PROPERTY CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Acts 1983, 68th Leg., p. 3478, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 1.002. CONSTRUCTION OF CODE. The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

Acts 1983, 68th Leg., p. 3478, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 70, eff. Sept. 1, 1985.

Sec. 1.003. INTERNAL REFERENCES. In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without

further identification is a reference to a unit of the next larger unit of this code in which the reference appears.

Acts 1983, 68th Leg., p. 3479, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 2. NATURE OF PROPERTY

Sec. 2.001. MANUFACTURED HOUSING. (a) Except as provided by Subsection (b), a manufactured home is personal property.

(b) A manufactured home is real property if:

(1) the statement of ownership and location for the home issued under Section 1201.207, Occupations Code, reflects that the owner has elected to treat the home as real property; and

(2) a certified copy of the statement of ownership and location has been filed in the real property records in the county in which the home is located.

(c) In this section, "consumer," "document of title," "first retail sale," "manufactured home," and "mobile home" have the meanings assigned by Chapter 1201, Occupations Code.

(d) to (h) Repealed by Acts 2003, 78th Leg., ch. 338, Sec. 52(2).

(i) This section does not require a retailer or retailer's agent to obtain a license under Chapter 1101, Occupations Code.

Added by Acts 1995, 74th Leg., ch. 978, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 899, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1055, Sec. 5, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 338, Sec. 41 to 43, 52(2), eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.802, eff. Sept. 1, 2003.

Sec. 2.002. DRY FIRE HYDRANTS: AGREEMENT IS PERSONAL. (a) An agreement between an owner, lessee, or occupant of real property and a fire-fighting agency relating to the connection of a dry fire hydrant to a source of water on the property or the installation of a dry fire hydrant on the property may not bind a subsequent owner, lessee, or occupant of the real property.

(b) In this section:

(1) "Dry fire hydrant" means a fire hydrant that is connected to a stock tank, pond, or other similar source of water from which water is pumped in case of fire.

(2) "Fire-fighting agency" means any entity that provides fire-fighting services, including:

(A) a volunteer fire department; and

(B) a political subdivision of this state authorized to provide fire-fighting services.

Added by Acts 1997, 75th Leg., ch. 437, Sec. 2, eff. Sept. 1, 1997.

TITLE 2. CONVEYANCES
CHAPTER 5. CONVEYANCES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 5.001. FEE SIMPLE. (a) An estate in land that is conveyed or devised is a fee simple unless the estate is limited by express words or unless a lesser estate is conveyed or devised by construction or operation of law. Words previously necessary at common law to transfer a fee simple estate are not necessary.

(b) This section applies only to a conveyance occurring on or after February 5, 1840.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.002. FAILING AS A CONVEYANCE. An instrument intended as a conveyance of real property or an interest in real property that, because of this chapter, fails as a conveyance in whole or in part is enforceable to the extent permitted by law as a contract to convey the property or interest.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.003. PARTIAL CONVEYANCE. (a) An alienation of real property that purports to transfer a greater right or estate in the property than the person making the alienation may lawfully transfer alienates only the right or estate that the person may convey.

(b) Neither the alienation by deed or will of an estate on which a remainder depends nor the union of the estate with an inheritance by purchase or descent affects the remainder.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.004. CONVEYANCE BY AUTHORIZED OFFICER. (a) A conveyance of real property by an officer legally authorized to sell the property under a judgment of a court within the state passes absolute title to the property to the purchaser.

(b) This section does not affect the rights of a person who is not or who does not claim under a party to the conveyance or judgment.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.005. ALIENS. An alien has the same real and personal property rights as a United States citizen.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.006. ATTORNEY'S FEES IN BREACH OF RESTRICTIVE COVENANT ACTION. (a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow to a prevailing party who asserted the action reasonable attorney's fees in addition to the party's costs and claim.

(b) To determine reasonable attorney's fees, the court shall consider:

(1) the time and labor required;

(2) the novelty and difficulty of the questions;

(3) the expertise, reputation, and ability of the attorney; and

(4) any other factor.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.007. VENDOR AND PURCHASER RISK ACT. (a) Any contract made in this state for the purchase and sale of real property shall be interpreted as including an agreement that the parties have the rights and duties prescribed by this section, unless the contract expressly provides otherwise.

(b) If, when neither the legal title nor the possession of the

subject matter of the contract has been transferred, all or a material part of the property is destroyed without fault of the purchaser or is taken by eminent domain, the vendor may not enforce the contract, and the purchaser is entitled to recover any portion of the contract price paid.

(c) If, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part of the property is destroyed without fault of the vendor or is taken by eminent domain, the purchaser is not relieved from the duty to pay the contract price, nor is the purchaser entitled to recover any portion of the price already paid.

(d) This section shall be interpreted and construed to accomplish its general purpose to make uniform the law of those states that enact the Uniform Vendor and Purchaser Risk Act.

(e) This section may be cited as the Uniform Vendor and Purchaser Risk Act.

Added by Acts 1989, 71st Leg., ch. 1002, Sec. 1, eff. Sept. 1, 1989.

Sec. 5.008. SELLER'S DISCLOSURE OF PROPERTY CONDITION. (a) A seller of residential real property comprising not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice as prescribed by this section or a written notice substantially similar to the notice prescribed by this section which contains, at a minimum, all of the items in the notice prescribed by this section.

(b) The notice must be executed and must, at a minimum, read substantially similar to the following:

SELLER'S DISCLOSURE NOTICE

CONCERNING THE PROPERTY AT _____

(Street Address and City)

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.

Seller __ is __ is not occupying the Property.
If unoccupied, how long since Seller has occupied the Property?

1. The Property has the items checked below:
Write Yes (Y), No (N), or Unknown (U).

__ Range	__ Oven	__ Microwave
__ Dishwasher	__ Trash Compactor	__ Disposal
__ Washer/Dryer Hookups	__ Window Screens	__ Rain Gutters
__ Security System	__ Fire Detection Equipment	__ Intercom System
	__ Smoke Detector	
	__ Smoke Detector - Hearing Impaired	
	__ Carbon Monoxide Alarm	
	__ Emergency Escape Ladder(s)	
__ TV Antenna	__ Cable TV Wiring	__ Satellite Dish
__ Ceiling Fan(s)	__ Attic Fan(s)	__ Exhaust Fan(s)
__ Central A/C	__ Central Heating	__ Wall/Window Air Conditioning
__ Plumbing System	__ Septic System	__ Public Sewer System
__ Patio/Decking	__ Outdoor Grill	__ Fences
__ Pool	__ Sauna	__ Spa
		__ Hot Tub
__ Pool Equipment	__ Pool Heater	__ Automatic Lawn Sprinkler System
__ Fireplace(s) & Chimney		__ Fireplace(s) & Chimney

(Woodburning)		(Mock)
__ Natural Gas Lines		__ Gas Fixtures
__ Liquid Propane Gas:	__ LP Community (Captive)	__ LP on Property
Garage: __ Attached	__ Not Attached	__ Carport
Garage Door Opener(s):	__ Electronic	__ Control(s)
Water Heater:	__ Gas	__ Electric
Water Supply: __ City	__ Well __ MUD	__ Co-op

Roof Type: _____ Age: _____(approx)

Are you (Seller) aware of any of the above items that are not in working condition, that have known defects, or that are in need of repair? __ Yes __ No __ Unknown.
If yes, then describe. (Attach additional sheets if necessary):
_____
_____

2. Does the property have working smoke detectors installed in accordance with the smoke detector requirements of Chapter 766, Health and Safety Code?* __ Yes __ No __ Unknown.
If the answer to the question above is no or unknown, explain. (Attach additional sheets if necessary):_____
_____
_____

*Chapter 766 of the Health and Safety Code requires one-family or two-family dwellings to have working smoke detectors installed in accordance with the requirements of the building code in effect in the area in which the dwelling is located, including performance, location, and power source requirements. If you do not know the building code requirements in effect in your area, you may check unknown above or contact your local building official for more information. A buyer may require a seller to install smoke detectors for the hearing impaired if: (1) the buyer or a member of the buyer's family who will reside in the dwelling is hearing impaired; (2) the buyer gives the seller written evidence of the hearing impairment from a licensed physician; and (3) within 10 days after the effective date, the buyer makes a written request for the seller to install smoke detectors for the hearing impaired and specifies the

locations for installation. The parties may agree who will bear the cost of installing the smoke detectors and which brand of smoke detectors to install.

3. Are you (Seller) aware of any known defects/malfunctions in any of the following?

Write Yes (Y) if you are aware, write No (N) if you are not aware.

__ Interior Walls	__ Ceilings	__ Floors
__ Exterior Walls	__ Doors	__ Windows
__ Roof	__ Foundation/ Slab(s)	__ Basement
__ Walls/Fences	__ Driveways	__ Sidewalks
__ Plumbing/Sewers/ Septics	__ Electrical Systems	__ Lighting Fixtures

__ Other Structural Components (Describe):_____

_____

_____

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary):_____

_____

_____

4. Are you (Seller) aware of any of the following conditions?

Write Yes (Y) if you are aware, write No (N) if you are not aware.

__ Active Termites (includes wood-destroying insects)	__ Previous Structural or Roof Repair
__ Termite or Wood Rot Damage Needing Repair	__ Hazardous or Toxic Waste
__ Previous Termite Damage	__ Asbestos Components
__ Previous Termite Treatment	__ Urea formaldehyde Insulation
__ Previous Flooding	__ Radon Gas
__ Improper Drainage	__ Lead Based Paint
__ Water Penetration	__ Aluminum Wiring
__ Located in 100-Year Floodplain	__ Previous Fires
__ Present Flood Insurance	__ Unplatted Easements

Coverage

__ Landfill, Settling, Soil

Movement, Fault Lines

__ Single Blockable Main Drain in Pool/Hot Tub/Spa*

__ Subsurface Structure or Pits

__ Previous Use of Premises for Manufacture of Methamphetamine

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary):_____

_____

_____

*A single blockable main drain may cause a suction entrapment hazard for an individual.

5. Are you (Seller) aware of any item, equipment, or system in or on the property that is in need of repair? __ Yes (if you are aware) __ No (if you are not aware). If yes, explain (attach additional sheets as necessary). _____

6. Are you (Seller) aware of any of the following? Write Yes (Y) if you are aware, write No (N) if you are not aware.

__ Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at that time.

__ Homeowners' Association or maintenance fees or assessments.

__ Any "common area" (facilities such as pools, tennis courts, walkways, or other areas) co-owned in undivided interest with others.

__ Any notices of violations of deed restrictions or governmental ordinances affecting the condition or use of the Property.

__ Any lawsuits directly or indirectly affecting the Property.

__ Any condition on the Property which materially affects the physical health or safety of an individual.

__ Any rainwater harvesting system located on the property that is larger than 500 gallons and that uses a public water supply as an auxiliary water source.

__ Any portion of the property that is located in a groundwater conservation district or a subsidence district.

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

_____

_____

7. If the property is located in a coastal area that is seaward of the Gulf Intracoastal Waterway or within 1,000 feet of the mean high tide bordering the Gulf of Mexico, the property may be subject to the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63, Natural Resources Code, respectively) and a beachfront construction certificate or dune protection permit may be required for repairs or improvements. Contact the local government with ordinance authority over construction adjacent to public beaches for more information.

_____ _____

Date Signature of Seller

The undersigned purchaser hereby acknowledges receipt of the foregoing notice.

