



Capital TitleSM
A Shaddock Company

Resale Certificate Changes

Effective January 1, 2012

The Breakdown

HB 1821 Property Owner Association Information Effective date: January 1, 2012: Section 5.012, Property Code was amended to make it clear that a resale certificate is available at the request of the owner or purchaser or title company and is not limited to sale situations.

The property owners association is not required to conduct a full examination of the property but may provide a copy of the most recent resale certificate in the association's records. It must include the total of all amounts due and unpaid to the property owners' association that are attributable to the owner's property. The property owners' association may require payment before beginning the process of providing a resale certificate but may not process a payment for a resale certificate until the certificate is available for delivery. The association may not charge a fee if the certificate is not provided within 10 business days.

What you should do: *Title companies continue to need to obtain resale certificates whenever they are required to insure that a lien to be insured will have priority over HOA/POA dues.*

Escrow

Section 5.012 of the Property Code has been amended to expand the disclosure that sellers must give buyers when the property is subject to membership in a mandatory property owners' association (both single family and condominium). The disclosure must now state, in underlined bold print, that the owner of the property is entitled to receive various documents governing the association. There are also a few minor language changes to the existing disclosure. The earnest money contract is not enforceable against the purchaser if this disclosure is not contained therein or otherwise given to the purchaser. Presumably, the Texas Real Estate Commission will revise its earnest money contract forms to incorporate these changes.

Currently, Section 207.003 of the Property Code requires a homeowners' association to promptly deliver a copy of a resale certificate to a property owner upon request. The recent changes require the HOA to also deliver a resale certificate to a prospective purchaser, purchaser's agent, or title company. The HOA may require proof that the purchaser has a contract to buy the property. The HOA may require payment in advance but may not process the payment until the certificate has been prepared and delivered. The deadline for delivery of the resale certificate has been changed from ten calendar days to ten business days. The deadline for the delivery of a required update has been changed from seven calendar days to seven business days. If the HOA maintains a website, the declaration must be available on the website.

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Property Owner Associations: What Has Changed?

In the recent legislative session, numerous proposals to limit the powers of property owner associations were introduced and debated. The proposed changes that have been enacted into law.

Terminology

The term "Property Owners' Association" includes several distinct categories of organizations. An association created by restrictive covenants governing a single-family subdivision, in which dues are mandatory, is often referred to as a "homeowners' association" (HOA). These types of associations were the focus of most of the proposed legislation and are the focus of this article.

An association that governs a condominium project is often called a "condominium association." The laws governing condominium associations are similar to the laws governing homeowner associations in some, but not all, respects. A voluntary association of homeowners in a single-family subdivision, in which the payment of dues is not mandatory, is often called a "civic club." Civic clubs have far less power than do homeowner associations.

Background

In the typical homeowners' association subdivision, the developer of the subdivision records a declaration, to which all lots in the subdivision will be bound. The declaration includes restrictive covenants, which limit the property to residential use and sets forth architectural requirements. It also provides for dues, which all property owners must pay. The declaration also provides for the creation of a nonprofit corporation, whose duties include enforcement of the restrictive covenants and collection of the dues. Initially, the board of directors of this nonprofit corporation is composed of representatives of the developer. However, as lots are sold and houses built, control of the association is turned over to the property owners. In most established subdivisions, the property owners elect the board of directors at annual meetings. Subject to the limitations imposed by the restrictions, the directors determine the policies of the homeowners' association. Although they are ultimately responsible for the governance of the HOA, the directors often hire professional management companies to collect the dues and handle day-to-day duties. If certain homeowners in the subdivision are dissatisfied with the policies of the HOA or the actions of the management company, they can elect new directors at the next annual meeting.

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Foreclosures

The ability of homeowners' associations to foreclose on property for nonpayment of dues has always been controversial. The new laws restrict this power in several respects. Most significantly, a court order will now be required prior to foreclosure. HOA foreclosure procedures are likely to be similar to the procedures for foreclosing home equity loans. The HOA will first obtain an order from a court authorizing the foreclosure, then will be permitted to foreclose non-judicially (if so authorized by the restrictive covenants). This change takes effect on September 1, 2011.

Prior to instituting foreclosure procedures, as of January 1, 2012, the HOA must notify the beneficiaries of any subordinate deeds of trust of the total amount due and give such lienholders 60 days to cure the delinquency. This new law effectively creates a statutory "60-day letter," so separate 60-day letters should no longer be necessary. If at least 67 percent of the homeowners in the subdivision approve, the power to foreclose may be eliminated from the declaration. Similarly, if the declaration does not allow foreclosure, that power may be added thereto with the approval of 67 percent of the homeowner. Effective September 1, 2011, a specified notice must be given to any member of the military who is facing foreclosure. This notice applies to all foreclosures, not just foreclosures by property owner associations. If you handle REO sales, be prepared for new Schedule C requirements for proof that this notice was given.

Governance

The legislature enacted a number of new laws regulating the governance of homeowners' associations. There will be limitations on the period of time that the developer may control the HOA board of directors. There will be new open record and document retention requirements. Requirements pertaining to notices of meetings, the qualifications of directors, and voting rights have been enacted.

Homeowners' associations are now required to adopt guidelines for payment plans for delinquent assessments and to record these guidelines. (Interestingly, the Las Colinas development in Irving was exempted from these and certain other requirements.) There also are new laws governing the application of payments and limitations on the ability of an HOA to pass through the fees of third party collectors (including attorneys). Restrictive covenants that completely prohibit the display of United States, Texas, or military flags are no longer enforceable.

However, certain limitations on the nature of the display are permitted, including compliance with federal and state guidelines. Similarly, a property owners' association's architectural requirements may not prohibit rain harvesting devices or solar panels. Certain size and placement restrictions are permitted, though.

Conclusion

Despite these changes, insuring the sale of property following the foreclosure of any property owners' association lien will continue to be an extra-ordinary risk.