

PROPERTY CODE

TITLE 11. RESTRICTIVE COVENANTS

CHAPTER 215. MASTER MIXED-USE PROPERTY OWNERS' ASSOCIATIONS

Sec. 215.001. DEFINITIONS. In this chapter:

(1) "Appraised value" means the property value determined by the appraisal district that establishes property values for taxing entities levying taxes on property in a mixed-use development.

(2) "Property owners' association" or "association" means, unless otherwise indicated, a master mixed-use property owners' association.

(3) "Dedictory instrument" has the meaning assigned by Section 209.002.

(4) "Self-help" means the process by which a property owners' association takes remedial action with regard to property governed by the association.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. 2869), Sec. 1, eff. September 1, 2011.

Sec. 215.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to a property owners' association that:

(1) includes:

(A) commercial properties, including hotel and retail properties, that constitute at least 35 percent of the total appraised property value of the mixed-use development governed by the association;

(B) single-family attached and detached properties that constitute at least 25 percent of the total appraised property value of the mixed-use development governed by the association; and

(C) multifamily properties that constitute at least 10 percent of the total appraised property value of the mixed-use development governed by the association;

(2) governs at least 6,000 acres of deed-restricted property;

(3) has at least 10 incorporated residential or

commercial property owners' associations that are members of and subject to the dedicatory instruments of the master mixed-use property owners' association;

(4) has at least 3,400 platted and developed single-family residential properties and at least 400 separately platted commercial properties, including office, industrial, hotel, and retail properties, which together constitute at least 30 million square feet of building area available for rental; and

(5) participates in the maintenance of public space, including parks, medians, and lakefronts, owned by local, including county, or state governmental entities.

(b) This chapter applies to property that is:

(1) governed by a property owners' association described by Subsection (a);

(2) located in a master mixed-use development; and

(3) subject to a provision, including a restriction, in a declaration that:

(A) requires mandatory membership in the association; and

(B) authorizes the association to collect a regular or special assessment on all or a majority of the property in the development.

(c) Except as otherwise provided by this chapter, this chapter applies only to a master mixed-use property owners' association and not to the independent property owners' associations that are members of the master mixed-use property owners' association.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. 2869), Sec. 1, eff. September 1, 2011.

Sec. 215.003. APPLICABILITY OF CHAPTER 209. Chapter 209 does not apply to a property owners' association subject to this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. 2869), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 673 (H.B. 1824), Sec. 1, eff.

September 1, 2013.

Sec. 215.004. CONFLICTS OF LAW. Notwithstanding any other provision of law, the provisions of this chapter prevail over a conflicting or inconsistent provision of law relating to independent property owners' associations.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. 2869), Sec. 1, eff. September 1, 2011.

Sec. 215.005. BOARD POWERS. In addition to any other powers provided by applicable law and this chapter, and unless otherwise provided by the dedicatory instruments of the property owners' association, the association, acting through its board of directors, may:

- (1) adopt and amend bylaws;
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from property owners;
- (3) adopt reasonable rules;
- (4) hire and terminate managing agents and other agents, employees, and independent contractors;
- (5) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings on matters affecting a property governed by the association;
- (6) make contracts and incur liabilities relating to the operation of the association;
- (7) regulate the use, maintenance, repair, replacement, modification, and appearance of the property governed by the association;
- (8) make improvements to be included as a part of the common area;
- (9) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;
- (10) purchase an investment property that is not part of the common area;
- (11) grant easements, leases, licenses, and concessions through or over the common elements;

(12) impose and receive payments, fees, or charges for the use, rental, or operation of the common area and for services provided to property owners;

(13) impose interest, late charges, and, if applicable, returned check charges for late payments of regular assessments or special assessments;

(14) charge costs to an owner's assessment account and collect the costs in any manner provided in the restrictions for the collection of assessments;

(15) adopt and amend rules regulating the collection of delinquent assessments;