_____ _____

Date Signature of Purchaser

(c) A seller or seller's agent shall have no duty to make a disclosure or release information related to whether a death by natural causes, suicide, or accident unrelated to the condition of the property occurred on the property or whether a previous occupant had, may have had, has, or may have AIDS, HIV related illnesses, or HIV infection.

(d) The notice shall be completed to the best of seller's belief and knowledge as of the date the notice is completed and signed by the seller. If the information required by the notice is unknown to the seller, the seller shall indicate that fact on the notice, and by that act is in compliance with this section.

(e) This section does not apply to a transfer:

(1) pursuant to a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest, or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a deed of trust or a sale pursuant to a court ordered foreclosure or has acquired the real property by a deed in

lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to one or more other co-owners;

(7) made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(8) between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree;

(9) to or from any governmental entity;

(10) of a new residence of not more than one dwelling unit which has not previously been occupied for residential purposes; or

(11) of real property where the value of any dwelling does not exceed five percent of the value of the property.

(f) The notice shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property. If a contract is entered without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within seven days after receiving the notice.

(g) In this section:

(1) "Blockable main drain" means a main drain of any size and shape that a human body can sufficiently block to create a suction entrapment hazard.

(2) "Main drain" means a submerged suction outlet typically located at the bottom of a swimming pool or spa to conduct water to a recirculating pump.

Added by Acts 1993, 73rd Leg., ch. 356, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 17.001, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 448 (H.B. 271), Sec. 1, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 11, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 22, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 20.001, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1178 (H.B. 3502), Sec. 1, eff. January 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 578 (H.B. 3389), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 621 (S.B. 710), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1311 (H.B. 3391), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 6, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 524 (H.B. 1221), Sec. 1, eff. January 1, 2016.

Sec. 5.009. DUTIES OF LIFE TENANT. (a) Subject to Subsection (b), if the life tenant of a legal life estate is given the power to sell and reinvest any life tenancy property, the life tenant is subject, with respect to the sale and investment of the property, to all of the fiduciary duties of a trustee imposed by the Texas Trust Code (Subtitle B, Title 9, Property Code) or the common law of this state.

(b) A life tenant may retain, as life tenancy property, any real property originally conveyed to the life tenant without being subject to the fiduciary duties of a trustee; however, the life tenant is subject to the common law duties of a life tenant.

Acts 1993, 73rd Leg., ch. 846, Sec. 34, eff. Sept. 1, 1993. Renumbered from Property Code Sec. 5.008 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(42), eff. Sept. 1, 1995.

Sec. 5.010. NOTICE OF ADDITIONAL TAX LIABILITY. (a) A person who is the owner of an interest in vacant land and who contracts for the transfer of that interest shall include in the contract the following bold-faced notice:

NOTICE REGARDING POSSIBLE LIABILITY FOR ADDITIONAL TAXES

If for the current ad valorem tax year the taxable value of the land that is the subject of this contract is determined by a special appraisal method that allows for appraisal of the land at less than its market value, the person to whom the land is transferred may not

be allowed to qualify the land for that special appraisal in a subsequent tax year and the land may then be appraised at its full market value. In addition, the transfer of the land or a subsequent change in the use of the land may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the land. The taxable value of the land and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the land is located.

(b) This section does not apply to a contract for a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) of only a mineral interest, leasehold interest, or security interest; or

(7) to or from a governmental entity.

(c) The notice described by Subsection (a) is not required to be included in a contract for transfer of an interest in land if every transferee under the contract is:

(1) a person who is a co-owner with an owner described by Subsection (a) of an undivided interest in the land; or

(2) a spouse or a person in the lineal line of consanguinity of an owner described by Subsection (a).

(d) The notice described by Subsection (a) is not required to be given if in a separate paragraph of the contract the contract expressly provides for the payment of any additional ad valorem taxes and interest that become due as a penalty because of:

(1) the transfer of the land; or

(2) a subsequent change in the use of the land.

(e) If the owner fails to include in the contract the notice described by Subsection (a), the person to whom the land is transferred is entitled to recover from that owner an amount equal to

the amount of any additional taxes and interest that the person is required to pay as a penalty because of:

(1) the transfer of the land; or

(2) a subsequent change in the use of the land that occurs before the fifth anniversary of the date of the transfer.

Added by Acts 1997, 75th Leg., ch. 174, Sec. 1, eff. Jan. 1, 1998.

Sec. 5.011. SELLER'S DISCLOSURE REGARDING POTENTIAL ANNEXATION. (a) A person who sells an interest in real property in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE REGARDING POSSIBLE ANNEXATION

If the property that is the subject of this contract is located outside the limits of a municipality, the property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the property for further information.

(b) The seller shall deliver the notice to the purchaser before the date the executory contract binds the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser.

(c) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a

decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to another co-owner of an undivided interest in the real property;

(7) to a spouse or a person in the lineal line of consanguinity of the seller;

(8) to or from a governmental entity;

(9) of only a mineral interest, leasehold interest, or security interest; or

(10) of real property that is located wholly within a municipality's corporate boundaries.

(d) If the notice is delivered as provided by this section, the seller has no duty to provide additional information regarding the possible annexation of the property by a municipality.

(e) If an executory contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within the earlier of:

(1) seven days after the date the purchaser receives the notice; or

(2) the date the transfer occurs.

Added by Acts 1999, 76th Leg., ch. 529, Sec. 1, eff. Jan. 1, 2000.

Sec. 5.012. NOTICE OF OBLIGATIONS RELATED TO MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION. (a) A seller of residential real property that is subject to membership in a property owners' association and that comprises not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION CONCERNING THE PROPERTY AT (street address) (name of residential community)

As a purchaser of property in the residential community in which this property is located, you are obligated to be a member of a property owners' association. Restrictive covenants governing the use and occupancy of the property and all dedicatory instruments governing the establishment, maintenance, or operation of this residential community have been or will be recorded in the Real Property Records of the county in which the property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk.

You are obligated to pay assessments to the property owners' association. The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of your property.

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

Date: _____ _____

Signature of Purchaser

(a-1) The second paragraph of the notice prescribed by Subsection (a) must be in bold print and underlined.

(b) The seller shall deliver the notice to the purchaser before the date the executory contract binds the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser. If the notice is included as part of the executory contract or another notice, the title of the notice prescribed by this section, the references to the street address and date in the notice, and the purchaser's signature on the notice may be omitted.

(c) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a

decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to another co-owner of an undivided interest in the real property;

(7) to a spouse or a person in the lineal line of consanguinity of the seller;

(8) to or from a governmental entity;

(9) of only a mineral interest, leasehold interest, or security interest; or

(10) of a real property interest in a condominium.

(d) If an executory contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within the earlier of:

(1) seven days after the date the purchaser receives the notice; or

(2) the date the transfer occurs as provided by the executory contract.

(e) The purchaser's right to terminate the executory contract under Subsection (d) is the purchaser's exclusive remedy for the seller's failure to provide the notice required by this section.

(f) On the purchaser's request for a resale certificate from the property owners' association or the association's agent, the association or its agent shall promptly deliver a copy of the most recent resale certificate issued for the property under Chapter 207 so long as the resale certificate was prepared not earlier than the 60th day before the date the resale certificate is delivered to the purchaser and reflects any special assessments approved before and due after the resale certificate is delivered. If a resale certificate that meets the requirements of this subsection has not been issued for the property, the seller shall request the association or its agent to issue a resale certificate under Chapter 207, and the association or its agent shall promptly prepare and deliver a copy of the resale certificate to the purchaser.

(g) The purchaser shall pay the fee to the property owners' association or its agent for issuing the resale certificate unless otherwise agreed by the purchaser and seller of the property. The property owners' association may require payment before beginning the process of providing a resale certificate requested under Chapter 207 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 in the time

prescribed by Section 207.003(a).

Added by Acts 1999, 76th Leg., ch. 1420, Sec. 1, eff. Jan. 1, 2000.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1142 (H.B. 1821), Sec. 1, eff. January 1, 2012.

Sec. 5.013. SELLER'S DISCLOSURE OF LOCATION OF CONDITIONS UNDER SURFACE OF UNIMPROVED REAL PROPERTY. (a) A seller of unimproved real property to be used for residential purposes shall provide to the purchaser of the property a written notice disclosing the location of a transportation pipeline, including a pipeline for the transportation of natural gas, natural gas liquids, synthetic gas, liquefied petroleum gas, petroleum or a petroleum product, or a hazardous substance.

(b) The notice must state the information to the best of the seller's belief and knowledge as of the date the notice is completed and signed by the seller. If the information required to be disclosed is not known to the seller, the seller shall indicate that fact in the notice.

(c) The notice must be delivered by the seller on or before the effective date of an executory contract binding the purchaser to purchase the property. If a contract is entered without the seller providing the notice as required by this section, the purchaser may terminate the contract for any reason not later than the seventh day after the effective date of the contract.

(d) This section applies to any seller of unimproved real property, including a seller who is the developer of the property and who sells the property to others for resale.

(e) In this section, "hazardous substance" and "hazardous waste" have the meanings assigned by Section 361.003, Health and Safety Code.

(f) A seller is not required to give the notice if:

(1) the seller is obligated under an earnest money contract to furnish a title insurance commitment to the buyer prior to closing; and

(2) the buyer is entitled to terminate the contract if the buyer's objections to title as permitted by the contract are not cured by the seller prior to closing.

Added by Acts 1997, 75th Leg., ch. 1239, Sec. 1, eff. Sept. 1, 1997. Renumbered from Property Code Sec. 5.010 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(95), eff. Sept. 1, 2001.

Sec. 5.014. NOTICE OF OBLIGATIONS RELATED TO PUBLIC IMPROVEMENT DISTRICT. (a) A seller of residential real property that is located in a public improvement district established under Subchapter A, Chapter 372, Local Government Code, or Chapter 382, Local Government Code, and that consists of not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF OBLIGATION TO PAY PUBLIC IMPROVEMENT DISTRICT ASSESSMENT TO (municipality or county levying assessment) CONCERNING THE PROPERTY AT (street address)

As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Subchapter A, Chapter 372, Local Government Code, or Chapter 382, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment.

The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

Date: _____ _____

Signature of Purchaser

(b) The seller shall deliver the notice required under Subsection (a) to the purchaser before the effective date of an executory contract binding the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser. If the notice is included as part of the executory contract or another notice, the title of the notice prescribed by this section, the references to the street address and date in the notice, and the purchaser's signature on the notice may be omitted.

(c) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to another co-owner of an undivided interest in the real property;

(7) to a spouse or a person in the lineal line of consanguinity of the seller;

(8) to or from a governmental entity;

(9) of only a mineral interest, leasehold interest, or security interest; or

(10) of a real property interest in a condominium.

(d) If an executory contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason not later than the earlier of:

(1) the seventh day after the date the purchaser receives the notice; or

(2) the date the transfer occurs as provided by the executory contract.

(e) The purchaser's right to terminate the executory contract under Subsection (d) is the purchaser's exclusive remedy for the seller's failure to provide the notice required by this section.

Added by Acts 2005, 79th Leg., Ch. 1085 (H.B. 1919), Sec. 1, eff. January 1, 2006.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 20.002, eff. September 1, 2009.

Sec. 5.015. PROHIBITED FEES. A person who has a right of first refusal in real property that is a condominium subject to Chapter 81 or Chapter 82 may not charge a fee for declining to exercise that right, such as a fee for providing written evidence of the declination.

