I. a) Chapter 209 of the Texas Property Code Texas Residential Property Owner’s Protection Act (“TRPOPA”)

Section 209.056 Notice of Election or Association Vote

NEW LAW Effective: 1/1/12

Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE.

(a) Not later than the 10th day or earlier than the 60th day before the date of an election or vote, a property owners' 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 property owners' association with the authority to elect or appoint board members of the property owners' association.

(b) This section supersedes any contrary requirement in a dedicatory instrument.

(c) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

[HB 2761, 82nd Legislature]

Summary:

Regardless of what the governing documents may state, an association must send written notice of an association-wide election or vote to every owner no later than 10 days, or earlier than 60 days, before an election or community vote. If an association has been established (because of size or other considerations) such that a representative votes on behalf of a portion of the membership, the individual entitled to vote in accordance with the governing documents must receive the written notice.
Section 209.0057  Recount of Votes

**NEW LAW**  Effective: 1/1/12

Sec. 209.0057. RECOUNT OF VOTES.

(a) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(b) 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. A demand for a recount must be submitted in writing either:

(1) by certified mail, return receipt requested, or by delivery by the United States Postal Service with signature confirmation service to the property owners' association's mailing address as reflected on the latest management certificate filed under Section 209.004; or

(2) in person to the property owners' association's managing agent as reflected on the latest management certificate filed under Section 209.004 or to the address to which absentee and proxy ballots are mailed.

(c) 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 under this subsection. 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.

(d) Any recount under Subsection (b) must be performed on or before the 30th day after the date of receipt of a request and payment for a recount in accordance with Subsections (b) and (c). If the recount changes the results of the election, the property owners' association shall reimburse the requesting owner for the cost of the recount. The property owners' association shall provide the results of the recount.

*"red letters" - represent changes in law

*"black letters" - represent the current language of the law

This material was prepared by Robert North, North Law, Houston, TX (713) 844-8030, e-mail: rnorth@thenorthlaw.com and is intended to provide general information about certain bills enacted into law during the 82nd Legislature. All comments and summaries are the opinion of Robert North and North Law and should not be relied upon as legal advice. Additional facts and future developments may affect the content of this material, and no guarantee is given that the information is correct, complete, or up to date.
the recount to each owner who requested the recount. Any action taken by the board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

[HB 2761, 82nd Legislature]

Summary:

Within 15 days after an election, any owner may demand a recount by sending written notice, by certified mail, to the association’s mailing address as set forth in its management certificate or by delivering the written notice in person to the association’s managing agent (at the address set forth in the management certificate).

Upon receiving the demand for recount, the association must retain the services of a person to recount the vote who:

A. is not a member of the association and is a current or former:  
   • County judge,  
   • Justice of the peace,  
   • County elections administrator, or,  
   • County voter registrar.

Or,

B. is not a member of the association and is agreed to by the association and the person requesting the recount.

The owner requesting the recount is liable for the cost of same, unless the recount changes the result of the election. If the recount changes the election result, the association must reimburse the owner for the costs of the recount.

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Section 209.0058   **Ballots**

Sec. 209.0058. BALLOTS.

(a) 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.

(b) Electronic votes cast under Section 209.00592 constitute written and signed ballots.

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(c) In an association-wide election, written and signed ballots are not required for uncontested races.

[HB 2761, 82nd Legislature]

Summary:

Unless an election is uncontested, all ballots must be in writing and signed by a member.

Electronic ballots (discussed in the new law set forth in Section 209.0593) satisfy this requirement as they are considered to be written and signed.

Section 209.059  **Right to Vote**  NEW LAW

2 Possible Versions of the Law

Sec. 209.0059. RIGHT TO VOTE.

(a) 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.

(b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

[SB 472, 82nd Legislature]  **Effective: 9/1/11**

Sec. 209.0059. RIGHT TO VOTE.

(a) A provision in a dedicatory instrument that would disqualify a property owner from voting in a property owners' association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

(b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

[HB 2761, 82nd Legislature]  **Effective: 1/1/12**

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Summary:

Regardless of what the governing documents may state, every owner has a right to vote in an election or on any matter concerning the rights and responsibilities of an owner. This would appear to include those owners who owe money to the association, who are in violation of the governing documents, and who may be a party to a lawsuit involving the association.

Section 209.00591  Board Membership  NEW LAW

2 Possible Versions of the Law

Sec. 209.00591. BOARD MEMBERSHIP.

(a) Except as provided by this section, 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.

(b) 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.

(c) The declaration may provide for a period of declarant control of the association during which a declarant, or persons designated by the declarant, may appoint and remove board members and the officers of the association, other than board members or officers elected by members of the property owners' association. Regardless of the period of declarant control provided by the declaration, on or before the 120th day after the date 75 percent of the lots that may be created and made subject to the declaration are conveyed to owners other than a declarant, at least one-third of the board members must be elected by owners other than the declarant. If the declaration does not include the number of lots that may be created and made subject to the declaration, at least one-third of the board members must be elected by owners other than the declarant not later than the 10th anniversary of the date the declaration was recorded.

[HB 2761, 82nd Legislature] Effective: 1/1/12

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Sec. 209.00592. BOARD MEMBERSHIP.

(a) Except as provided by Subsection (b), 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.

(b) 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.

[SB 472, 82nd Legislature] Effective: 9/1/11

Summary:

Regardless of what the governing documents may state, any owner may run for a position on the board of directors, unless they are a convicted felon. If an association discovers that a current director is a felon, he is automatically removed from the board.

There are two versions of the new law relating to “Board Membership.” The distinction is a provision relating to when a developer must allow homeowner members on the developer controlled Board. If the final version of the law encompasses the provision addressing developers, the following would appear to guide the Developer Board: Regardless of what the governing documents may state, within 120 days after 75% of the lots that may be created under a declaration are sold to owners, at least 1/3 of the directors must be elected by owners (other than the declarant/developer). If the declaration does not include the number of lots that may be created under a declaration then, 10 years after the recording of the declaration, 1/3 of the directors who comprise a Board must be elected by owners other than the declarant/developer.

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