

I. a) Chapter 209 of the Texas Property Code Texas Residential Property Owner's Protection Act ("TRPOPA")

[beginning of excerpt]

Section 209.005 Association Records **AMENDED** Effective: 1/1/12

Sec. 209.005. ASSOCIATION RECORDS.

- (a) Except as provided by Subsection (b), this section applies to all property owners' associations and controls over other law not specifically applicable to a property owners' association.
- (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.
- (c) Notwithstanding a provision in a dedicatory instrument, a property owners' association shall make the books and records of the association, including financial records, open to and reasonably available for examination by an owner, or a person designated in a writing signed by the owner as the owner's agent, attorney, or certified public accountant, in accordance with this section. An owner is entitled to obtain from the association copies of information contained in the books and records.
- (d) Except as provided by this subsection, an attorney's files and records relating to the property owners' association, excluding invoices requested by an owner under Section 209.008(d), are not records of the association and are not subject to inspection by the owner or production in a legal proceeding. If a document in an attorney's files and records relating to the association would be responsive to a legally authorized request to inspect or copy association documents, the document shall be produced by using the copy from the attorney's files and records if the association has not maintained a separate copy of the document. This subsection does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.
- (e) An owner or the owner's authorized representative described by Subsection (c) must submit a written request for access or information under Subsection (c) by certified mail, with sufficient detail describing the property owners' association's

books and records requested, to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 209.004. 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, except as otherwise provided by this section.
- (f) If the property owners' association is unable to produce the books or records requested under Subsection (e) 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 under this subsection is given.
- (g) 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 property owners' association to copy and forward to the requesting party.
- (h) A property owners' association may produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the association.
- (i) A property owners' 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 under this

section. 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 required by this subsection must be recorded as a dedicatory instrument in accordance with Section 202.006. 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 as required by this subsection. An owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this subsection. 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.

- (j) A property owners' association must estimate costs under this section using amounts prescribed by the policy adopted under Subsection (i).
- (k) Except as provided by Subsection (l) and to the extent the information is provided in the meeting minutes, the property owners' 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.
- (l) The books and records described by Subsection (k) shall be released or made available for inspection if:
 - (1) the express written approval of the owner whose records are the subject of the request for inspection is provided to the property owners' association; or
 - (2) a court orders the release of the books and records or orders that the books and records be made available for inspection.
- (m) A property owners' 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.
- (n) A member of a property owners' association who is denied access to or copies of association books or records to which the member is entitled under this section may file a petition with the justice of the peace of a justice precinct in which all or part of the property that is governed by the association is located requesting relief in accordance with this subsection. If the justice of the peace finds that the member is entitled to access to or copies of the records, the justice of the peace may grant one or more of the following remedies:
- (1) a judgment ordering the property owners' association to release or allow access to the books or records;
 - (2) a judgment against the property owners' association for court costs and attorney's fees incurred in connection with seeking a remedy under this section; or
 - (3) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Subdivision (2) from any future regular or special assessments payable to the property owners' association.
- (o) If the property owners' association prevails in an action under Subsection (n), the association is entitled to a judgment for court costs and attorney's fees incurred by the association in connection with the action.
- (p) On or before the 10th business day before the date a person brings an action against a property owners' association under this section, the person must send written notice to the association of the person's intent to bring the action. The notice must:
- (1) be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service to the mailing address of the association or authorized representative as

reflected on the most current management certificate filed under Section 209.004; and

(2) describe with sufficient detail the books and records being requested.

(q) For the purposes of this section, "business day" means a day other than Saturday, Sunday, or a state or federal holiday.

[HB 2761, 82nd Legislature]

Summary:

Section 209.005 was substantially rewritten to the extent that it could be considered a new law. This law is intended to control over any current provision in a governing document. Moreover, it is intended to control over other laws not specifically applicable to an association (i.e. the Texas Non Profit Corporation Act).