Added by Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 14, eff. September 1, 2005.
Renumbered from Property Code, Section 5.014 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(63), eff. September 1, 2007.

Sec. 5.016. CONVEYANCE OF RESIDENTIAL PROPERTY ENCUMBERED BY LIEN. (a) A person may not convey an interest in or enter into a contract to convey an interest in residential real property that will be encumbered by a recorded lien at the time the interest is conveyed unless, on or before the seventh day before the earlier of the effective date of the conveyance or the execution of an executory contract binding the purchaser to purchase the property, an option contract, or other contract, the person provides the purchaser and each lienholder a separate written disclosure statement in at least 12-point type that:

(1) identifies the property and includes the name, address, and phone number of each lienholder;

(2) states the amount of the debt that is secured by each lien;

(3) specifies the terms of any contract or law under which the debt that is secured by the lien was incurred, including, as applicable:

(A) the rate of interest;

(B) the periodic installments required to be paid; and

(C) the account number;

(4) indicates whether the lienholder has consented to the transfer of the property to the purchaser;

(5) specifies the details of any insurance policy relating to the property, including:

(A) the name of the insurer and insured;

(B) the amount for which the property is insured; and

(C) the property that is insured;

(6) states the amount of any property taxes that are due on the property; and

(7) includes a statement at the top of the disclosure in a form substantially similar to the following:

WARNING: ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A CLAIM AGAINST THIS PROPERTY AS LISTED BELOW. IF A LIEN IS NOT RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE

LIENHOLDER, IT IS POSSIBLE THE LIENHOLDER COULD DEMAND FULL PAYMENT OF THE OUTSTANDING BALANCE OF THE LIEN IMMEDIATELY. YOU MAY WISH TO CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION AND DISCUSS THIS MATTER WITH AN ATTORNEY.

(b) A violation of this section does not invalidate a conveyance. Except as provided by Subsections (c) and (d), if a contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason on or before the seventh day after the date the purchaser receives the notice in addition to other remedies provided by this section or other law.

(c) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the real property by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to one or more other co-owners;

(7) to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(8) between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to one of those decrees;

(9) to or from a governmental entity;

(10) where the purchaser obtains a title insurance policy insuring the transfer of title to the real property; or

(11) to a person who has purchased, conveyed, or entered into contracts to purchase or convey an interest in real property four or more times in the preceding 12 months.

(d) A violation of this section is not actionable if the person required to give notice reasonably believes and takes any necessary action to ensure that each lien for which notice was not provided will be released on or before the 30th day after the date on which

title to the property is transferred.

Added by Acts 2007, 80th Leg., R.S., Ch. 1056 (H.B. 2207), Sec. 1, eff. January 1, 2008.

Sec. 5.018. DISCLOSURE OF ABSENCE OF CERTAIN WARRANTIES. (a) A seller of residential real property that is exempt from Title 16 under Section 401.005 shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF NONAPPLICABILITY OF CERTAIN WARRANTIES
AND BUILDING AND PERFORMANCE STANDARDS

The property that is subject to this contract is exempt from Title 16, Property Code, including the provisions of that title that provide statutory warranties and building and performance standards.

(b) A notice required by this section shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property. If a contract is entered into without the seller providing the notice, the purchaser may terminate the contract for any reason on or before the seventh day after the date the purchaser receives the notice.

(c) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to another co-owner of an undivided interest in the real property;

(7) to a spouse or a person in the lineal line of consanguinity of the seller;

(8) to or from a governmental entity; or

(9) of only a mineral interest, leasehold interest, or

security interest.

Added by Acts 2007, 80th Leg., R.S., Ch. 843 (H.B. 1038), Sec. 1, eff. September 1, 2007.
Renumbered from Property Code, Section 5.016 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(76), eff. September 1, 2009.

Sec. 5.019. NOTICE OF WATER LEVEL FLUCTUATIONS. (a) This section applies only to the sale of residential or commercial real property adjoining an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level.

(b) A seller of real property shall give to the purchaser of the property a written notice in substantially the following form:

NOTICE OF WATER LEVEL FLUCTUATIONS

The water level of the impoundment of water adjoining the property at _____ (street address and city) or described as _____ (legal description) fluctuates for various reasons, including as a result of:

(1) an entity lawfully exercising its right to use the water stored in the impoundment; or

(2) drought or flood conditions.

(c) The notice described by Subsection (b) shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property.

(d) If a contract is entered into without the seller providing the notice within the period required by Subsection (c), the purchaser may terminate the contract for any reason within seven days after the date the purchaser receives:

(1) the notice described by Subsection (b) from the seller; or

(2) information described by the notice under Subsection (b) from any other person.

(e) After the date of the conveyance, the purchaser may bring an action for misrepresentation against the seller if the seller:

(1) failed to provide the notice before the date of the conveyance; and

(2) had actual knowledge that the water level described by

Subsection (b) fluctuates for various reasons, including the reasons stated in Subsection (b).

Added by Acts 2015, 84th Leg., R.S., Ch. 926 (H.B. 1665), Sec. 1, eff. September 1, 2015.

SUBCHAPTER B. FORM AND CONSTRUCTION OF INSTRUMENTS

Sec. 5.021. INSTRUMENT OF CONVEYANCE. A conveyance of an estate of inheritance, a freehold, or an estate for more than one year, in land and tenements, must be in writing and must be subscribed and delivered by the conveyor or by the conveyor's agent authorized in writing.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.022. FORM. (a) The following form or a form that is the same in substance conveys a fee simple estate in real property with a covenant of general warranty:

"The State of Texas,

"County of _____.

"Know all men by these presents, That I, _____, of the _____ (give name of city, town, or county), in the state aforesaid, for and in consideration of _____ dollars, to me in hand paid by _____, have granted, sold, and conveyed, and by these presents do grant, sell, and convey unto the said _____, of the _____ (give name of city, town, or county), in the state of _____, all that certain _____ (describe the premises). To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said _____, his heirs or assigns forever. And I do hereby bind myself, my heirs, executors, and administrators to warrant and forever defend all and singular the said premises unto the said _____, his heirs, and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

"Witness my hand, this _____ day of _____, A.D. 19___.

"Signed and delivered in the presence of _____"

(b) A covenant of warranty is not required in a conveyance.

(c) The parties to a conveyance may insert any clause or use any form not in contravention of law.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.023. IMPLIED COVENANTS. (a) Unless the conveyance expressly provides otherwise, the use of "grant" or "convey" in a conveyance of an estate of inheritance or fee simple implies only that the grantor and the grantor's heirs covenant to the grantee and the grantee's heirs or assigns:

(1) that prior to the execution of the conveyance the grantor has not conveyed the estate or any interest in the estate to a person other than the grantee; and

(2) that at the time of the execution of the conveyance the estate is free from encumbrances.

(b) An implied covenant under this section may be the basis for a lawsuit as if it had been expressed in the conveyance.

Acts 1983, 68th Leg., p. 3482, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.024. ENCUMBRANCES. "Encumbrance" includes a tax, an assessment, and a lien on real property.

Acts 1983, 68th Leg., p. 3482, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.025. WOOD SHINGLE ROOF. To the extent that a deed restriction applicable to a structure on residential property requires the use of a wood shingle roof, the restriction is void.

Acts 1983, 68th Leg., p. 3482, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.026. DISCRIMINATORY PROVISIONS. (a) If a restriction that affects real property, or a provision in a deed that conveys real property or an interest in real property, whether express or incorporated by reference, prohibits the use by or the sale, lease, or transfer to a person because of race, color, religion, or national

origin, the provision or restriction is void.

(b) A court shall dismiss a suit or part of a suit to enforce a provision that is void under this section.

Acts 1983, 68th Leg., p. 3483, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.027. CORRECTION INSTRUMENTS: GENERALLY. (a) A correction instrument that complies with Section 5.028 or 5.029 may correct an ambiguity or error in a recorded original instrument of conveyance to transfer real property or an interest in real property, including an ambiguity or error that relates to the description of or extent of the interest conveyed.

(b) A correction instrument may not correct an ambiguity or error in a recorded original instrument of conveyance to transfer real property or an interest in real property not originally conveyed in the instrument of conveyance for purposes of a sale of real property under a power of sale under Chapter 51 unless the conveyance otherwise complies with all requirements of Chapter 51.

(c) A correction instrument is subject to Section 13.001.

Added by Acts 2011, 82nd Leg., R.S., Ch. 194 (S.B. 1496), Sec. 1, eff. September 1, 2011.

Sec. 5.028. CORRECTION INSTRUMENTS: NONMATERIAL CORRECTIONS. (a) A person who has personal knowledge of facts relevant to the correction of a recorded original instrument of conveyance may prepare or execute a correction instrument to make a nonmaterial change that results from a clerical error, including:

(1) a correction of an inaccurate or incorrect element in a legal description, such as a distance, angle, direction, bearing or chord, a reference to a plat or other plat information, a lot or block number, a unit, building designation, or section number, an appurtenant easement, a township name or number, a municipality, county, or state name, a range number or meridian, a certified survey map number, or a subdivision or condominium name; or

(2) an addition, correction, or clarification of:

(A) a party's name, including the spelling of a name, a first or middle name or initial, a suffix, an alternate name by which a party is known, or a description of an entity as a corporation,

company, or other type of organization;

(B) a party's marital status;

(C) the date on which the conveyance was executed;

(D) the recording data for an instrument referenced in the correction instrument; or

(E) a fact relating to the acknowledgment or authentication.

(a-1) A person who has personal knowledge of facts relevant to the correction of a recorded original instrument of conveyance may prepare or execute a correction instrument to make a nonmaterial change that results from an inadvertent error, including the addition, correction, or clarification of:

(1) a legal description prepared in connection with the preparation of the original instrument but inadvertently omitted from the original instrument; or

(2) an omitted call in a metes and bounds legal description in the original instrument that completes the description of the property.

(b) A person who executes a correction instrument under this section may execute a correction instrument that provides an acknowledgment or authentication that is required and was not included in the recorded original instrument of conveyance.

(c) A person who executes a correction instrument under this section shall disclose in the instrument the basis for the person's personal knowledge of the facts relevant to the correction of the recorded original instrument of conveyance.

(d) A person who executes a correction instrument under this section shall:

(1) record the instrument and evidence of notice as provided by Subdivision (2), if applicable, in each county in which the original instrument of conveyance being corrected is recorded; and

(2) if the correction instrument is not signed by each party to the recorded original instrument, send a copy of the correction instrument and notice by first class mail, e-mail, or other reasonable means to each party to the original instrument of conveyance and, if applicable, a party's heirs, successors, or assigns.

Added by Acts 2011, 82nd Leg., R.S., Ch. 194 (S.B. 1496), Sec. 1, eff.

September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 158 (S.B. 887), Sec. 1, eff. September 1, 2013.

Sec. 5.029. CORRECTION INSTRUMENTS: MATERIAL CORRECTIONS. (a) In addition to nonmaterial corrections, including the corrections described by Section 5.028, the parties to the original transaction or the parties' heirs, successors, or assigns, as applicable may execute a correction instrument to make a material correction to the recorded original instrument of conveyance, including a correction to:

(1) add:

(A) a buyer's disclaimer of an interest in the real property that is the subject of the original instrument of conveyance;

(B) a mortgagee's consent or subordination to a recorded document executed by the mortgagee or an heir, successor, or assign of the mortgagee; or

(C) land to a conveyance that correctly conveys other land;

(2) remove land from a conveyance that correctly conveys other land; or

(3) accurately identify a lot or unit number or letter of property owned by the grantor that was inaccurately identified as another lot or unit number or letter of property owned by the grantor in the recorded original instrument of conveyance.

