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RULES NEEDED/SUGGESTED TO ADDRESS CHANGES IN LAW

To: Managers and Board members of our client POAs

From: Connie Heyer, Niemann & Heyer LLP

Date: July 13, 2015

RE: Drafting Services for New Rules

Background. The 2015 Texas legislature imposed sweeping changes to the laws governing Texas homeowner associations (HOAs) and condominium associations (Condos). Some of these new laws are already in effect. One of the new laws effectively requires HOAs and Condos to adopt a new rule in order to maintain control over the placement, use, and aesthetics of standby electric generators. We also recommend that HOAs and Condos consider adopting additional rules to address other changes in the law.

A summary of the suggested rule changes is set forth below. Please review this document and then complete and return the form attached to this memorandum to let us know which rules your association would like prepared for adoption and execution. As always, please do not hesitate to contact our office should you have any questions.

Mandatory New Rule

Standby Electric Generators (HOA and Condo). Unless your HOA or Condo association adopts a rule related to standby electric generators (ones that provide backup electricity for a residence), a new law that is already in effect gives owners the right to install these generators without restriction as to size, location, use, screening, noise, and the like. This is the case irrespective of the current language in your deed restrictions. If your HOA or Condo wants to restrict the installation and use of these generators to the maximum degree allowed by law (as we assume most will!), please indicate so on the attached form.

Fee: For HOAs and Condos with outside space that is part of a unit, the fee is a discounted \$250.00 plus hourly fee to integrate into current rules and prepare for filing (estimate of one hour or less). For traditional Condos where the unit is located solely within the building structure, the fee is \$75.00 plus hourly.

New Rules We Suggest Adopting

Enforcement/Violations (HOA only). When an owner violates a deed restriction provision and the HOA wants to levy a fine, suspend common area usage, or file a lawsuit in response to that violation, Section 209 of the Texas Property Code historically has required that the HOA first provide the owner an opportunity to cure the violation to avoid these enforcement actions. In practice, this “opportunity to cure” provision was problematic when dealing with one-time (as opposed to ongoing) events, which by their nature are incurable (e.g., setting of fireworks). A revision to Section 209 now provides that an HOA need not provide an opportunity to cure when a violation is incurable.

Many HOAs have enforcement rules that mirror the old 209 language and require an opportunity to cure in all instances. We strongly suggest that HOAs allow us to review their enforcement policies and, if necessary, provide an amendment that removes this “opportunity to cure” language for incurable violations.

Fee: Hourly. (Estimate of less than one hour.)

Payment Plans (HOA only). The law regarding when an HOA is required to offer a payment plan has been clarified. This includes allowing the HOA to not offer a payment beyond a certain timeframe. All HOA payment plan rules should be reviewed and, as necessary, amended to ensure that delinquent owners do not have a perpetual right to receive a payment plan.

Fee: Hourly. (Estimate of less than one hour.)

Rules You May Elect to Adopt

Board Member Eligibility (HOA only). A new law allows HOAs to require that board members be residents in (i.e., live in) the subdivision, with the exception that at least one board position must be open to non-residents. If your HOA would like to adopt a bylaws amendment to put these requirements in place, please indicate so on the attached form. Please note that in most cases the board can adopt a bylaw amendment by board vote.

Fee: Hourly. (Estimate of 1 ½ hours or less.)

Secret ballots (HOA only). HOAs may now adopt procedures allowing for the use of ballots that do not reveal the person casting the vote (i.e., unsigned with no other information that identifies the owner). Our firm *does not* believe such a provision is necessary to protect privacy, since under current law ballots are not reviewable by HOA members. Rather, only the people who actually tabulate the ballots are allowed to view them. Nevertheless, if your HOA would like to go to a system of unsigned ballots, we can draft rule and/or bylaw amendments to allow for this.

Fee: Hourly. (Estimate of 1 ½ hours or less.)

Why Niemann & Heyer? Our firm is in a unique position to draft your new rules so that they are of maximum benefit to your POA, including protection against future liability. Connie Heyer is co-chair of the state-wide lobby group Texas Community Association Advocates that lobbied for (and in some cases, against) the POA laws adopted in the 2015 session. Connie Heyer drafted a significant portion of the language of the new laws. There is no firm in the Austin/San Antonio area with more experience with these new laws. Rules to implement the new laws must be very carefully drafted to ensure that they are not only practicable to follow and enforce, but that they provide the maximum protections and are precisely integrated into your current governing documents. This is not a matter of simply copying the law verbatim into a set of rules.

**REQUEST FOR RULES CHANGES -- 2015
NIEMANN & HEYER LLP**

Return: Please return your completed form either by email to admin@niemannlaw.com or by fax to 512-474-0717

Name of POA: _____

Name of property manager: _____

Person and email address to whom correspondence should be sent:

Signature: _____

Date: _____

Please perform the following work for the POA named above:

HOAs:

- Generator Rule.** Draft a standby generator rule, integrate into current rules, and provide to client in an executable and recordable form. Required if you want to maintain control over generator installation.
- Enforcement/Violations Rule.** Review enforcement policy to determine whether provides a right to cure and, if so, provide rule amendment to limit right to cure to ongoing violations (so fines can levy immediately for incurable violations).
- Payment Plans Rule.** Review current payment plan rule and prepare any amendments needed to ensure that owners do not have a perpetual right to a payment plan.
- Board Member Eligibility Bylaws Amendment.** Review current bylaws and prepare bylaws amendment for execution and recording requiring one or more board members to be residents of the community.
- Secret Voting Rule.** Review current voting provisions in bylaws and rules. Prepare appropriate amendment(s) for execution and recording to allow for ballots to be unsigned.

Condos:

- Generator Rule.** Required if you want to maintain control over generator installation.