(16) impose reasonable charges for preparing, recording, or copying amendments to resale certificates or statements of unpaid assessments;

(17) purchase insurance and fidelity bonds, including directors' and officers' liability insurance, that the board considers appropriate or necessary;

(18) subject to the requirements of the provisions described by Section 1.008(d), Business Organizations Code, and by majority vote of the board, indemnify a director or officer of the association who was, is, or may be made a named defendant or respondent in a proceeding because the person is or was a director or officer;

(19) if the restrictions vest the architectural control authority in the association:

(A) implement written architectural control guidelines for its own use, or record the guidelines in the real property records of the applicable county; and

(B) modify the guidelines as the needs of the development change;

(20) exercise self-help with regard to property governed by the association;

(21) exercise other powers conferred by the dedicatory instruments;

(22) exercise other powers necessary and proper for the governance and operation of the association; and

(23) exercise any other powers that may be exercised

in this state by a corporation of the same type as the association.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. 2869), Sec. 1,
eff. September 1, 2011.

Sec. 215.006. ANNUAL MEETING OF ASSOCIATION MEMBERS; NOTICE OF ANNUAL OR SPECIAL MEETING. (a) An annual meeting of members of a property owners' association must be conducted in accordance with the association's dedicatory instruments.

(b) Unless otherwise provided by a dedicatory instrument, an annual meeting of the property owners' association members is open to association members and must be held in a county in which all or part of the property governed by the association is located or in a county adjacent to that county.

(c) Unless otherwise provided by a dedicatory instrument, the board shall give members notice of the date, time, place, and subject of an annual or special meeting of the members. The notice must be delivered to each member not later than the 10th day and not earlier than the 60th day before the date of the meeting.

(d) A notice under Subsection (c) must be posted in a conspicuous manner reasonably designed to provide notice to association members:

(1) in a place located outside the corporate offices of the association that is accessible by the general membership during normal business hours; or

(2) on any Internet website maintained by the association.

(e) Unless otherwise provided by a dedicatory instrument, any number of the members may attend the meeting by use of videoconferencing or a similar telecommunication method for purposes of establishing full participation in the meeting.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. 2869), Sec. 1,
eff. September 1, 2011.

Sec. 215.007. BOARD MEETINGS. (a) A meeting of the board of directors of a property owners' association must be conducted in accordance with the association's dedicatory instruments.

(b) Unless otherwise provided by a dedicatory instrument,

elected directors who represent the commercial and residential membership attend and conduct the business of the property owners' association at a meeting under this section.

(c) In this section, a board meeting has the meaning assigned by a dedicatory instrument. Notwithstanding this subsection, the term does not include the gathering of a quorum of the board at any other venue, including at a social function unrelated to the business of the association, or the attendance by a quorum of the board at a regional, state, or national convention, workshop, ceremonial event, or press conference, if formal action is not taken and any discussion of association business is incidental to the social function, convention, workshop, ceremonial event, or press conference.

(d) Unless otherwise provided by a dedicatory instrument, the board shall keep a record of each regular, emergency, or special board meeting in the form of written minutes or an audio recording of the meeting. A record of a meeting must state the subject of each motion or inquiry, regardless of whether the board takes action on the motion or inquiry, and indicate each vote, order, decision, or other action taken by the board. The board shall make meeting records, including approved minutes, available to a member for inspection and copying, at the member's expense, during the normal business hours of the association on the member's written request to the board or the board's representative. The board shall approve the minutes of a board meeting not later than the next regular board meeting.

(e) Unless otherwise provided by a dedicatory instrument, before the board calls an executive session, the board shall convene in a regular or special board meeting for which notice has been given as provided by this section. During that board meeting, the presiding board member may call an executive session by announcing that an executive session will be held to deliberate a matter described by Subsection (f) and identifying the specific subdivision of Subsection (f) under which the executive session will be held. A vote or other action item may not be taken in executive session. An executive session is not subject to the requirements of Subsection (d).