(b) A correction instrument under this section must be:

(1) executed by each party to the recorded original instrument of conveyance the correction instrument is executed to correct or, if applicable, a party's heirs, successors, or assigns; and

(2) recorded in each county in which the original instrument of conveyance that is being corrected is recorded.

Added by Acts 2011, 82nd Leg., R.S., Ch. 194 (S.B. 1496), Sec. 1, eff. September 1, 2011.

Sec. 5.030. CORRECTION INSTRUMENT: EFFECT. (a) A correction instrument that complies with Section 5.028 or 5.029 is:

(1) effective as of the effective date of the recorded original instrument of conveyance;

(2) prima facie evidence of the facts stated in the correction instrument;

(3) presumed to be true;

(4) subject to rebuttal; and

(5) notice to a subsequent buyer of the facts stated in the correction instrument.

(b) A correction instrument replaces and is a substitute for the original instrument. Except as provided by Subsection (c), a bona fide purchaser of property that is subject to a correction instrument may rely on the instrument against any person making an adverse or inconsistent claim.

(c) A correction instrument is subject to the property interest of a creditor or a subsequent purchaser for valuable consideration without notice acquired on or after the date the original instrument was acknowledged, sworn to, or proved and filed for record as required by law and before the correction instrument has been acknowledged, sworn to, or proved and filed for record as required by law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 194 (S.B. 1496), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 158 (S.B. 887), Sec. 2, eff. September 1, 2013.

Sec. 5.031. CORRECTION INSTRUMENTS RECORDED BEFORE SEPTEMBER 1, 2011. A correction instrument recorded before September 1, 2011, that substantially complies with Section 5.028 or 5.029 and that purports to correct a recorded original instrument of conveyance is effective to the same extent as provided by Section 5.030 unless a court of competent jurisdiction renders a final judgment determining that the correction instrument does not substantially comply with Section 5.028 or 5.029.

Added by Acts 2011, 82nd Leg., R.S., Ch. 194 (S.B. 1496), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. FUTURE ESTATES

Sec. 5.041. FUTURE ESTATES. A person may make an inter vivos conveyance of an estate of freehold or inheritance that commences in the future, in the same manner as by a will.

Acts 1983, 68th Leg., p. 3483, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.042. ABOLITION OF COMMON-LAW RULES. (a) The common-law rules known as the rule in Shelley's case, the rule forbidding a remainder to the grantor's heirs, the doctrine of worthier title, and the doctrine or rule prohibiting an existing lien upon part of a homestead from extending to another part of the homestead not charged with the debts secured by the existing lien upon part of the homestead do not apply in this state.

(b) A deed, will, or other conveyance of property in this state that limits an interest in the property to a particular person or to a class such as the heirs, heirs of the body, issue, or next of kin of the conveyor or of a person to whom a particular interest in the same property is limited is effective according to the intent of the conveyor.

(c) Status as an heir or next of kin of a conveyor or the failure of a conveyor to describe a person in a conveyance other than as a member of a class does not affect a person's right to take or share in an interest as a conveyee.

(d) Subject to the intention of a conveyor, which controls unless limited by law, the membership of a class described in this section and the participation of a member in a property interest conveyed to the class are determined under this state's laws of descent and distribution.

(e) This section does not apply to a conveyance taking effect before January 1, 1964.

Acts 1983, 68th Leg., p. 3483, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1999, 76th Leg., ch. 1510, Sec. 5, eff. Sept. 1, 1999.

Sec. 5.043. REFORMATION OF INTERESTS VIOLATING RULE AGAINST

PERPETUITIES. (a) Within the limits of the rule against perpetuities, a court shall reform or construe an interest in real or personal property that violates the rule to effect the ascertainable general intent of the creator of the interest. A court shall liberally construe and apply this provision to validate an interest to the fullest extent consistent with the creator's intent.

(b) The court may reform or construe an interest under Subsection (a) of this section according to the doctrine of cy pres by giving effect to the general intent and specific directives of the creator within the limits of the rule against perpetuities.

(c) If an instrument that violates the rule against perpetuities may be reformed or construed under this section, a court shall enforce the provisions of the instrument that do not violate the rule and shall reform or construe under this section a provision that violates or might violate the rule.

(d) This section applies to legal and equitable interests, including noncharitable gifts and trusts, conveyed by an inter vivos instrument or a will that takes effect on or after September 1, 1969, and this section applies to an appointment made on or after that date regardless of when the power was created.

Acts 1983, 68th Leg., p. 3484, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 895, Sec. 16, eff. Sept. 1, 1991.

SUBCHAPTER D. EXECUTORY CONTRACT FOR CONVEYANCE

Sec. 5.061. DEFINITION. In this subchapter, "default" means the failure to:

(1) make a timely payment; or

(2) comply with a term of an executory contract.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.065 and amended by Act 2001, 77th Leg., ch. 693, Sec. 1, Sept. 1, 2001.

Sec. 5.062. APPLICABILITY. (a) This subchapter applies only to a transaction involving an executory contract for conveyance of real property used or to be used as the purchaser's residence or as the residence of a person related to the purchaser within the second

degree by consanguinity or affinity, as determined under Chapter 573, Government Code. For purposes of this subchapter, and only for the purposes of this subchapter:

(1) a lot measuring one acre or less is presumed to be residential property; and

(2) an option to purchase real property that includes or is combined or executed concurrently with a residential lease agreement, together with the lease, is considered an executory contract for conveyance of real property.

(b) This subchapter does not apply to the following transactions under an executory contract:

(1) the sale of state land; or

(2) a sale of land by:

(A) the Veterans' Land Board;

(B) this state or a political subdivision of this state; or

(C) an instrumentality, public corporation, or other entity created to act on behalf of this state or a political subdivision of this state, including an entity created under Chapter 303, 392, or 394, Local Government Code.

(c) This subchapter does not apply to an executory contract that provides for the delivery of a deed from the seller to the purchaser within 180 days of the date of the final execution of the executory contract.

(d) Section 5.066 and Sections 5.068-5.080 do not apply to a transaction involving an executory contract for conveyance if the purchaser of the property:

(1) is related to the seller of the property within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and

(2) has waived the applicability of those sections in a written agreement.

(e) Sections 5.066, 5.067, 5.071, 5.075, 5.079, 5.081, and 5.082 do not apply to an executory contract described by Subsection (a)(2).

(f) Notwithstanding any other provision of this subchapter, only the following sections apply to an executory contract described by Subsection (a)(2) if the term of the contract is three years or less and the purchaser and seller, or the purchaser's or seller's assignee, agent, or affiliate, have not been parties to an executory

contract to purchase the property covered by the executory contract for longer than three years:

(1) Sections 5.063-5.065;

(2) Section 5.073, except for Section 5.073(a)(2); and

(3) Sections 5.083 and 5.085.

(g) Except as provided by Subsection (b), if Subsection (f) conflicts with another provision of this subchapter, Subsection (f) prevails.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.091 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 1, eff. September 1, 2015.

Sec. 5.0621. CONSTRUCTION WITH OTHER LAW. (a) Except as provided by Subsection (b), the provisions of this subchapter and Chapter 92 apply to the portion of an executory contract described by Section 5.062(a)(2) that is a residential lease agreement.

(b) After a tenant exercises an option to purchase leased property under a residential lease described by Subsection (a), Chapter 92 no longer applies to the lease.

Added by Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 3, eff. September 1, 2005.

Sec. 5.063. NOTICE. (a) Notice under Section 5.064 must be in writing and must be delivered by registered or certified mail, return receipt requested. The notice must be conspicuous and printed in 14-point boldface type or 14-point uppercase typewritten letters, and must include on a separate page the statement:

NOTICE

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF YOUR PROPERTY.

(b) The notice must also:

(1) identify and explain the remedy the seller intends to enforce;

(2) if the purchaser has failed to make a timely payment, specify:

(A) the delinquent amount, itemized into principal and interest;

(B) any additional charges claimed, such as late charges or attorney's fees; and

(C) the period to which the delinquency and additional charges relate; and

(3) if the purchaser has failed to comply with a term of the contract, identify the term violated and the action required to cure the violation.

(c) Notice by mail is given when it is mailed to the purchaser's residence or place of business. The affidavit of a person knowledgeable of the facts to the effect that notice was given is prima facie evidence of notice in an action involving a subsequent bona fide purchaser for value if the purchaser is not in possession of the real property and if the stated time to avoid the forfeiture has expired. A bona fide subsequent purchaser for value who relies upon the affidavit under this subsection shall take title free and clear of the contract.

Acts 1983, 68th Leg., p. 3485, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 444, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.062 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.064. SELLER'S REMEDIES ON DEFAULT. A seller may enforce the remedy of rescission or of forfeiture and acceleration against a purchaser in default under an executory contract for conveyance of real property only if:

(1) the seller notifies the purchaser of:

(A) the seller's intent to enforce a remedy under this section; and

(B) the purchaser's right to cure the default within the 30-day period described by Section 5.065;

(2) the purchaser fails to cure the default within the 30-

day period described by Section 5.065;

(3) Section 5.066 does not apply; and

(4) the contract has not been recorded in the county in which the property is located.

Acts 1983, 68th Leg., p. 3484, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.061 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 959, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 2, eff. September 1, 2015.

Sec. 5.065. RIGHT TO CURE DEFAULT. Notwithstanding an agreement to the contrary, a purchaser in default under an executory contract for the conveyance of real property may avoid the enforcement of a remedy described by Section 5.064 by complying with the terms of the contract on or before the 30th day after the date notice is given under that section.

Acts 1983, 68th Leg., p. 3485, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.063 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 959, Sec. 2, eff. Sept. 1, 2003.

Sec. 5.066. EQUITY PROTECTION; SALE OF PROPERTY. (a) If a purchaser defaults after the purchaser has paid 40 percent or more of the amount due or the equivalent of 48 monthly payments under the executory contract or, regardless of the amount the purchaser has paid, the executory contract has been recorded, the seller is granted the power to sell, through a trustee designated by the seller, the purchaser's interest in the property as provided by this section. The seller may not enforce the remedy of rescission or of forfeiture and acceleration after the contract has been recorded.

(b) The seller shall notify a purchaser of a default under the contract and allow the purchaser at least 60 days after the date notice is given to cure the default. The notice must be provided as

prescribed by Section 5.063 except that the notice must substitute the following statement:

NOTICE

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) A TRUSTEE DESIGNATED BY THE SELLER HAS THE RIGHT TO SELL YOUR PROPERTY AT A PUBLIC AUCTION.

(c) The trustee or a substitute trustee designated by the seller must post, file, and serve a notice of sale and the county clerk shall record and maintain the notice of sale as prescribed by Section 51.002. A notice of sale is not valid unless it is given after the period to cure has expired.

(d) The trustee or a substitute trustee designated by the seller must conduct the sale as prescribed by Section 51.002. The seller must:

(1) convey to a purchaser at a sale conducted under this section fee simple title to the real property; and

(2) warrant that the property is free from any encumbrance.