What Records are Reviewable

An owner, or an agent designated by an owner in writing, is entitled to review and/or obtain from an association copies of information contained in the association's books and records. All books and records (not protected by an individual's right to privacy) are reviewable except attorneys' files and records relating to an association (however, invoices for attorneys fees relating only to the matter for which the association seeks reimbursement are reviewable).

The Review Process

To initiate the review process, an owner, or his designated representative, must send a written request, by certified mail, to an association's mailing address as reflected in its management certificate on file in the real property records. The owner can either request to inspect the association records (and, upon review, copy same), or they can request that an association copy and forward to them specific requested records.

If the owner requests an inspection of the records, the association, within 10 business days after receiving the request, must send to the owner written notice as to the date upon which the owner may review the records. The inspection is to take place during a mutually agreed upon time during regular business hours.

If an owner requests copies of specific records to be sent to them, the association is required to copy and send to the owner, within 10 business days after receiving the owner's request, all identifiable documents which it retains in its possession. The copies requested may be tendered in hard copy, electronic, or any other format reasonably available to the association.

If an association is unable to produce the documents requested within 10 business days of its receipt of the request, it must send written notice (the "Notice") to the owner regarding this fact and must state a date by which the information will be sent or made available for inspection. The documents must be made available to inspect, and/or the copies sent, within 15 business days of the date that the Notice is sent to the owner.

Recorded Records Production/ Copying Policy

An association must create and file in the real property records a Records Production and Copying Policy that sets out the amounts that the association will charge an owner to compile, produce and copy the information requested by an owner. The maximum cost that can be charged by an association is the cost charged by the state of Texas for providing copies of public information which is found in Title 1, Part 3, Chapter 70, Rule 70.3 of the Texas Administrative Code.

Although an owner is responsible for the costs, an association may not charge an owner for their request until a formal Records Production/Copying Policy is adopted and filed. Upon receipt of a records request, an association may require advanced payment of the estimated costs (based upon the filed Records Production/Copying Policy) required for the association to produce the documents requested. If, after providing the requested records, the costs to produce the request are higher, a final bill is to be sent to the owner requesting payment within 30 business days after the documents have been produced. If the owner fails to pay the final invoice within 30 business days after receiving the invoice, the final invoice charge may be added to the owner's property account as an assessment. If the estimated upfront costs exceed the final invoice amount, the association must send the owner a refund within 30 business days after the final invoice is sent to the owner.

Right to Privacy

An association is not required to produce or reveal personal information about an owner including their deed restriction violation history, payment history, and contact information (except an owner's address). Information regarding violation history or payment history may be produced in a summary form which does not identify individual property owners.

Importantly, an individual's right of privacy belongs to them, and, thus, they may, with written approval, agree to relinquish that right and allow an association to produce their information. In addition, a court order can require an association to release information specific to an individual.

Records Retention Policy

An association comprised of 15 lots or more must adopt a record retention policy, whereby they keep the following documents for at least a minimum prescribed period of time:

- (1) Declarations, bylaws, certificates of formation and amendments to same.....kept permanently
- (2) Financial Records.....7 years

*"red letters" - represent changes in law

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

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- (3) Account Records of owners.....5 years
- (4) Contracts (term: 1 year or more).....4 years after end of contract
- (5) Meeting minutes.....7 years
- (6) Tax/Audit records.....7 years

Remedy for an Owner who is Denied Records

If an owner is denied access to association records, they must send written notice, by certified mail, to the address of the association as set forth in its management certificate describing, in detail, the records being requested. If the owner fails to receive the records within the prescribed period of time, they may file a petition in a justice of the peace court seeking one or more of the following:

- (1) a judgment seeking a release of the records,
- (2) a judgment for cost and attorney’s fees, or
- (3) a judgment allowing the owner to deduct any monetary judgment awarded in their favor from future assessments.

If an association prevails in the justice of the peace action, they are entitled to attorney fees and costs.

[end of excerpt]