

# 2011 TEXAS LEGISLATIVE UPDATE

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# 2011 Texas Legislative Update

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- The legislative session began with the pre-filing of bills last fall.
- The official session lasted from January to May 2011.
- In the session ultimately **19 bills** from the House and Senate that affect property owner associations in some way became law.



# 2011 Texas Legislative Update

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- Of the 19 bills that passed:
  - 9 became effective immediately;
  - 6 become effective 9/1/11; and
  - 4 become effective 1/1/12.
  - Some affect all property owner associations.
  - Some affect only non-condominiums
  - Only a few deal only with condominiums.
  - We will discuss 11 today.



# 11 Bills That Will Be Discussed

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## **Effective Now:**

- 1) House Bill 8
- 2) House Bill 362
- 3) House Bill 1278
- 4) House Bill 2779

## **Effective 9/1/11:**

- 1) House Bill 3391
- 2) Senate Bill 101
- 3) Senate Bill 472

## **Effective 1/1/12:**

- 1) House Bill 1821
- 2) House Bill 1127
- 3) House Bill 1228
- 4) House Bill 2761



# 8 Bills That Will Not Be Discussed\*

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## **Effective Now:**

1. House Bill 232
2. House Bill 1071
3. House Bill 1737
4. House Bill 2869
5. Senate Bill 1789

## **Effective 9/1/11:**

1. House Bill 364
2. House Bill 2702
3. Senate Bill 498

\*These bills either deal only with specific areas of the State or deal with matters that are not relevant to the day-to-day decision making of property owner associations.



# Where Can I Find the Full Text of the Statutes?

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- Go to the Texas Legislature Online at: <http://www.capitol.state.tx.us/>
- Click on “Legislation”
- Click on “Bill Lookup”
- Type in the Bill you want to look up using “HB” for “House Bill” and “SB” for “Senate Bill” (i.e. HB 1228, or SB 101)
- Change “Legislature” option to “82(R)-2011”
- Click “Submit”
- Click “Text”
- Choose the format version (PDF, Word, or HTLM) that you want under the “Bill” column and “Enrolled” row.



# **House Bill 8**

## **Effective Now**

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### **Deals With Transfer Fees.**

- Applicable to Condominiums and HOA's.
- Prohibits certain transfer fees but protects associations charging transfer fees with certain requisites:
  - Must be provided for and stated in the association's governing documents OR
  - Collectible under state law (i.e. resale certificate fees – see Texas Property Code Section 207.003)



# House Bill 8...

## Effective Now

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### ACTION ITEMS:

- 1) If an association wants to charge transfer fees, the association should check their governing documents to ensure that authorization for such is provided in the governing documents.
- 2) If not, the association should consult with its association attorney and not charge another transfer fee until the attorney indicates to you that such is permitted.



# House Bill 362...

## Effective Now

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### Deals With Solar Panels and Roofing Materials/Shingles.

- Applicable to Condominiums and HOA's.
- Allows an owner the right to install solar panels with certain limitations. Those limitations may prevent an owner from an installation that is:
  - In violation of law;
  - On property owned by the association;
  - In common areas;
  - Anywhere but on an owner's roof or in his/her fenced in yard, etc.
  - See HB 362 and/or speak with counsel regarding additional limitations.



# House Bill 362...

## Effective Now

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- **Allows** an owner the right to **install shingles** of certain materials that:
  - Are wind and hail resistant;
  - Provide heating/cooling efficiencies greater than composite shingles; or
  - Provide solar generation capabilities; and

When installed:

- Resemble shingles used or authorized for use in the development;
- Are more durable and are of equal or superior quality to the above shingles; and
- Match the aesthetics of the the property surrounding the owner's property.



# House Bill 362...

Effective Now

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## ACTION ITEMS:

- 1) In order to regulate the installation of solar panels and shingles at all, the association **must** adopt a policy in line with HB 362.
- 2) All associations **should** contact counsel regarding the drafting, **adopting and filing** of a Solar Panel and Shingle Policy.
- 3) Should a situation arise regarding such prior to the association filing the policy, do nothing and immediately contact the association's attorney.