(e) The remaining balance of the amount due under the executory contract is the debt for purposes of a sale under this section. If the proceeds of the sale exceed the debt amount, the seller shall disburse the excess funds to the purchaser under the executory contract. If the proceeds of the sale are insufficient to extinguish the debt amount, the seller's right to recover the resulting deficiency is subject to Sections 51.003, 51.004, and 51.005 unless a provision of the executory contract releases the purchaser under the contract from liability.

(f) The affidavit of a person knowledgeable of the facts that states that the notice was given and the sale was conducted as provided by this section is prima facie evidence of those facts. A purchaser for value who relies on an affidavit under this subsection acquires title to the property free and clear of the executory contract.

(g) If a purchaser defaults before the purchaser has paid 40 percent of the amount due or the equivalent of 48 monthly payments under the executory contract, the seller may enforce the remedy of rescission or of forfeiture and acceleration of the indebtedness if the seller complies with the notice requirements of Sections 5.063 and 5.064.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.101 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 3, eff. September 1, 2015.

Sec. 5.067. PLACEMENT OF LIEN FOR UTILITY SERVICE. Notwithstanding any terms of a contract to the contrary, the placement of a lien for the reasonable value of improvements to residential real estate for purposes of providing utility service to the property shall not constitute a default under the terms of an executory contract for the purchase of the real property.

Added by Acts 1991, 72nd Leg., ch. 743, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.064 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.068. FOREIGN LANGUAGE REQUIREMENT. If the negotiations that precede the execution of an executory contract are conducted primarily in a language other than English, the seller shall provide a copy in that language of all written documents relating to the transaction, including the contract, disclosure notices, annual accounting statements, and a notice of default required by this subchapter.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.093 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.069. SELLER'S DISCLOSURE OF PROPERTY CONDITION. (a) Before an executory contract is signed by the purchaser, the seller shall provide the purchaser with:

(1) a survey, which was completed within the past year, or plat of a current survey of the real property;

(2) a legible copy of any document that describes an encumbrance or other claim, including a restrictive covenant or

easement, that affects title to the real property; and

(3) a written notice, which must be attached to the contract, informing the purchaser of the condition of the property that must, at a minimum, be executed by the seller and purchaser and read substantially similar to the following:

WARNING

IF ANY OF THE ITEMS BELOW HAVE NOT BEEN CHECKED, YOU MAY NOT BE ABLE TO LIVE ON THE PROPERTY.

SELLER'S DISCLOSURE NOTICE

CONCERNING THE PROPERTY AT (street address or legal description and city)

THIS DOCUMENT STATES CERTAIN APPLICABLE FACTS ABOUT THE PROPERTY YOU ARE CONSIDERING PURCHASING.

CHECK ALL THE ITEMS THAT ARE APPLICABLE OR TRUE:

_____ The property is in a recorded subdivision.

_____ The property has water service that provides potable water.

_____ The property has sewer service.

_____ The property has been approved by the appropriate municipal, county, or state agency for installation of a septic system.

_____ The property has electric service.

_____ The property is not in a floodplain.

_____ The roads to the boundaries of the property are paved and maintained by:

_____ the seller;

_____ the owner of the property on which the road exists;

_____ the municipality;

_____ the county; or

_____ the state.

_____ No individual or entity other than the seller:

(1) owns the property;

(2) has a claim of ownership to the property; or

(3) has an interest in the property.

_____ No individual or entity has a lien filed against the property.

_____ There are no restrictive covenants, easements, or other title exceptions or encumbrances that prohibit construction of a house on the property.

NOTICE: SELLER ADVISES PURCHASER TO:

(1) OBTAIN A TITLE ABSTRACT OR TITLE COMMITMENT COVERING THE PROPERTY AND HAVE THE ABSTRACT OR COMMITMENT REVIEWED BY AN ATTORNEY BEFORE SIGNING A CONTRACT OF THIS TYPE; AND

(2) PURCHASE AN OWNER'S POLICY OF TITLE INSURANCE COVERING THE PROPERTY.

_____ _____

(Date) (Signature of Seller)

_____ _____

(Date) (Signature of Purchaser)

(b) If the property is not located in a recorded subdivision, the seller shall provide the purchaser with a separate disclosure form stating that utilities may not be available to the property until the subdivision is recorded as required by law.

(c) If the seller advertises property for sale under an executory contract, the advertisement must disclose information regarding the availability of water, sewer, and electric service.

(d) The seller's failure to provide information required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(e) Subsection (d) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.094 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.070. SELLER'S DISCLOSURE OF TAX PAYMENTS AND INSURANCE COVERAGE. (a) Before an executory contract is signed by the purchaser, the seller shall provide the purchaser with:

(1) a tax certificate from the collector for each taxing

unit that collects taxes due on the property as provided by Section 31.08, Tax Code; and

(2) a legible copy of any insurance policy, binder, or other evidence relating to the property that indicates:

(A) the name of the insurer and the insured;

(B) a description of the property insured; and

(C) the amount for which the property is insured.

(b) The seller's failure to provide information required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(c) Subsection (b) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

(d) If the executory contract is recorded, the seller is not required to continue insuring the property.

Added by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 4, eff. September 1, 2015.

Sec. 5.071. SELLER'S DISCLOSURE OF FINANCING TERMS. Before an executory contract is signed by the purchaser, the seller shall provide to the purchaser a written statement that specifies:

(1) the purchase price of the property;

(2) the interest rate charged under the contract;

(3) the dollar amount, or an estimate of the dollar amount if the interest rate is variable, of the interest charged for the term of the contract;

(4) the total amount of principal and interest to be paid under the contract;

(5) the late charge, if any, that may be assessed under the

contract; and

(6) the fact that the seller may not charge a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.095 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.072. ORAL AGREEMENTS PROHIBITED. (a) An executory contract is not enforceable unless the contract is in writing and signed by the party to be bound or by that party's authorized representative.

(b) The rights and obligations of the parties to a contract are determined solely from the written contract, and any prior oral agreements between the parties are superseded by and merged into the contract.

(c) An executory contract may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the contract.

(d) The seller shall include in a separate document or in a provision of the contract a statement printed in 14-point boldfaced type or 14-point uppercase typewritten letters that reads substantially similar to the following:

THIS EXECUTORY CONTRACT REPRESENTS THE FINAL AGREEMENT BETWEEN THE SELLER AND PURCHASER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

_____ _____

(Date) (Signature of Seller)

_____ _____

(Date) (Signature of Purchaser)

(e) The seller's failure to provide the notice required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E,

Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(f) Subsection (e) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.073. CONTRACT TERMS, CERTAIN WAIVERS PROHIBITED. (a) A seller may not include as a term of the executory contract a provision that:

(1) imposes an additional late-payment fee that exceeds the lesser of:

(A) eight percent of the monthly payment under the contract; or

(B) the actual administrative cost of processing the late payment;

(2) prohibits the purchaser from pledging the purchaser's interest in the property as security to obtain a loan to place improvements, including utility improvements or fire protection improvements, on the property;

(3) imposes a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract;

(4) forfeits an option fee or other option payment paid under the contract for a late payment; or

(5) increases the purchase price, imposes a fee or charge of any type, or otherwise penalizes a purchaser leasing property with an option to buy the property for requesting repairs or exercising any other right under Chapter 92.

(b) A provision of the executory contract that purports to waive a right or exempt a party from a liability or duty under this subchapter is void.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.096 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 4, eff. September 1, 2005.

Sec. 5.074. PURCHASER'S RIGHT TO CANCEL CONTRACT WITHOUT CAUSE. (a) In addition to other rights or remedies provided by law, the purchaser may cancel and rescind an executory contract for any reason by sending by telegram or certified or registered mail, return receipt requested, or by delivering in person a signed, written notice of cancellation to the seller not later than the 14th day after the date of the contract.

(b) If the purchaser cancels the contract as provided by Subsection (a), the seller shall, not later than the 10th day after the date the seller receives the purchaser's notice of cancellation:

(1) return to the purchaser the executed contract and any property exchanged or payments made by the purchaser under the contract; and

(2) cancel any security interest arising out of the contract.

(c) The seller shall include in immediate proximity to the space reserved in the executory contract for the purchaser's signature a statement printed in 14-point boldface type or 14-point uppercase typewritten letters that reads substantially similar to the following:

YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT AT ANY TIME DURING THE NEXT TWO WEEKS. THE DEADLINE FOR CANCELING THE CONTRACT IS (date). THE ATTACHED NOTICE OF CANCELLATION EXPLAINS THIS RIGHT.

(d) The seller shall provide a notice of cancellation form to the purchaser at the time the purchaser signs the executory contract that is printed in 14-point boldface type or 14-point uppercase typewritten letters and that reads substantially similar to the following:

(date of contract)

NOTICE OF CANCELLATION

YOU MAY CANCEL THE EXECUTORY CONTRACT FOR ANY REASON WITHOUT ANY PENALTY OR OBLIGATION BY (date).

(1) YOU MUST SEND BY TELEGRAM OR CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR DELIVER IN PERSON A SIGNED AND

DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO (Name of Seller) AT (Seller's Address) BY (date).

(2) THE SELLER SHALL, NOT LATER THAN THE 10TH DAY AFTER THE DATE THE SELLER RECEIVES YOUR CANCELLATION NOTICE:

(A) RETURN THE EXECUTED CONTRACT AND ANY PROPERTY EXCHANGED OR PAYMENTS MADE BY YOU UNDER THE CONTRACT; AND

(B) CANCEL ANY SECURITY INTEREST ARISING OUT OF THE CONTRACT.

I ACKNOWLEDGE RECEIPT OF THIS NOTICE OF CANCELLATION FORM.

_____ _____

(Date) (Purchaser's Signature)

I HEREBY CANCEL THIS CONTRACT.

_____ _____

(Date) (Purchaser's Signature)

(e) The seller may not request the purchaser to sign a waiver of receipt of the notice of cancellation form required by this section.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.097 by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.075. PURCHASER'S RIGHT TO PLEDGE INTEREST IN PROPERTY ON CONTRACTS ENTERED INTO BEFORE SEPTEMBER 1, 2001. (a) On an executory contract entered into before September 1, 2001 , a purchaser may pledge the interest in the property, which accrues pursuant to Section 5.066, only to obtain a loan for improving the safety of the property or any improvements on the property.

(b) Loans that improve the safety of the property and improvements on the property include loans for:

(1) improving or connecting a residence to water service;

(2) improving or connecting a residence to a wastewater system;

(3) building or improving a septic system;

(4) structural improvements in the residence; and

(5) improved fire protection.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.098 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.076. RECORDING REQUIREMENTS. (a) Except as provided by Subsection (b), the seller shall record the executory contract, including the attached disclosure statement required by Section 5.069, as prescribed by Title 3 on or before the 30th day after the date the contract is executed.

(b) Section 12.002(c) does not apply to an executory contract filed for record under this section.

(c) If the executory contract is terminated for any reason, the seller shall record the instrument that terminates the contract.

(d) The county clerk shall collect the filing fee prescribed by Section 118.011, Local Government Code.

(e) A seller who violates this section is liable to the purchaser in the same manner and for the same amount as a seller who violates Section 5.079 is liable to a purchaser, except the damages may not exceed $500 for each calendar year of noncompliance. This subsection does not limit or affect any other rights or remedies a purchaser has under other law.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.099 and amended Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 5, eff. September 1, 2015.

Sec. 5.077. ANNUAL ACCOUNTING STATEMENT. (a) The seller shall provide the purchaser with an annual statement in January of each year for the term of the executory contract. If the seller mails the statement to the purchaser, the statement must be postmarked not later than January 31.