(f) Unless otherwise provided by a dedicatory instrument, a property owners' association board may meet in executive session to deliberate:

(1) anticipated or pending litigation, settlement offers, or interpretations of the law with the association's legal counsel;

(2) complaints or charges against or issues regarding a board member or an agent, employee, contractor, or other representative of the association;

(3) all financial matters concerning a specific property owner;

(4) a payment plan for an association member who has a financial obligation to the association;

(5) a foreclosure of a lien;

(6) an enforcement action against an association member, including for nonpayment of amounts due;

(7) the purchase, exchange, lease, or value of real property, if the board determines in good faith that deliberation in an open board meeting may have a detrimental effect on the association;

(8) business and financial issues relating to the negotiation of a contract, if the board determines in good faith that deliberation in an open board meeting may have a detrimental effect on the position of the association;

(9) matters involving the invasion of privacy of an individual owner;

(10) an employee matter; and

(11) any other matter the board considers necessary or reasonable to further assist the association's operation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. [2869](#)), Sec. 1, eff. September 1, 2011.

Sec. 215.008. VOTING. (a) The number of votes to which an individual or corporation who is a member of a property owners' association is entitled is determined by the dedicatory instruments of the association.

(b) Each corporation or individual who is a member of the

property owners' association may vote by proxy as provided for nonprofit corporations under Sections 22.160(b) and (c), Business Organizations Code.

(c) Notwithstanding any provision of the certificate of formation or bylaws to the contrary, a member vote on any matter may be conducted by mail, by facsimile transmission, by e-mail, or by any combination of those methods.

(d) Notwithstanding any provision of the certificate of formation, declaration, or bylaws to the contrary, the declaration and any supplementary declaration, including amendments, modifications, or corrections, may be amended by a simple majority of the eligible votes being cast in favor of the amendment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. 2869), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 673 (H.B. 1824), Sec. 2, eff. September 1, 2013.

Sec. 215.009. RESTRICTIVE COVENANTS. (a) A property owners' association may enforce its restrictive covenants as follows:

(1) by exercising discretionary authority relating to a restrictive covenant unless a court has determined by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory; and

(2) by initiating, defending, or intervening in litigation or an administrative proceeding affecting the enforcement of a restrictive covenant or the protection, preservation, or operation of property subject to the association's dedicatory instruments.

(b) If the association prevails in an action to enforce restrictive covenants, the association may recover reasonable attorney's fees and costs incurred.

(c) An association may use self-help to enforce its restrictive covenants against a residential or commercial property owner as necessary to prevent immediate harm to a person or property, or as otherwise reasonable. If a property owner commits

a subsequent repeat violation of the restrictive covenants within 12 months of the initial violation, the association is not required to provide the property owner with advance notice before the association implements self-help.

(d) For purposes of Subsection (c), an advance, annual notice of maintenance requirements is considered notice to the extent notice is required.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. 2869), Sec. 1, eff. September 1, 2011.

Sec. 215.010. ATTORNEY'S FEES IN BREACH OF RESTRICTIVE COVENANT ACTION. In an action based on breach of a restrictive covenant, the prevailing party is entitled to reasonable attorney's fees, costs, and actual damages.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. 2869), Sec. 1, eff. September 1, 2011.

Sec. 215.011. COMMON AREAS. A property owners' association may adopt reasonable rules regulating common areas.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. 2869), Sec. 1, eff. September 1, 2011.

Sec. 215.012. RESALE CERTIFICATES. A property owners' association shall provide resale certificates only for residential properties and in the manner provided by Section 207.003.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. 2869), Sec. 1, eff. September 1, 2011.

Sec. 215.013. MANAGEMENT CERTIFICATE. (a) A property owners' association shall record in each county in which any portion of the development governed by the association is located a management certificate, signed and acknowledged by an officer of the association, stating:

- (1) the name of the development;
- (2) the name of the association;
- (3) the recording data for the declaration and all supplementary declarations;

(4) the applicability of any supplementary declarations to residential communities;

(5) the name and mailing address of the association; and

(6) other information the association considers appropriate.