# House Bill 1278

## Effective Now

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### Deals With Religious Displays.

- Applicable to condominiums and HOA's.
- Associations cannot adopt or enforce restrictions that prohibit an owner or resident from displaying/affixing on an entry door or door frame to the residence **one or more religious items** motivated by sincere religious belief.
- Association can adopt/enforce restrictions that prohibit such if the display or displays:
  - Have a total size of greater than 25 square inches;
  - Threatens the public health or safety;
  - Contains language, graphics, or any display that is patently offensive to a passerby; and
  - Is in a location other than the entry door or door frame past the outer edge of the door frame of the owner's residence or dwelling.

An association is allowed to utilize self-help removal if there is a violation of the above.



# House Bill 1278...

Effective Now

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## ACTION ITEMS:

- 1) **Read** the new section of the Texas Property Code (Section 202.018).
- 2) **Read** governing documents and determine if any provision may conflict with this new section.
- 3) **Be careful** to ensure the rights granted under this Section are not violated when proceeding with enforcement actions.



# **House Bill 2779**

## **Effective Now**

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### **Deals With Flags and Flagpoles.**

- Applicable to Condominiums and HOA's.
- Prohibits restrictions on an owner's right to display a U.S., Texas or military branch flag.
- An association may adopt or enforce reasonable dedicatory instrument provisions:
  - 1) that require:
    - a) the flag of the United States be displayed in accordance with 4 U.S.C. Sections 5-10;
    - b) the flag of the State of Texas be displayed in accordance with Chapter 3100, Government Code;
    - c) a flagpole attached to a dwelling or a freestanding flagpole be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;
    - d) the display of a flag, or the location and construction of the supporting flagpole, to comply with applicable zoning ordinances, easements, and setbacks of record; and
    - e) a displayed flag and the flagpole on which it is flown be maintained in good condition and that any deteriorated flag or deteriorated or structurally unsafe flagpole be repaired, replaced, or removed;



# **House Bill 2779...**

## **Effective Now**

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### **Flags and Flagpoles cont...**

- 2) that regulate the size, number, and location of flagpoles on which flags are displayed, except that the regulation may not prevent the installation or erection of at least one flagpole per property that is not more than 20 feet in height;
- 3) that govern the size of a displayed flag;
- 4) that regulate the size, location, and intensity of any lights used to illuminate a displayed flag;
- 5) that impose reasonable restrictions to abate noise caused by an external halyard of a flagpole; or
- 6) that prohibit a property owner from locating a displayed flag or flagpole on property that is:
  - a) owned or maintained by the property owners' association; or
  - b) owned in common by the members of the association.



## House Bill 2779...

Effective Now

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### **ACTION ITEM:**

- Contact your association attorney about drafting and filing rules related to the display of flags and regarding flag poles. If an association has no such specific rules, the association loses its right to enforce any rules, whether in compliance with the new statute, or not, and an owner would have an absolute right to fly any such flag(s).



# **House Bill 3391**

**Effective 9/1/11**

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## **Deals With Rain Barrels.**

- Applicable to Condominiums and HOA's.
- Amends current "rain barrel" law; requires associations to allow for the installation of such if certain association guidelines are met, but such guidelines cannot make it economically impossible for the installation of the rain barrel.
- Amends Section 202.007(d), Property Code but such does not require a property owners' association to permit a rain barrel or rainwater harvesting system to be installed in or on property if:



# **House Bill 3391...**

## **Effective 9/1/11**

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### **Rain Barrels cont...**

(A) the property is:

- (i) owned by the property owners' association;
- (ii) owned in common by the members of the property owners' association; or
- (iii) located between the front of the property owner's home and an adjoining or adjacent street; or

(B) the barrel or system:

- (i) is of a color other than a color consistent with the color scheme of the property owner's home; or
- (ii) displays any language or other content that is not typically displayed by such a barrel or system as it is manufactured.