(b) The statement must include the following information:

(1) the amount paid under the contract;

(2) the remaining amount owed under the contract;

(3) the number of payments remaining under the contract;

(4) the amounts paid to taxing authorities on the purchaser's behalf if collected by the seller;

(5) the amounts paid to insure the property on the

purchaser's behalf if collected by the seller;

(6) if the property has been damaged and the seller has received insurance proceeds, an accounting of the proceeds applied to the property; and

(7) if the seller has changed insurance coverage, a legible copy of the current policy, binder, or other evidence that satisfies the requirements of Section 5.070(a)(2).

(c) A seller who conducts less than two transactions in a 12-month period under this section who fails to comply with Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of $100 for each annual statement the seller fails to provide to the purchaser within the time required by Subsection (a); and

(2) reasonable attorney's fees.

(d) A seller who conducts two or more transactions in a 12-month period under this section who fails to comply with Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of $250 a day for each day after January 31 that the seller fails to provide the purchaser with the statement, but not to exceed the fair market value of the property; and

(2) reasonable attorney's fees.

(e) The requirements of this section continue to apply after a purchaser obtains title to the property by conversion or any other process.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.100 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 5, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 6, eff. September 1, 2015.

Sec. 5.078. DISPOSITION OF INSURANCE PROCEEDS. (a) The named insured under an insurance policy, binder, or other coverage relating to property subject to an executory contract for the conveyance of real property shall inform the insurer, not later than the 10th day

after the date the coverage is obtained or the contract executed, whichever is later, of:

(1) the executory contract for conveyance and the term of the contract; and

(2) the name and address of the other party to the contract.

(b) An insurer who disburses proceeds under an insurance policy, binder, or other coverage relating to property that has been damaged shall issue the proceeds jointly to the purchaser and the seller designated in the contract.

(c) If proceeds under an insurance policy, binder, or other coverage are disbursed, the purchaser and seller shall ensure that the proceeds are used to repair, remedy, or improve the condition on the property.

(d) The failure of a seller or purchaser to comply with Subsection (c) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

(e) Subsection (d) does not limit either party's remedy for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.079. TITLE TRANSFER. (a) A recorded executory contract shall be the same as a deed with a vendor's lien. The vendor's lien is for the amount of the unpaid contract price, less any lawful deductions, and may be enforced by foreclosure sale under Section 5.066 or by judicial foreclosure. A general warranty is implied unless otherwise limited by the recorded executory contract. If an executory contract has not been recorded or converted under Section 5.081, the seller shall transfer recorded, legal title of the property covered by the executory contract to the purchaser not later than the 30th day after the date the seller receives the purchaser's final payment due under the contract.

(b) A seller who violates Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of:

(A) $250 a day for each day the seller fails to transfer the title to the purchaser during the period that begins the 31st day and ends the 90th day after the date the seller receives the purchaser's final payment due under the contract; and

(B) $500 a day for each day the seller fails to transfer title to the purchaser after the 90th day after the date the seller receives the purchaser's final payment due under the contract; and

(2) reasonable attorney's fees.

(c) If a person to whom a seller's property interest passes by will or intestate succession is required to obtain a court order to clarify the person's status as an heir or to clarify the status of the seller or the property before the person may convey good and indefeasible title to the property, the court in which the action is pending may waive payment of the liquidated damages and attorney's fees under Subsection (b) if the court finds that the person is pursuing the action to establish good and indefeasible title with reasonable diligence.

(d) In this section, "seller" includes a successor, assignee, personal representative, executor, or administrator of the seller.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.102 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 7, eff. September 1, 2015.

Sec. 5.080. LIABILITY FOR DISCLOSURES. For purposes of this subchapter, a disclosure required by this subchapter that is made by a seller's agent is a disclosure made by the seller.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.103 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.081. RIGHT TO CONVERT CONTRACT. (a) A purchaser, at any time and without paying penalties or charges of any kind, is

entitled to convert the purchaser's interest in property under an executory contract into recorded, legal title in accordance with this section, regardless of whether the seller has recorded the executory contract.

(b) If the purchaser tenders to the seller an amount of money equal to the balance of the total amount owed by the purchaser to the seller under the executory contract, the seller shall transfer to the purchaser recorded, legal title of the property covered by the contract.

(c) Subject to Subsection (d), if the purchaser delivers to the seller of property covered by an executory contract a promissory note that is equal in amount to the balance of the total amount owed by the purchaser to the seller under the contract and that contains the same interest rate, due dates, and late fees as the contract:

(1) the seller shall execute a deed containing any warranties required by the contract and conveying to the purchaser recorded, legal title of the property; and

(2) the purchaser shall simultaneously execute a deed of trust that:

(A) contains the same terms as the contract regarding the purchaser's and seller's duties concerning the property;

(B) secures the purchaser's payment and performance under the promissory note and deed of trust; and

(C) conveys the property to the trustee, in trust, and confers on the trustee the power to sell the property if the purchaser defaults on the promissory note or the terms of the deed of trust.

(d) On or before the 10th day after the date the seller receives a promissory note under Subsection (c) that substantially complies with that subsection, the seller shall:

(1) deliver to the purchaser a written explanation that legally justifies why the seller refuses to convert the purchaser's interest into recorded, legal title under Subsection (c); or

(2) communicate with the purchaser to schedule a mutually agreeable day and time to execute the deed and deed of trust under Subsection (c).

(e) A seller who violates this section is liable to the purchaser in the same manner and amount as a seller who violates Section 5.079 is liable to a purchaser. This subsection does not limit or affect any other rights or remedies a purchaser has under

other law.

(f) On the last date that all of the conveyances described by Subsections (b) and (c) are executed, the executory contract:

(1) is considered completed; and

(2) has no further effect.

(g) The appropriate use of forms published by the Texas Real Estate Commission for transactions described by this section constitutes compliance with this section.

(h) This section may not be construed to limit the purchaser's interest in the property established by other law, if any, or any other rights of the purchaser under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 6, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 8, eff. September 1, 2015.

Sec. 5.082. REQUEST FOR BALANCE AND TRUSTEE. (a) A purchaser under an executory contract, on written request, is entitled to receive the following information from the seller:

(1) as of the date of the request or another date specified by the purchaser, the amount owed by the purchaser under the contract; and

(2) if applicable, the name and address of the seller's desired trustee for a deed of trust to be executed under Section 5.081.

(b) On or before the 10th day after the date the seller receives from the purchaser a written request for information described by Subsection (a), the seller shall provide to the purchaser a written statement of the requested information.

(c) If the seller does not timely respond to a request made under this section, the purchaser may:

(1) determine or pay the amount owed under the contract, including determining the amount necessary for a promissory note under Section 5.081; and

(2) if applicable, select a trustee for a deed of trust under Section 5.081.

(d) For purposes of Subsection (c)(2), a purchaser must select

a trustee that lives or has a place of business in the same county where the property covered by the executory contract is located.

(e) Not later than the 20th day after the date a seller receives notice of an amount determined by a purchaser under Subsection (c)(1), the seller may contest that amount by sending a written objection to the purchaser. An objection under this subsection must:

(1) be sent to the purchaser by regular and certified mail;

(2) include the amount the seller claims is the amount owed under the contract; and

(3) be based on written records kept by the seller or the seller's agent that were maintained and regularly updated for the entire term of the executory contract.

Added by Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 6, eff. September 1, 2005.

Sec. 5.083. RIGHT TO CANCEL CONTRACT FOR IMPROPER PLATTING. (a) Except as provided by Subsection (c), in addition to other rights or remedies provided by law, the purchaser may cancel and rescind an executory contract at any time if the purchaser learns that the seller has not properly subdivided or platted the property that is covered by the contract in accordance with state and local law. A purchaser canceling and rescinding a contract under this subsection must:

(1) deliver a signed, written notice of the cancellation and rescission to the seller in person; or

(2) send a signed, written notice of the cancellation and rescission to the seller by telegram or certified or registered mail, return receipt requested.

(b) If the purchaser cancels the contract as provided under Subsection (a), the seller, not later than the 10th day after the date the seller receives the notice of cancellation and rescission, shall:

(1) deliver in person or send by telegram or certified or registered mail, return receipt requested, to the purchaser a signed, written notice that the seller intends to subdivide or plat the property properly; or

(2) return to the purchaser all payments of any kind made

to the seller under the contract and reimburse the purchaser for:

(A) any payments the purchaser made to a taxing authority for the property; and

(B) the value of any improvements made to the property by the purchaser.

(c) A purchaser may not exercise the purchaser's right to cancel and rescind an executory contract under this section if, on or before the 90th day after the date the purchaser receives the seller's notice under Subsection (b)(1), the seller:

(1) properly subdivides or plats the property; and

(2) delivers in person or sends by telegram or certified or registered mail, return receipt requested, to the purchaser a signed, written notice evidencing that the property has been subdivided or platted in accordance with state and local law.

(d) The seller may not terminate the purchaser's possession of the property covered by the contract being canceled and rescinded before the seller pays the purchaser any money to which the purchaser is entitled under Subsection (b).

Added by Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 6, eff. September 1, 2005.

Sec. 5.084. RIGHT TO DEDUCT. If a seller is liable to a purchaser under this subchapter, the purchaser, without taking judicial action, may deduct the amount owed to the purchaser by the seller from any amounts owed to the seller by the purchaser under the terms of an executory contract.

Added by Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 6, eff. September 1, 2005.

Sec. 5.085. FEE SIMPLE TITLE REQUIRED; MAINTENANCE OF FEE SIMPLE TITLE. (a) A potential seller may not execute an executory contract with a potential purchaser if the seller does not own the property in fee simple free from any liens or other encumbrances.

(b) Except as provided by this subsection, a seller, or the seller's heirs or assigns, must maintain fee simple title free from any liens or other encumbrances to property covered by an executory contract for the entire duration of the contract. This subsection

does not apply to a lien or encumbrance placed on the property that is:

(1) placed on the property because of the conduct of the purchaser;

(2) agreed to by the purchaser as a condition of a loan obtained to place improvements on the property, including utility or fire protection improvements; or

(3) placed on the property by the seller prior to the execution of the contract in exchange for a loan used only to purchase the property if:

(A) the seller, not later than the third day before the date the contract is executed, notifies the purchaser in a separate written disclosure:

(i) of the name, address, and phone number of the lienholder or, if applicable, servicer of the loan;

(ii) of the loan number and outstanding balance of the loan;

(iii) of the monthly payments due on the loan and the due date of those payments; and

(iv) in 14-point type that, if the seller fails to make timely payments to the lienholder, the lienholder may attempt to collect the debt by foreclosing on the lien and selling the property at a foreclosure sale;

(B) the lien:

(i) is attached only to the property sold to the purchaser under the contract; and

(ii) secures indebtedness that, at no time, is or will be greater in amount than the amount of the total outstanding balance owed by the purchaser under the executory contract;

(C) the lienholder:

(i) does not prohibit the property from being encumbered by an executory contract; and

(ii) consents to verify the status of the loan on request of the purchaser and to accept payments directly from the purchaser if the seller defaults on the loan; and

(D) the following covenants are placed in the executory contract:

(i) a covenant that obligates the seller to make timely payments on the loan and to give monthly statements to the purchaser reflecting the amount paid to the lienholder, the date the

lienholder receives the payment, and the information described by Paragraph (A);

(ii) a covenant that obligates the seller, not later than the third day the seller receives or has actual knowledge of a document or an event described by this subparagraph, to notify the purchaser in writing in 14-point type that the seller has been sent a notice of default, notice of acceleration, or notice of foreclosure or has been sued in connection with a lien on the property and to attach a copy of all related documents received to the written notice; and

(iii) a covenant that warrants that if the seller does not make timely payments on the loan or any other indebtedness secured by the property, the purchaser may, without notice, cure any deficiency with a lienholder directly and deduct from the total outstanding balance owed by the purchaser under the executory contract, without the necessity of judicial action, 150 percent of any amount paid to the lienholder.