(b) A property owners' association shall record an amended management certificate not later than the 30th day after the date the association has notice of a change in information in the recorded certificate required by Subsection (a).

(c) The association and its officers, directors, employees, and agents are not liable to any person or corporation for delay in recording or failure to record a management certificate unless the delay or failure is willful or caused by gross negligence.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. 2869), Sec. 1, eff. September 1, 2011.

Sec. 215.0135. ASSOCIATION RECORDS. (a) To the extent of any conflict or inconsistency, this section prevails over other provisions of law and the dedicatory instruments of a property owners' association subject to this chapter. This section is the exclusive procedure for a property owner to inspect the books and records of the association.

(b) Except as provided by Subsection (c) or (j), a property owners' association shall, on written request as provided by this section, make the books and records of the association open to and reasonably available for examination by an owner or a person designated in a written instrument signed by the owner as the owner's agent, attorney, or certified public accountant. Except as provided by Subsection (c) or (j), an owner is entitled to obtain copies of the books and records from the association.

(c) An attorney's files and records relating to the property owners' association, excluding invoices, are not records of the association and are not subject to inspection by the owner or the owner's authorized representative or to production in a legal proceeding. This subsection does not require production of a document that is covered by the attorney-client privilege.

(d) An owner or the owner's authorized representative described by Subsection (b) must submit a written request by certified mail to the mailing address of the property owners' association or the association's authorized representative, as reflected on the most current management certificate filed under Section 215.013, for access to the books and records of the association. The request must describe, in sufficient detail, the association's books and records requested by the owner or the owner's representative and:

(1) if an inspection is requested, the association shall, on or before the 10th business day after the date the association receives the request, send written notice of dates that the owner may inspect, during normal business hours, the requested books and records to the extent those books and records are in the actual physical possession, custody, and 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 actual physical possession, custody, and control of the association, produce copies of the requested books and records on or before the 10th business day after the date the association receives the request, except as otherwise provided by this section.

(e) If the property owners' association fails to produce the books or records requested under Subsection (d) 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 and the specific reasons for that inability on or before the 10th business day after the date the association received the request; and

(2) if the association can produce the information, notifies the requestor of the date by which the information will be sent or made available for inspection to the requesting party, which may not be later than the 15th day after the date notice under this subsection is given.

(f) If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal business hours of the property owners' association, and the requesting party shall identify the books and records for the association to copy and forward to the requesting party.

(g) 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.

(h) 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. The policy required by this subsection must be recorded as a dedicatory instrument. If the policy is not recorded, the association may not charge an owner for the compilation, production, or reproduction of information requested under this section. If the policy is recorded, the requesting owner or the owner's representative is responsible for all costs related to the compilation, production, and reproduction of the requested information based on the amounts prescribed by the policy. The association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the total of the estimated costs differs from the total of the actual costs, the association shall submit a final invoice to the owner on or before the 30th business day after the date the requested copies are delivered. If the actual total cost is higher than the estimated total cost, and the owner fails to reimburse the association before the 30th business day after the date the invoice is sent to the owner, the association may add the amount due to the owner's account as an assessment. If the actual total cost is less than the estimated total cost, the association shall issue a refund to the owner not later than the 30th business day after the date the requested copies are delivered.

(i) A property owners' association must estimate costs under this section using amounts prescribed by the policy adopted under Subsection (h).

(j) Information may be released in an aggregate or summary manner that would not identify an individual property owner. Except as provided by Subsection (k) 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:

(1) the dedicatory instrument violation history of an individual owner;

(2) an owner's personal financial information, including records of payment or nonpayment of amounts due the association;

(3) an owner's contact information, other than the owner's address;

(4) an owner's property files or building plans;

(5) books or records described by Subsection (c);

(6) any information to which an owner objects to releasing or has not granted approval for releasing; or

(7) information related to an employee of the association, including personnel files.

