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2021 TEXAS HOA LAW LEGISLATIVE UPDATE

On May 31, 2021, the Texas Legislature concluded the 2021 legislative session. Although there were a significant number of bills filed that could have had a dramatic effect on the laws governing Texas homeowners associations, only a few bills were ultimately enacted by the 2021 Texas Legislature. The most significant of the enacted bills is Senate Bill 1588, which ultimately evolved into an omnibus bill with 27 separate sections that add or modify 3 chapters of the Texas Property Code. Such new and modified statutory laws are summarized as follows:

HOUSE BILL 1659 – Reduced Application of Declaration Amendment Procedures under Chapter 209

House Bill 1659 modifies Section 209.0041 of the Texas Property Code, which establishes a statutory procedure for the amendment of a Declaration by a property owners association that administers a subdivision development. As modified, the Declaration amendment procedure under Section 209.0041 may not be used to amend a Declaration if the amendment will affect a portion of the subdivision development that is zoned for or that contains, or previously contained as specifically allowed under the Declaration, a commercial structure, an industrial structure, an apartment complex, or a condominium. This bill takes effect on June 15, 2021.

HOUSE BILL 3571 – Protection of Security Measures

House Bill 3571 adds Section 202.023 to the Texas Property Code, which prohibits a property owners association that administers a subdivision development from adopting or enforcing any restrictive covenant that prevents a property owner from building or installing security measures, including but not limited to a security camera, motion detector, or perimeter fence. Section 202.023, however, does permit a property owners association to regulate the type of fencing that a property owner may install. There are identical provisions for the protection of security measures incorporated in Senate Bill 1588. This bill takes effect on June 15, 2021.

SENATE BILL 318 – Production and Keeping of Books and Records by Condominium Associations

Senate Bill 318 adds Section 82.1141 to the Texas Property Code, which incorporates new statutory provisions for the production and keeping of records by

condominium associations that are substantially similar to existing statutory provisions that are already applicable to property owners associations that administer subdivision developments pursuant to Section 209.005 of the Texas Property Code. As required by Section 209.005, new Section 82.1141 now requires condominium associations to adopt a document production and copy charge policy as well as a document retention policy. Section 82.1141 now makes all Texas homeowners associations subject to the same procedures for the inspection and production of their books and records. This bill takes effect on September 1, 2021.

SENATE BILL 581 – Protection of Displayed Religious Items

Senate Bill 581 amends Section 202.018 of the Texas Property Code, which prior to 2021 prohibited a property owners association from adopting or enforcing a restrictive covenant that restricts an owner or resident from displaying or affixing a religious item on the owner's or resident's entry to their dwelling. Pursuant to such amendment, Section 202.018 now prohibits the adoption or enforcement of a restriction that would restrict an owner or resident from displaying a religious item anywhere on the owner's or resident's dwelling or property. Section 202.018 also permits a property owners association to adopt or enforce restrictions that restrict the display of religious items: (1) on common area or common element property; (2) that violate any applicable building line, right-of-way, setback, or easement; or (3) that are attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture. There are identical provisions for the protection of displayed religious items incorporated in Senate Bill 1588. This bill takes effect on May 31, 2021.

SENATE BILL 1588 – The Omnibus Bill

Senate Bill 1588 has 27 separate sections that add or modify statutory provisions in Chapters 202, 207 and 209 of the Texas Property Code, including provisions identical to those in House Bill 3571 (Protection of Security Measures) and Senate Bill 581 (Protection of Displayed Religious Items). Due to the size and scope of Senate Bill 1588, it shall be summarized in separate sub-parts by topic.

Senate Bill 1588 adds Section 202.022 of the Texas Property, which prohibits property owners associations from adopting or enforcing a restrictive covenant that restricts a property owner from installing on the owner's property a swimming pool enclosure that conforms to applicable state or local safety requirements. Section 202.022 does authorize property owners associations to adopt and/or enforce rules regulating the appearance of a swimming pool enclosure, including limitations establishing permissible colors for a swimming pool enclosure, provided such limitations do not prohibit a swimming pool enclosure that is black in color and consists of transparent mesh set in metal frames. This provision takes effect on September 1, 2021.

Senate Bill 1588 modifies Section 202.006 of the Texas Property Code, which requires all Dedicatory Instruments of a property owners association to be recorded in the Official Public Records of the county in which its development is located. As amended, Section 202.006 restricts a property owners association from collecting a regular assessment if the Dedicatory Instrument authorizing the collection of such assessment is not recorded in the Official Public Records. This provision takes effect on September 1, 2021.

Senate Bill 1588 modifies Section 207.006 of the Texas Property Code, which governs the online publication of Dedicatory Instruments by a property owners association that administers a subdivision development. As amended, Section 207.006 only applies to a property owners association with at least 60 lots or that is managed by a management company and it now requires such applicable property owners associations to maintain an internet website and to publish its Dedicatory Instruments on such internet website. This provision takes effect on September 1, 2021.