(c) A violation of this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) in addition to other rights or remedies provided by law, entitles the purchaser to cancel and rescind the executory contract and receive from the seller:

(A) the return of all payments of any kind made to the seller under the contract; and

(B) reimbursement for:

(i) any payments the purchaser made to a taxing authority for the property; and

(ii) the value of any improvements made to the property by the purchaser.

(d) A seller is not liable under this section if:

(1) a lien is placed on the property by a person other than the seller; and

(2) not later than the 30th day after the date the seller receives notice of the lien, the seller takes all steps necessary to remove the lien and has the lien removed from the property.

Added by Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 6, eff.

September 1, 2005.

SUBCHAPTER F. REQUIREMENTS FOR CONVEYANCES OF MINERAL OR ROYALTY INTERESTS

Sec. 5.151. DISCLOSURE IN OFFER TO PURCHASE MINERAL INTEREST. (a) A person who mails to the owner of a mineral or royalty interest an offer to purchase only the mineral or royalty interest, it being understood that for the purpose of this section the taking of an oil, gas, or mineral lease shall not be deemed a purchase of a mineral or royalty interest, and encloses an instrument of conveyance of only the mineral or royalty interest and a draft or other instrument, as defined in Section 3.104, Business & Commerce Code, providing for payment for that interest shall include in the offer a conspicuous statement printed in a type style that is approximately the same size as 14-point type style or larger and is in substantially the following form:

BY EXECUTING AND DELIVERING THIS INSTRUMENT YOU ARE SELLING ALL OR A PORTION OF YOUR MINERAL OR ROYALTY INTEREST IN (DESCRIPTION OF PROPERTY BEING CONVEYED).

(b) A person who conveys a mineral or royalty interest as provided by Subsection (a) may bring suit against the purchaser of the interest if:

(1) the purchaser did not give the notice required by Subsection (a); and

(2) the person has given 30 days' written notice to the purchaser that a suit will be filed unless the matter is otherwise resolved.

(c) A plaintiff who prevails in a suit under Subsection (b) may recover from the initial purchaser of the mineral or royalty interest the greater of:

(1) $100; or

(2) an amount up to the difference between the amount paid by the purchaser for the mineral or royalty interest and the fair market value of the mineral or royalty interest at the time of the sale.

(d) The prevailing party in a suit under Subsection (b) may recover:

(1) court costs; and

(2) reasonable attorney's fees.

(e) A person must bring a suit under Subsection (b) not later than the second anniversary of the date the person executed the conveyance.

(f) The remedy provided under this section shall be in addition to any other remedies existing under law, excluding rescission or other remedies that would make the conveyance of the mineral or royalty interest void or of no force and effect.

Added by Acts 1999, 76th Leg., ch. 1200, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER G. CERTAIN PRIVATE TRANSFER FEES PROHIBITED; PRESERVATION OF PRIVATE REAL PROPERTY RIGHTS

Sec. 5.201. DEFINITIONS. In this subchapter:

(1) "Encumbered property" means all property, including the property of a subsequent purchaser, subject to the same private transfer fee obligation.

(2) "Lender" means a lending institution, including a bank, trust company, banking association, savings and loan association, mortgage company, investment bank, credit union, life insurance company, and governmental agency, that customarily provides financing or an affiliate of a lending institution.

(3) "Payee" means a person who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation and who may or may not have a pecuniary interest in the obligation.

(4) "Private transfer fee" means an amount of money, regardless of the method of determining the amount, that is payable on the transfer of an interest in real property or payable for a right to make or accept a transfer.

(5) "Private transfer fee obligation" means an obligation to pay a private transfer fee created under:

(A) a declaration or other covenant recorded in the real property records in the county in which the property subject to the private transfer fee obligation is located;

(B) a contractual agreement or promise; or

(C) an unrecorded contractual agreement or promise.

(6) "Subsequent owner" means a person who acquires real property by transfer from a person other than the person who is the seller of the property on the date the private transfer fee

obligation is created.

(7) "Subsequent purchaser" means a person who purchases real property from a person other than the person who is the seller on the date the private transfer fee obligation is created. The term includes a lender who provides a mortgage loan to a subsequent purchaser to purchase the property.

(8) "Transfer" means the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211 (H.B. 8), Sec. 1, eff. June 17, 2011.

Sec. 5.202. CERTAIN PRIVATE TRANSFER FEE OBLIGATIONS VOID. (a) Except as provided by this subchapter, a private transfer fee obligation created on or after the effective date of this subchapter is not binding or enforceable against a subsequent owner or subsequent purchaser of an interest in real property and is void.

(b) For purposes of this subchapter, the following payments are not considered private transfer fee obligations:

(1) consideration paid by a purchaser to a seller for an interest in real property transferred, including, as applicable, a mineral interest transferred, including additional consideration paid to a seller for the property's appreciation, development, or sale after the interest in the property has been transferred to the purchaser, if the additional consideration is paid only once and that payment does not bind successors in interest to the property to any private transfer fee obligation;

(2) a commission paid to a licensed real estate broker under a written agreement between a seller or purchaser and the broker, including an additional commission for the property's appreciation, development, or sale after the interest in property is transferred to the purchaser;

(3) interest, a fee, a charge, or another type of payment to a lender under a loan secured by a mortgage on the property, including:

(A) a fee payable for the lender's consent to an assumption of the loan or transfer of the property subject to the mortgage;

(B) a fee or charge payable for an estoppel letter or certificate;

(C) a shared appreciation interest or profit participation; or

(D) other consideration payable in connection with the loan;

(4) rent, reimbursement, a fee, a charge, or another type of payment to a lessor under a lease, including a fee for consent to an assignment, sublease, encumbrance, or transfer of a lease;

(5) consideration paid to the holder of an option to purchase an interest in property, or to the holder of a right of first refusal or first offer to purchase an interest in property, for waiving, releasing, or not exercising the option or right when the property is transferred to another person;

(6) a fee payable to or imposed by a governmental entity in connection with recording the transfer of the property;

(7) dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment under a declaration or other covenant or under law, including a fee or charge payable for a change of ownership entered in the records of an association to which this subdivision applies or an estoppel letter or resale certificate issued under Section 207.003 by an association to which this subdivision applies or the person identified under Section 209.004(a)(6), provided that no portion of the fee or charge is required to be passed through to a third party designated or identifiable in the declaration or other covenant or law or in a document referenced in the declaration or other covenant or law, unless paid to:

(A) an association as defined by Section 82.003 or 221.002 or the person or entity managing the association as provided by Section 82.116(a)(5) or 221.032(b)(11), as applicable;

(B) a property owners' association as defined by Section 202.001 or 209.002 or the person or entity described by Section 209.004(a)(6); or

(C) a property owners' association as defined by Section 202.001 that does not require an owner of property governed by the association to be a member of the association or the person or entity described by Section 209.004(a)(6);

(8) dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment for the transfer of a club

membership related to the property;

(9) dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment paid to an organization exempt from federal taxation under Section 501(c)(3) or 501(c)(4), Internal Revenue Code of 1986, only if the organization uses the payments to directly benefit the encumbered property by:

(A) supporting or maintaining only the encumbered property;

(B) constructing or repairing improvements only to the encumbered property; or

(C) providing activities or infrastructure to support quality of life, including cultural, educational, charitable, recreational, environmental, and conservation activities and infrastructure, that directly benefit the encumbered property; or

(10) a fee payable to or imposed by the Veterans' Land Board for consent to an assumption or transfer of a contract of sale and purchase.

(c) The benefit described by Subsection (b)(9)(C) may collaterally benefit a community composed of:

(1) property that is adjacent to the encumbered property; or

(2) property a boundary of which is not more than 1,000 yards from a boundary of the encumbered property.

(d) Notwithstanding Subsection (c), an organization may provide a direct benefit under Subsection (b)(9) if:

(1) the organization provides to the general public activities or infrastructure described by Subsection (b)(9)(C);

(2) the provision of activities or infrastructure substantially benefits the encumbered property; and

(3) the governing body of the organization:

(A) is controlled by owners of the encumbered property; and

(B) approves payments for activities or infrastructure at least annually.

(e) An organization may provide activities and infrastructure described by Subsection (b)(9)(C) to another organization exempt from federal taxation under Section 501(c)(3) or 501(c)(4), Internal Revenue Code of 1986, at no charge for de minimis usage without violating the requirements of this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211 (H.B. 8), Sec. 1, eff. June 17, 2011.

Sec. 5.203. NOTICE REQUIREMENTS FOR CONTINUATION OF EXISTING PRIVATE TRANSFER FEE OBLIGATIONS. (a) A person who receives a private transfer fee under a private transfer fee obligation created before the effective date of this subchapter must, on or before January 31, 2012, file for record a "Notice of Private Transfer Fee Obligation" as provided by this section in the real property records of each county in which the property is located.

(b) Multiple payees of a single private transfer fee under a private transfer fee obligation must designate one payee as the payee of record for the fee.

(c) A notice under Subsection (a) must:

(1) be printed in at least 14-point boldface type;

(2) state the amount of the private transfer fee and the method of determination, if applicable;

(3) state the date or any circumstance under which the private transfer fee obligation expires, if any;

(4) state the purpose for which the money from the private transfer fee obligation will be used;

(5) notwithstanding Subsection (b), state the name of each payee and each payee's contact information;

(6) state the name and address of the payee of record to whom the payment of the fee must be sent;

(7) include the acknowledged signature of each payee or authorized representative of each payee; and

(8) state the legal description of the property subject to the private transfer fee obligation.

(d) A person required to file a notice under this section shall:

(1) refile the notice described by this section not earlier than the 30th day before the third anniversary of the original filing date described by Subsection (a) and within a similar 30-day period every third year thereafter; and

(2) amend the notice to reflect any change in the name or address of any payee included in the notice not later than the 30th day after the date the change occurs.

(e) A person who amends a notice under Subsection (d)(2) must

include:

(1) the recording information of the original notice filed as required by this section; and

(2) the legal description of the property subject to the private transfer fee obligation.

(f) If a person required to file a notice under this section fails to comply with this section:

(1) payment of the private transfer fee may not be a requirement for the conveyance of an interest in the property to a purchaser;

(2) the property is not subject to further obligation under the private transfer fee obligation; and

(3) the private transfer fee obligation is void.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211 (H.B. 8), Sec. 1, eff. June 17, 2011.

Sec. 5.204. ADDITIONAL COMPLIANCE REQUIREMENT: TIMELY ACCEPTANCE OF FEES PAID UNDER EXISTING PRIVATE TRANSFER FEE OBLIGATIONS. (a) The payee of record on the date a private transfer fee is paid under a private transfer fee obligation subject to Section 5.203 must accept the payment on or before the 30th day after the date the payment is tendered to the payee.