(k) The books and records described by Subsection (j) 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.

(l) A property owners' association 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.

(m) A member of a property owners' association who is denied access to or copies of the association books or records to which the member is entitled under this section may file a petition with the county court at law 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 county court at law finds that the member is entitled to access to or copies of the records, the county court at law may grant one or more of the following remedies:

(1) a judgment ordering the association to release or allow access to the books or records;

(2) a judgment against the 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 association.

(n) If the property owners' association prevails in an action under Subsection (m), the association is entitled to a judgment for court costs and attorney's fees incurred by the association in connection with the action.

(o) 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 the association's authorized representative as reflected on the

most current management certificate filed under Section [215.013](#);
and

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

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 673 (H.B. [1824](#)), Sec. 3, eff. September 1, 2013.

Sec. 215.014. PRIORITY OF PAYMENTS. Unless otherwise provided in writing by the property owner at the time payment is made, a payment received by a property owners' association from the owner shall be applied to the owner's debt in the following order of priority:

(1) any delinquent assessment;

(2) any current assessment;

(3) any attorney's fees incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;

(4) any fines assessed by the association;

(5) any attorney's fees incurred by the association that are not subject to Subdivision (3); and

(6) any other amount owed to the association.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. [2869](#)), Sec. 1, eff. September 1, 2011.

Sec. 215.015. FORECLOSURE. A property owners' association may not foreclose an association assessment lien unless the association first obtains a court order of sale.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1167 (H.B. [2869](#)), Sec. 1, eff. September 1, 2011.

Sec. 215.016. NOTICE REQUIRED BEFORE CERTAIN ENFORCEMENT ACTIONS. (a) Before a property owners' association may file a suit against an owner, other than a suit to collect a regular or special assessment or judicial foreclosure under the association's lien, or charge an owner for property damage, the association or its agent

must give written notice sent to the owner by certified mail, return receipt requested, to the property address of the owner.

(b) The notice must:

(1) describe the violation of the declaration or property damage that is the basis for the suit or charge and state any amount due to the association from the owner; and

(2) inform the owner that the owner:

(A) is entitled, as applicable, to a reasonable period to cure the violation and avoid the suit unless the owner was previously given notice and a reasonable opportunity to cure by the association for the same or a similar violation within the preceding six months;

(B) may request a hearing under Section [215.017](#) on or before the 30th day after the date the owner receives the notice; and

(C) may have special rights or relief related to the suit or charge under federal law, including, without limitation, the Servicemembers Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the owner is serving on active military duty.

Added by Acts 2013, 83rd Leg., R.S., Ch. 673 (H.B. [1824](#)), Sec. 4, eff. September 1, 2013.

Sec. 215.017. HEARING BEFORE BOARD. (a) Except as provided by Section [215.009](#)(c), if the owner is entitled to an opportunity to cure a violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter at issue before a committee appointed by the board of the property owners' association or before the board if the board does not appoint a committee.

(b) The association shall hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and shall notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. The board or committee or the owner may request a postponement, and if requested, a postponement shall be granted for a period of not more than 10 days. Additional

postponements may be granted by agreement of the parties.

(c) The notice and hearing provisions of this section and Section 215.016 do not apply if the association files a suit seeking a temporary restraining order or temporary injunctive relief or a suit that includes foreclosure as a cause of action.

Added by Acts 2013, 83rd Leg., R.S., Ch. 673 (H.B. 1824), Sec. 4, eff. September 1, 2013.

Sec. 215.018. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) A property owners' association shall adopt reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments to the association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties. For purposes of this section, monetary penalties do not include reasonable costs associated with administering the payment plan or interest.

(b) A property owners' association is not required to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan.

(c) A property owners' association shall file the association's guidelines under this section in the real property records of each county in which any portion of the subdivision is located.

Added by Acts 2013, 83rd Leg., R.S., Ch. 673 (H.B. 1824), Sec. 4, eff. September 1, 2013.