water services to file a complaint with the Texas Utility Commission (instead of a lawsuit), and if the Texas Utility Commission finds that the occupant was overcharged, the condominium manager must now pay restitution to the occupant in the amount that was overcharged (instead of three times the overcharged amount, a civil penalty, attorneys fees and court costs). In addition, Section 13.505 now makes clear that the Texas Utility Commission may also assess an administrative penalty under Section 13.4151 of the Texas Water Code for violation of Chapter 13 of the Water Code or any rules promulgated by the Texas Utility Commission.

### **SENATE BILL 1518**

Senate Bill 1518 modifies Sections 22.154, 22.214 and 22.227 of the Texas Business Organizations Code, which regulate calling of an annual membership meeting and the approval of actions by a Board of Directors of a nonprofit corporation, including any condominium or property owners association that is incorporated as a nonprofit corporation. More specifically, Senate Bill 1518 modifies Section 22.154 so as to allow a member of a nonprofit corporation to send a written demand to call an annual meeting of members to the nonprofit corporation’s Board of Directors by certified or registered mail, return receipt

requested, or any other means specified in the nonprofit corporation's governing documents (previously, such statute required such written demand to be sent by only registered mail).

In addition, Senate Bill 1518 modifies Section 22.214 so as to make clear that an action approved by the Board of Directors at a Board meeting may only be approved if a quorum of Directors is present at the time of the approval. In other words, it is not enough to have a quorum of Directors at the beginning of the Board meeting. An action of the Board may only be approved if there is a quorum of Directors still present at the time that the Board of Directors votes to approve such action.

Finally, Senate Bill 1518 modifies Section 22.227 so as to require a Director's abstention to an action being voted on by the Board of Directors to be recorded in the meeting minutes or be sent in writing to the secretary of the nonprofit corporation by certified or registered mail, return receipt requested, or other means specified by the nonprofit corporation's governing documents, within a reasonable time after the meeting adjourns.

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