- An association can regulate the size, type, and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located on the side of a house or at any other location that is visible from a street, another lot, or a common area if:
  - (A) the restriction does not prohibit the economic installation of the device or appurtenance on the property owner's property; and
  - (B) there is a reasonably sufficient area on the property owner's property in which to install the device or appurtenance.



## House Bill 3391...

Effective 9/1/11

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### **ACTION ITEM:**

- Contact your association attorney about drafting and filing rules regulating to the installation of rain barrels. If an association has no such specific rules, the association may lose its right to enforce any rules, whether in compliance with the new statute, or not, and an owner would have an absolute right to install rain barrels.



# **Senate Bill 101**

## **Effective 9/1/11**

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### **Deals With Military Protection Notice.**

- Applicable to Condominiums and HOA's
- Amends the provision in the Texas property Code dealing with foreclosure sale notices. Must provide the following language in the sale notice (**Association attorney to do**):

Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately.

- **Same requirements as House Bill 1127** regarding notice being given concerning rights for individuals in the armed forces in the Notice of Sale. HB 1127 will be discussed later.



# **Senate Bill 472**

**Effective 9/1/11**

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## **Deals With Amendments to Restrictions, Voting, and Ballots.**

- Applicable to HOA's only.
- Provides for the same voting, ballot, and Board member requirements as HB 2761 (HB 2761 is eff. 1/1/12 and will be discussed later).
- Provides that any Declaration may be amended with the approval of owners holding at least 67% of the total votes in the association, unless the Declaration provides for a lower percentage requirement.



# **Senate Bill 472...**

**Effective 9/1/11**

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## **Voting and Ballots...**

- 1) Any vote cast in an election or vote by a member of a property owners' association must be in writing and signed by the member.
- 2) Electronic votes cast constitute written and signed ballots.
- 3) In an association-wide election, written and signed ballots are not required for uncontested races.



# Senate Bill 472...

Effective 9/1/11

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## Voting and Ballots...

- RIGHT TO VOTE. A provision in a dedicatory instrument that would disqualify a property owner from voting in an association election of board members or on any matter concerning the rights or responsibilities of the owner **is void.**
- A provision in a dedicatory instrument that restricts a property owner's right to run for a position on the board of the property owners' association **is void.** However, if a board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member has been convicted of a felony or crime involving moral turpitude, the board member is immediately ineligible to serve on the board of the property owners' association, automatically considered removed from the board, and prohibited from future service on the board.



# **Senate Bill 472...**

## **Effective 9/1/11**

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### **Voting and Ballots...**

- The voting rights of an owner may be cast or given:
  - (1) in person or by proxy at a meeting of the property owners' association;
  - (2) by absentee ballot in accordance with this section;
  - (3) by electronic ballot in accordance with this section; or
  - (4) by any method of representative or delegated voting provided by a dedicatory instrument.
  
- An absentee or electronic ballot:
  - (1) may be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot;
  - (2) may not be counted, even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by a property owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and
  - (3) may not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.



# **Senate Bill 472...**

## **Effective 9/1/11**

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### **Voting and Ballots...**

- A solicitation for votes by absentee ballot must include:
  - (1) an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action;
  - (2) instructions for delivery of the completed absentee ballot, including the delivery location; and
  - (3) the following language: "By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail."



# **Senate Bill 472...**

## **Effective 9/1/11**

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### **Voting and Ballots...**

- “electronic ballot” means a ballot:
  - (1) given by:
    - (A) e-mail;
    - (B) facsimile; or
    - (C) posting on an Internet website;
  - (2) for which the identity of the property owner submitting the ballot can be confirmed; and
  - (3) for which the property owner may receive a receipt of the electronic transmission and receipt of the owner's ballot.
- If an electronic ballot is posted on an Internet website, a notice of the posting shall be sent to each owner that contains instructions on obtaining access to the posting on the website.



