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Legal Issues Affecting Texas Homeowners' Associations

Presentation to GLPC Boot Camp
January 27, 2018, 9:45 to 10:30 a.m.

1. Corporate Matters

- a. Articles of incorporation
- b. Bylaws
- c. Rules, Regulations, Policies, and Procedures
 - i. Authority
 - ii. Required ones:
 - (1) Alternative payment plans (PC § 209.0062)
 - (2) Document retention
 - (3) Open records and copying [PC § 209.005(i)]
- d. Members' meetings
 - i. Membership list
 - ii. Notice
- e. Notice requirements
 - i. For election or vote, notice 10-60 days prior (PC § 209.0056)
 - ii. POA can use alternative method of notice if owner opts in. (PC § 209.0042)
 - iii. Notice of Board meetings must be provided 10-60 days prior (PC § 209.0051(e))
- f. Open Records - written request required (PC § 209.005)
- g. Open Board Meetings (PC § 209.0051)
 - i. Required for certain matters
- h. Executive session (PC § 209.0051(c))
 - i. personnel
 - ii. pending or threatened litigation
 - iii. contract negotiations
 - iv. enforcement actions
 - v. confidential communications with the property owners' association's attorney
 - vi. matters involving the invasion of privacy of individual owners
 - vii. matters that are to remain confidential by request of the affected parties and agreement of the board
- i. Voting and elections
 - i. Any provision disqualifying owner from voting is void (PC § 209.0059)
 - ii. Other voting methods permitted
 - iii. Methods include proxy, absentee ballot, electronic ballot, or other

- method authorized by dedicatory instrument. (PC § 209.00592)
 - iv. Solicitation for votes by absentee ballot must have required language [PC § 209.00592(c)]
 - v. Eligibility for Board - no convictions for felonies or crimes of moral turpitude (PC § 209.00591)
 - vi. Vacancies - If term expired, owners must elect. Otherwise Board may appoint. (PC § 209.00593)
 - vii. Recount (PC § 209.0057)
 - viii. Access to ballots (PC § 209.00594)
 - ix. Owners can force election if Board fails to call annual meeting (PC § 209.014)
- j. Fiduciary Duties
 - i. Care - Business Judgment Rule
 - ii. Loyalty - Conflicts of Interest
 - iii. Corporate Opportunity
 - iv. Attorney-client privilege
- k. Management certificates (PC § 209.004)
- l. Resale certificates
- m. Filing “dedicatory instruments”
- n. “Discretionary authority” - presumed reasonable

2. Covenants that Run with the Land

- a. Requirements:
 - i. Notice
- b. Effect: Binding on subsequent owners, with or without actual notice or consent
- c. Amendment - methods of doing so if impractical
 - i. If declaration requires less than 67% of votes for amendment, or if it does not state the requirement, then it may be amended by 67% of the total votes allowed to be cast. (PC § 209.0041)
- d. Attorney’s fees
 - i. Mandatory for successful party proving violation of restrictive covenants (PC § 5.006)
 - ii. Must notify owner they will be charged if violation continues beyond date certain (PC § 209.008)
- e. Defenses:
 - i. Abandonment
 - ii. Limitations

3. Collections Matters

- a. Annual Assessments/Dues
- b. Special Assessments
- c. Notice of lien can only be prepared and filed by attorney (PC § 209.0094)
- d. Procedure:

- i. Expedited foreclosure required (PC § 209.0092) (TRCP 735 and 736)
- ii. Must give 60 days' notification to inferior lienholders and give opportunity to cure (PC § 209.0091)
- e. Homestead exemption and the Inwood North case
- f. Post-foreclosure notice required (PC § 209.010)
- g. Right of Redemption (PC § 209.011)
- h. Priority of payments (PC § 209.0063)
- i. Owners are not liable for contingency fees (PC § 209.0064)
- j. Can't foreclose if obligation includes only fines, attorney's fees associated with fines, unpaid copy costs, and unpaid recount costs (PC § 209.009)
- k. Owners can remove foreclosure authority by 67% vote; requires petition of 10% of owners, and special meeting. (PC § 209.0093)

4. Enforcement Matters In General

- a. Right to appeal to Board (PC § 209.007)
- b. Notice and opportunity to cure required first (PC § 209.006)
- c. Injunctions

d. Nuisances

- i. Under covenants
- ii. Private nuisance
- iii. Public nuisance
- iv. Septic tanks and similar matters

e. Architectural Standards

- i. ACC
- ii. Common provisions
- iii. Square footage
- iv. Outbuildings

f. Use and Conduct Restrictions

- i. Common provisions
- ii. No commercial use, and variations
- iii. Single family residence
- iv. Animals
- v. Nuisances
- vi. Miscellaneous statutes:
 - (1) Owners have right to use adjacent lot for residential purposes (PC § 209.015)

5. Renters

- a. Generally, you can restrict or prohibit renters by restrictive covenant or an amendment thereto
- b. Issues:
 - i. Grandfather clause
 - ii. Exclusion for family members
 - iii. Exclusion if no money is paid
 - iv. What about people cohabiting with owner
 - v. Common restriction, owner, family, and up to 2 unrelated persons
 - vi. Live-in girlfriends and boyfriends
 - vii. Reduction in property value due to restricted use of property
 - viii. Political considerations
- c. Applications or leases (PC § 209.016):
 - i. POA's can't require submission and approval of lease
 - ii. POA's can't require credit report, or application to be submitted to it
 - iii. Sensitive info can be redacted

6. Insurance

- a. Can protect officers and directors from personal liability
- b. Can cover counterclaims but usually not suits by HOA

7. Questions

Feel free to contact me if you have any questions.

Sincerely,

Sean P. Healy
Attorney at Law