Senate Bill 1588 modifies Section 207.003 of the Texas Property Code, which governs the production of resale certificates by a property owners association that administers a subdivision development. As amended, Section 207.003 imposes restrictions on the amounts charged for a resale certificate (no more than \$375 for a resale certificate and no more than \$75 for an updated resale certificate) and modifies the numbers of days to cure a failure to timely produce a resale certificate (5 business days instead of 7 days) before a property owner may sue the property owners association. Section 207.003 also now allows a court to award damages up to \$5,000 (instead of \$500) in such a lawsuit. This provision takes effect on September 1, 2021.

Senate Bill 1588 modifies Section 209.004 of the Texas Property Code, which governs the filing of a management certificate by a property owners association that administers a subdivision development. As amended, Section 209.004 now requires the management certificate to identify the recording data for the governing Declarations and all amendments thereto, the telephone and email address for the person managing the property owners association, the website address for the internet website on which the property owners association's Dedicatory Instruments are published, and the amount and description of any fees charged by the property owners association related to the transfer of property. Section 209.004 now also requires the management certificate to be filed at the Texas Real Estate Commission and restricts a property owners association from holding a property owner liable for attorneys fees incurred in the collection of unpaid assessments or interest on the unpaid assessments if the property owners association has not timely recorded the management certificate in the county's Official Public Records or filed the management certificate with the Texas Real Estate Commission. This provision takes effect on September 1, 2021, however, the Texas Real Estate Commission has until December 1, 2021 to establish the ability to electronically file management certificates and if a property owners association has already

recorded a management certificate or amended management certificate in compliance with Section 209.004 on or before December 1, 2021, then it is not required to electronically file a duplicate management certificate or amended management certificate with the Texas Real Estate Commission until June 1, 2022.

Senate Bill 1588 adds Section 209.00505 to the Texas Property Code, which imposes new rules on the denial of an application by an architectural committee for a subdivision development with more than 40 lots and creates a procedure for appealing such a denial to the property owners association's board of directors. Section 209.00505 also restricts members of the property owners association's board of directors, and their spouses and household members, for serving on the architectural committee. This provision takes effect on September 1, 2021.

Senate Bill 1588 modifies Section 209.0051 of the Texas Property Code, which governs the meetings of a board of directors for a property owners association that administers a subdivision development. As amended, notices of a regular board meeting must be posted and sent to the registered email address of members of the property owners association at least 144 hours (instead of 72 hours) before the meeting. In addition, all amendments of the annual budget (instead of only those increasing the budget by more than 10%) have to be approved by the property owners association's board of directors at an open board meeting. This provision takes effect on September 1, 2021.

Senate Bill 1588 modifies Section 209.0052 of the Texas Property Code, which governs the procedure for approving contracts by property owners associations that administer subdivision developments. As amended, Section 209.0052 requires property owners associations that propose to contract for services that will cost more than \$50,000 to solicit bids or proposals using a bid process established by the property owners association. This provision takes effect on September 1, 2021.

Senate Bill 1588 modifies Section 209.006 and adds Section 209.0065 to the Property Code, which creates new due process procedures that must be performed before a delinquent account may be reported to credit reporting services by a property owners association that administers a subdivision development. Section 209.0065 also restricts a property owners association from charging a property owner fees associated with reporting a delinquent account to a credit reporting service. This provision takes effect on September 1, 2021.

Senate Bill 1588 modifies Section 209.0063 of the Texas Property Code, which establishes a priority of payment schedule that must be followed by property owners associations that administer a subdivision development. As amended, payments received by a property owners association may only be applied to attorneys fees that are reasonable. This provision takes effect on September 1, 2021.

Senate Bill 1588 modifies Section 209.0064 of the Texas Property Code, which requires written notice of a delinquent account be sent to property owners by a property owners association that administers a subdivision development before the property owner can be made liable for the fees of a collection agent. As amended, the written notice must provide property owners with 45 days (instead of 30 days) to cure a delinquent account before further collection action may be taken by the property owners association. This provision takes effect on September 1, 2021.

Senate Bill 1588 modifies Section 209.007 of the Texas Property Code, which governs the procedure for conducting a hearing on a covenant violation by the board of directors of a property owners association that administers a subdivision development. As amended, Section 209.007 no longer permits the hearing to be first held by a committee appointed by the board of directors and it now requires the board of directors to designate a member of the board or other representative to present the property owners association's case at the hearing. In addition, Section 209.007 also requires the board of directors to provide the property owner a packet containing all evidence of the violation to be presented at the hearing at least 10 days before the hearing and it extends the hearing date automatically if the board fails to timely produce the packet of evidence. This provision takes effect on September 1, 2021.

Senate Bill 1588 modifies Section 209.016 of the Texas Property Code, which prior to 2021 imposed limits on the type of information of a prospective tenant that may be turned over by a property owner to a property owners association that administers a subdivision development. As amended, Section 209.016 no longer requires redaction of sensitive personal information of a tenant from a lease agreement and authorizes a property owners association to require property owners who lease their property to submit to the property owners association contact information, including the name, mailing address, phone number, and e-mail address, of each person who will reside at a property under a lease and the commencement date and term of the lease. This provision takes effect on September 1, 2021.

Senate Bill 1588 adds Section 209.017 of the Texas Property Code, which authorizes property owners to sue a property owners association that administers a subdivision development in justice court for violations of Chapter 209 of the Texas Property Code. This provision takes effect on September 1, 2021.

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