# **Senate Bill 472...**

**Effective 9/1/11**

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## **Voting and Ballots...**

- **TABULATION OF AND ACCESS TO BALLOTS.** A person who is a candidate in a property owners' association election or who is otherwise the subject of an association vote, or a person related to that person within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, may not tabulate or otherwise be given access to the ballots cast in that election or vote except as provided by this section.
- A person other than a person described above may tabulate votes in an association election or vote but may not disclose to any other person how an individual voted.
- A person other than a person who tabulates votes as set forth above, may be given access to the ballots cast in the election or vote only as part of a recount process authorized by law.



# **House Bill 1821**

**Effective 1/1/12**

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## **Deals With Filing and Posting Governing Documents, Resale Certificates and Payment Plans.**

- Applicable to Condominiums and HOA's.
  - **Dedictory Instruments.**

All dedicatory instruments/governing documents must be filed in the county(ies) records or such is not enforceable.



# **House Bill 1821...**

**Effective 1/1/12**

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## **Payment Plans.**

- Applicable to HOA's only:
  - Must adopt and file in the County records a payment plan policy (if HOA consists of more than 14 lots).
  - The payment plan must be at least 3 months and no more than 18 months without accruing additional monetary penalties.
  - The association is not required to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan during the two years following the owner's default under the previous payment plan.



# House Bill 1821...

Effective 1/1/12

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## Resale certificates.

- Resale certificates must include a statement of all fees associated with the transfer (how much, to whom paid, etc.).
  - Resale fees may be required to be delivered to the Association prior to delivery of resale certificate but cannot be processed until resale certificate has been delivered.
  - Section Property Code Section 207.003(b) provides requirements for resale certificates.
- If HOA **or** HOA's management company maintains a HOA website, must have copies of all association governing documents on the site.



# House Bill 1821...

Effective 1/1/12

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## ACTION ITEMS:

- Ensure **all** governing documents are filed in the county records.
- Contact association attorney to **draft and file a payment plan policy** that conforms with the new statutory requirements.
- Read and understand that new requirements for resale certificates – if you have any questions, contact your association attorney.
- If you have an association website, make sure all governing documents are available on the website.



# **House Bill 1127**

**Effective 1/1/12**

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## **Deals with Eviction Suits and Military Protection Notice.**

- Applicable to Condominiums and HOA's:
- **Eviction Suits:**
  - Citations to the Lawsuit must contain Military Protection Notice.
- **Foreclosure Notices:**
  - Provides for specific language that must be included on a Notice of Sale regarding rights as a member of the armed forces. (Same as SB 101).



# House Bill 1127...

Effective 1/1/12

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- Applicable to HOA's only:
  - Provides additional notification to be added to **Section 209 violation letters** regarding special rights or relief if owner is active military. Must provide the following language:
    - **You may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the owner is serving on active military duty.**

## **ACTION ITEM:**

- Make sure violation notices sent by the association provide the proper military protection language.



# House Bill 1228

Effective 1/1/12

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## Deals With Payment Plans, Foreclosure, Notices of Lien.

- Applicable to HOA's only.
- Payment Plans - Like HB 1821:
  - HOA's must adopt and file in the county records a payment plan policy (if HOA consists of more than 14 lots).
  - Payment plans of 3 to 18 months.
  - Discusses payment plans and application of payments.
  - HOA required to send specific **notice** by CMRRR to an owner before turning account over to attorney specifying the owner's options and notifying the owner of the availability of a payment plan and giving the owner **30 days to cure** the default



# House Bill 1228...

Effective 1/1/12

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## Third Party Collections.

- An owner is not liable for fees of a collection agent retained by the property owners' association if:
  - (1) the obligation for payment by the association to the association's collection agent for fees or costs associated with a collection action is in any way **dependent or contingent** on amounts recovered; or
  - (2) the payment agreement between the association and the association's collection agent **does not require payment by the association** of all fees to a collection agent for the action undertaken by the collection agent.
- The agreement between the association and the association's collection agent **may not prohibit the owner from contacting the association board or the association's managing agent** regarding the owner's delinquency.



# House Bill 1228...

Effective 1/1/12

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## Foreclosures:

- Notice must be sent to junior lien holders giving a 61 day opportunity to cure the delinquency.
- Association's must utilize an expedited judicial process, to be established by the Supreme Court, to obtain a judgment prior to foreclosing, even if the HOA's documents specifically grant the power of non-judicial sale.
- The foreclosure power can be removed or adopted by affirmative vote of 67% of total votes allocated in the association



# House Bill 1228...

Effective 1/1/12

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## Notice of Lien is a Legal Instrument.

- HB 1228 confirms that:

the “Assessment lien, or other instrument evidencing the nonpayment of assessments or other charges owed to a property owners’ association and filed in the official public records of a county is a legal instrument affecting title to real property.”

- **Translation – only licensed attorneys may file assessment liens in the county records; any other person filing such is engaging in the unlawful practice of law**



# House Bill 1228...

Effective 1/1/12

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## ACTION ITEMS:

- Contact association attorney to **draft and file a payment plan policy** that conforms with the new statutory requirements.
- If the association has an **application of payments policy**, **have association attorney review same** and let the association if any revisions are necessary.
- If you do not have an **application of payments policy**, contact association attorney for drafting and filing of such a policy.



# House Bill 1228...

Effective 1/1/12

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## ACTION ITEMS...

- **Read CAREFULLY** the new Section 209.0064 added to the Texas Property Code.
- **Update** your internal or management **collection letter**. Ensure that before turning over a collection matter to the association attorney, the notices provided in Section 209.0064 have been given to that particular owner. If not, send another letter complying with such before turning over to association attorney.
- You may want to have your association attorney review your form letter to ensure compliance and to prepare and file Notices of Lien.



# House Bill 1228...

Effective 1/1/12

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## ACTION ITEMS...

- The Texas Supreme Court is supposed to adopt rules establishing expedited foreclosure proceedings by September 1, 2011, and the rules are supposed to be substantially similar to home equity foreclosures.
- Stay tuned for details on the expedited foreclosure process established by the Supreme Court.



# **House Bill 2761**

**Effective 1/1/12**

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## **Deals With:**

- 1. Specific Record Retention and Production Requirements;**
  - 2. Open Board Meeting Requirements;**
  - 3. Mandatory Election Procedures; and**
  - 4. Also contains provisions dealing with Ballots, Right to Vote and Board Membership. These are the same as in SB 472 discussed earlier.**
- Applicable to HOA's only.
  - Lengthy bill with many parts.



# **House Bill 2761...**

## **Effective 1/1/12**

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### **Records Inspection.**

- An association shall make the books and records of the association, including financial records, open to and reasonably available for examination.
- An owner or the owner's authorized representative must submit a written request for access or information by certified mail, with sufficient detail describing the association's books and records requested, to the mailing address of the association or authorized representative as reflected on the most current management certificate.
- The request must contain an election either to inspect the books and records before obtaining copies or to have the property owners' association forward copies of the requested books and records and:
  - (1) if an inspection is requested, the association, on or before the 10th business day after the date the association receives the request, shall send written notice of dates during normal business hours that the owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the association; or
  - (2) if copies of identified books and records are requested, the association shall, to the extent those books and records are in the possession, custody, or control of the association, produce the requested books and records for the requesting party on or before the 10th business day after the date the association receives the request.



# **House Bill 2761...**

## **Effective 1/1/12**

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### **Records Inspection...**

- If the association is unable to produce the books or records requested on or before the 10th business day after the date the association receives the request, the association must provide to the requestor written notice that:
  - (1) informs the requestor that the association is unable to produce the information on or before the 10th business day after the date the association received the request; and
  - (2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 15th business day after the date notice is given.
- If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal business hours, and the requesting party shall identify the books and records for the association to copy and forward to the requesting party.
- An association may produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the association.



# House Bill 2761...

## Effective 1/1/12

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### Records Production and Copying Policy.

- An association board **must adopt a records production and copying policy** that prescribes the costs the association will charge for the compilation, production, and reproduction of information requested. **ACTION ITEM.**
- The prescribed charges may include all reasonable costs of materials, labor, and overhead but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3.
- The policy **must be recorded as a dedicatory instrument** . **ACTION ITEM.**
- An association may not charge an owner for the compilation, production, or reproduction of information requested under this section unless the policy prescribing those costs has been recorded.
- An owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy .



# House Bill 2761...

## Effective 1/1/12

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### Records Production and Copying Policy...

- The association **may require advance payment** of the estimated costs of compilation, production, and reproduction of the requested information.
- If the estimated costs are lesser or greater than the actual costs, the association shall submit a final invoice to the owner on or before the 30th business day after the date the information is delivered. If the final invoice includes additional amounts due from the owner, the additional amounts, if not reimbursed to the association before the 30th business day after the date the invoice is sent to the owner, may be added to the owner's account as an assessment. If the estimated costs exceeded the final invoice amount, the owner is entitled to a refund, and the refund shall be issued to the owner not later than the 30th business day after the date the invoice is sent to the owner.
- A property owners' association must estimate costs under this section using amounts prescribed by the policy.



# **House Bill 2761...**

**Effective 1/1/12**

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## **Records Production and Copying Policy...**

- **Individual Information Can Be Protected.** To the extent the information is provided in the meeting minutes, the association is not required to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual owner of an association, an owner's personal financial information, including records of payment or nonpayment of amounts due the association, an owner's contact information, other than the owner's address, or information related to an employee of the association, including personnel files. Information may be released in an aggregate or summary manner that would not identify an individual property owner.
- An owner can file a **lawsuit in the Justice of the Peace** court if the association does not produce records as may be required.



# **House Bill 2761...**

**Effective 1/1/12**

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## **Records Production and Copying Policy...**

- Record Production Policy – statute refers to Title 1, Texas Administration Code, Section 70.3.
  - Standard paper copy cost – 10 cents/page
  - Oversize paper copy cost – 50 cents/page
  - Specialty paper – actual cost
  - Programming costs - \$28.50/hour
  - Processing / gathering documents (including sorting, redacting, etc.) - \$15/hour
    - But cannot be charged if less than 50 pages requested, unless documents are located in at least 2 separate, disconnected buildings or located in a remote storage facility
    - No legal charges can be charged
  - Postage/shipping expenses may be charged

# House Bill 2761...

Effective 1/1/12

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## Records Retention Policy. - ACTION ITEM.

- An association composed of more than 14 lots shall adopt and comply with a document retention policy that includes, at a minimum, the following requirements:
  - (1) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;
  - (2) financial books and records shall be retained for seven years;
  - (3) account records of current owners shall be retained for five years;
  - (4) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;
  - (5) minutes of meetings of the owners and the board shall be retained for seven years;  
and
  - (6) tax returns and audit records shall be retained for seven years.



# House Bill 2761...

## Effective 1/1/12

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### Open Board Meetings.

- Regular and special board meetings **must be open to owners**, subject to the right of the board to adjourn a board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the property owners' association's attorney, matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the board.
- Any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.



# House Bill 2761...

## Effective 1/1/12

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### Open Board Meetings...

- Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be:
  - (1) mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or
  - (2) provided **at least 72 hours** before the start of the meeting by:
    - (A) posting the notice in a conspicuous manner reasonably designed to provide notice to property owners' association members:
      - (i) in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or
      - (ii) on any Internet website maintained by the association or other Internet media; and
    - (B) sending the notice by e-mail to each owner who has registered an e-mail address with the association.



# **House Bill 2761...**

## **Effective 1/1/12**

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### **Open Board Meetings...**

- The board may not, without prior notice to owners consider or vote on:
  - (1) fines;
  - (2) damage assessments;
  - (3) initiation of foreclosure actions;
  - (4) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;
  - (5) increases in assessments;
  - (6) levying of special assessments;
  - (7) appeals from a denial of architectural control approval; or
  - (8) a suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue.



# House Bill 2761...

Effective 1/1/12

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## Notice of Election or Association Vote.

- **Not less than 10 nor more than 60 days notice.**
- Statute says: Not later than the 10th day or earlier than the 60th day before the date of an election or vote, an association shall give written notice of the election or vote to:
  - (1) each owner of property in the property owners' association, for purposes of an association-wide election or vote; or
  - (2) each owner of property in the property owners' association entitled under the dedicatory instruments to vote in a particular representative election, for purposes of a vote that involves election of representatives of the association who are vested under the dedicatory instruments of the association with the authority to elect or appoint board members of the association.



# **House Bill 2761...**

## **Effective 1/1/12**

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### **Recount of Votes.**

- Any owner may, not later than the 15th day after the date of the meeting at which the election was held, require a recount of the votes.
- The property owners' association shall, at the expense of the owner requesting the recount, retain for the purpose of performing the recount, the services of a person qualified to tabulate votes.
- The association shall enter into a contract for the services of a person who:
  - (1) is not a member of the association or related to a member of the association board within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and
  - (2) is:
    - (A) a current or former:
      - (i) county judge;
      - (ii) county elections administrator;
      - (iii) justice of the peace; or
      - (iv) county voter registrar; or
    - (B) a person agreed on by the association and the persons requesting the recount.



# House Bill 2761...

Effective 1/1/12

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## Mandatory Election After Failure to Call Regular Meeting.

- If a board of an association does not call an annual meeting of the association members, **an owner may demand that a meeting of the association members be called** not later than the 30th day after the date of the owner's demand. The owner's demand must be made in writing and sent by certified mail, return receipt requested, to the registered agent of the association and to the association at the address for the association according to the most recently filed management certificate. A copy of the notice must be sent to each property owner who is a member of the association.
- **If the board does not call a meeting** of the members of the association on or before the 30th day after the date of a demand **three or more owners may form an election committee.**



# House Bill 2761...

Effective 1/1/12

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## ACTION ITEMS:

- Contact association attorney regarding adopting and recording a record retention and production policy.
- Ensure proper notice is being given to owners regarding voting, elections, and board meetings.
- Make sure board meeting are being conducted properly.
- If an owner requests a recount of votes, contact your association attorney for guidance on how such should be handled.



# 2011 TEXAS LEGISLATIVE UPDATE

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That's All Folks!

- ❖ **Please note that the information in this presentation is not intended to be legal advice to anyone in connection with any legal matter. The information in this presentation is only intended to provide general information in summary form. The information is in no way intended to be exhaustive or as a substitute for obtaining the advice of competent legal counsel.**



## **ROBERT M. “BOB” BLEND**

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- Bob earned his business degree by double majoring in Advertising and Selling and Sales Management at Bowling Green State University, in Bowling Green, Ohio. In college, Bob was inducted into the Beta Gamma Sigma which recognizes outstanding achievement by collegians in the School of Business.
- Bob attended Wake Forest University School of Law earning his law degree in 1985. He has been a member of the Community Associations Institute, since 1990 and was a member of the former POA Sub-Committee of the State Bar of Texas Real Estate’s Section which dealt exclusively with issues relating to property owners associations. Bob has actively participated with the legislation process dealing with property owners associations and he has given speeches, served as an instructor and participated in round table legal discussions concerning property owners associations, and has also held positions in the local chapter of the CAI, including serving on the Board of Directors from 2007 to the present and serving as President-Elect in 2011. Bob will serve as President of the Chapter in 2012.
- Bob has also been honored by being selected as a Fellow of the Texas and Dallas Bar Foundations and has received the highest rating “AV” from the Martindale-Hubbell legal directory, one of the oldest legal directories in the country.