(b) If the payee of record fails to comply with Subsection (a):

(1) the payment must be returned to the remitter;

(2) payment of the private transfer fee may not be a requirement for the conveyance of an interest in the property to a purchaser; and

(3) the property is not subject to further obligation under the private transfer fee obligation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211 (H.B. 8), Sec. 1, eff. June 17, 2011.

Sec. 5.205. DISCLOSURE OF EXISTING TRANSFER FEE OBLIGATION REQUIRED IN CONTRACT FOR SALE. A seller of real property that may be subject to a private transfer fee obligation shall provide written notice to a potential purchaser stating that the obligation may be governed by this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211 (H.B. 8), Sec. 1, eff. June 17, 2011.

Sec. 5.206. WAIVER VOID. A provision that purports to waive a purchaser's rights under this subchapter is void.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211 (H.B. 8), Sec. 1, eff. June 17, 2011.

Sec. 5.207. INJUNCTIVE OR DECLARATORY RELIEF; PROVIDING PENALTIES. (a) The attorney general may institute an action for injunctive or declaratory relief to restrain a violation of this subchapter.

(b) In addition to instituting an action for injunctive or declaratory relief under Subsection (a), the attorney general may institute an action for civil penalties against a payee for a violation of this chapter. Except as provided by Subsection (c), a civil penalty assessed under this section may not exceed an amount equal to two times the amount of the private transfer fee charged or collected by the payee in violation of this subchapter.

(c) If the court in which an action under Subsection (b) is pending finds that a payee violated this subchapter with a frequency that constitutes a pattern or practice, the court may assess a civil penalty not to exceed $250,000.

(d) The comptroller shall deposit to the credit of the general revenue fund all money collected under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211 (H.B. 8), Sec. 1, eff. June 17, 2011.

TITLE 3. PUBLIC RECORDS

CHAPTER 11. PROVISIONS GENERALLY APPLICABLE TO PUBLIC RECORDS

Sec. 11.001. PLACE OF RECORDING. (a) To be effectively recorded, an instrument relating to real property must be eligible for recording and must be recorded in the county in which a part of the property is located. However, if such an instrument grants a security interest by a utility as defined in Section 261.001, Business & Commerce Code, the instrument may be recorded as required

by Sections 261.004 and 261.006 of that code, and if such instrument is so recorded, the lien and the secured interest created by such instrument shall be deemed perfected for all purposes.

(b) If an instrument has been recorded in a proper county, the subsequent creation of a new county containing property conveyed or encumbered by the instrument does not affect the recording's validity or effect as notice. The county court of the new county shall at its own expense:

(1) obtain a certified transcript of the record of all instruments conveying or encumbering property in the new county;

(2) deposit the transcript for public inspection in the recorder's office of the new county; and

(3) make an index of the transcript.

Acts 1983, 68th Leg., p. 3486, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 999, Sec. 1, eff. Aug. 28, 1989. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.32, eff. April 1, 2009.

Sec. 11.002. ENGLISH LANGUAGE. (a) An instrument relating to real or personal property may not be recorded unless it is in English or complies with this section.

(b) An authenticated instrument not in English that was executed before August 22, 1897, may be recorded and operate as constructive notice from the date of filing if:

(1) a correct English translation is recorded with the original instrument; and

(2) the accuracy of the translation is sworn to before an officer authorized to administer oaths.

(c) An instrument acknowledged outside the United States or its territories in accordance with Section 121.001(c)(3), Civil Practice and Remedies Code, that contains a certificate, stamp, or seal of a notary public or other official before whom the acknowledgment was taken or an apostille relating to the acknowledgment, any portion of which is not in English, may be recorded and operate as constructive notice from the date of filing if:

(1) a correct English translation of any non-English portion of the certificate, stamp, seal, or apostille is recorded

with the original instrument;

(2) the accuracy of the translation is sworn to before an officer authorized to administer oaths; and

(3) any apostille relating to the acknowledgment complies with the Hague Convention dated October 5, 1961, titled Convention Abolishing the Requirement of Legalisation for Foreign Public Documents.

Acts 1983, 68th Leg., p. 3486, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 891, Sec. 2, eff. Sept. 1, 1987.

Sec. 11.003. GRANTEE'S ADDRESS. (a) An instrument executed after December 31, 1981, conveying an interest in real property may not be recorded unless:

(1) a mailing address of each grantee appears in the instrument or in a separate writing signed by the grantor or grantee and attached to the instrument; or

(2) a penalty filing fee equal to the greater of $25 or twice the statutory recording fee for the instrument is paid.

(b) The validity of a conveyance as between the parties is not affected by a failure to include an address of each grantee in the instrument or an attached writing.

(c) Payment of a filing fee and acceptance of the instrument by the county clerk for recording creates a conclusive presumption that the requirements of this section have been met.

Acts 1983, 68th Leg., p. 3487, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 11.004. DUTY OF RECORDER. (a) A county clerk shall:

(1) correctly record, as required by law, within a reasonable time after delivery, any instrument authorized or required to be recorded in that clerk's office that is proved, acknowledged, or sworn to according to law;

(2) give a receipt, as required by law, for an instrument delivered for recording;

(3) record instruments relating to the same property in the order the instruments are filed; and

(4) provide and keep in the clerk's office the indexes required by law.

(b) A county clerk who violates a provision of this section and the sureties on the clerk's bond are liable for damages and, on motion in district court and after three days' notice to the clerk, for a civil penalty of not more than $500, half of which is payable to the county and half to the person who files the motion.

Acts 1983, 68th Leg., p. 3487, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 162, Sec. 1, eff. Sept. 1, 1989.

Sec. 11.0041. REVIEW OF CERTAIN INSTRUMENTS IN CERTAIN COUNTIES. (a) This section applies only to the county clerk of a county:

(1) that:

(A) is located on the international border; and

(B) has a population of less than 15,000;

(2) in which a colonia self-help center established under Section 2306.582, Government Code, is located; or

(3) that is served by a colonia self-help center described by Subdivision (2) in another county.

(b) Before accepting an instrument conveying real property for filing, the county clerk may send the instrument to the county attorney for review under this section. Not later than five business days after the date the county attorney receives an instrument under this subsection, the county attorney shall:

(1) review the instrument to determine whether the platting requirements prescribed by Sections 232.023, 232.025, and 232.031, Local Government Code, have been satisfied; and

(2) return the instrument to the county clerk with a statement of the county attorney's determination under Subdivision (1).

(c) Notwithstanding Section 11.004(a), the county clerk shall immediately notify the party that presented the instrument for recording that:

(1) the clerk is referring the instrument to the county attorney for review;

(2) the instrument will not be immediately recorded; and

(3) the clerk is not required to file an instrument the county attorney determines the clerk is not required to file.

Added by Acts 2009, 81st Leg., R.S., Ch. 1176 (H.B. 3479), Sec. 1,

eff. September 1, 2009.

Sec. 11.005. JUDGMENT PROVING AN INSTRUMENT OR CORRECTING A CERTIFICATE. (a) A person interested under an instrument that may be proved for record may bring an action in district court for a judgment proving the instrument.

(b) A person interested under a defectively certified instrument for which acknowledgement or proof of execution has been properly made may bring an action in district court for a judgment correcting the certificate.

(c) If a certified copy of a judgment in a suit under this section that shows proof of an instrument is attached to the instrument, the instrument may be recorded with the same effect as if it were acknowledged.

Acts 1983, 68th Leg., p. 3488, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 11.006. INSTRUMENT AFFECTING TITLE TO LAND IN ARCHER COUNTY. An instrument that in any manner affects title to land in Archer County, Texas, but was recorded in Jack County on or after August 10, 1866, but no later than August 10, 1870, and was made under the hand and seal of the county clerk of Shackelford County, is admissible in evidence in any suit in which secondary evidence is admissible.

Acts 1983, 68th Leg., p. 3488, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 11.007. EFFECT OF CITATION TO REAL PROPERTY RECORDS. A reference in an instrument to the volume and page number, film code number, or county clerk file number of the "real property records" (or other words of similar import) for a particular county is equivalent to a reference to the deed records, deed of trust records, or other specific records, for the purpose of providing effective notice to all persons of the existence of the referenced instrument.

Added by Acts 1989, 71st Leg., ch. 161, Sec. 1, eff. May 25, 1989. Amended by Acts 1991, 72nd Leg., ch. 205, Sec. 1, eff. Aug. 26, 1991.

Sec. 11.008. PERSONAL INFORMATION IN REAL PROPERTY RECORDS. (a) In this section, "instrument" means a deed or deed of trust.

(b) An instrument submitted for recording is not required to contain an individual's social security number, and the social security number of an individual is not obtained or maintained by the clerk under this section. The preparer of a document may not include an individual's social security number in a document that is presented for recording in the office of the county clerk.

(c) Notwithstanding Section 191.007(c), Local Government Code, an instrument transferring an interest in real property to or from an individual must include a notice that appears on the top of the first page of the instrument in 12-point boldfaced type or 12-point uppercase letters and reads substantially as follows:

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

(d) The validity of an instrument as between the parties to the instrument and the notice provided by the instrument are not affected by a party's failure to include the notice required under Subsection (c).

(e) The county clerk may not under any circumstance reject an instrument presented for recording solely because the instrument fails to comply with this section. Other than the duty to redact an individual's social security number as required by Section 552.147, Government Code, the county clerk has no duty to ensure that an instrument presented for recording does not contain an individual's social security number.

(f) The county clerk shall post a notice in the county clerk's office stating that instruments recorded in the real property or official public records or the equivalent of the real property or official public records of the county:

(1) are not required to contain a social security number or driver's license number; and

(2) are public records available for review by the public.

(g) All instruments described by this section are subject to inspection by the public. The county clerk is not criminally or civilly liable for disclosing an instrument or information in an instrument in compliance with the public information law (Chapter

552, Government Code) or another law.

(h) Unless this section is cited in a law enacted after September 1, 2003, this section is the exclusive law governing the confidentiality of personal information contained in the real property or official public records or the equivalent of the real property or official public records of a county.

(i) To the extent that federal law conflicts with this section, an instrument must contain the information required by and must be filed in a manner that complies with federal law.

Added by Acts 2003, 78th Leg., ch. 715, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 960, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 45 (S.B. 461), Sec. 1, eff. May 13, 2005.

Acts 2007, 80th Leg., R.S., Ch. 3 (H.B. 2061), Sec. 2, eff. March 28, 2007.

CHAPTER 12. RECORDING OF INSTRUMENTS

Sec. 12.001. INSTRUMENTS CONCERNING PROPERTY. (a) An instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law.

(b) An instrument conveying real property may not be recorded unless it is signed and acknowledged or sworn to by the grantor in the presence of two or more credible subscribing witnesses or acknowledged or sworn to before and certified by an officer authorized to take acknowledgements or oaths, as applicable.

(c) This section does not require the acknowledgement or swearing or prohibit the recording of a financing statement, a security agreement filed as a financing statement, or a continuation statement filed for record under the Business & Commerce Code.

(d) The failure of a notary public to attach an official seal to an acknowledgment, a jurat, or other proof taken outside this state but inside the United States or its territories renders the acknowledgment, jurat, or other proof invalid only if the jurisdiction in which the acknowledgment, jurat, or other proof is taken requires the notary public to attach the seal.

Acts 1983, 68th Leg., p. 3489, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 1989, 71st Leg., ch. 162, Sec. 2, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 603, Sec. 2, eff. June 14, 1995.

Sec. 12.0011. INSTRUMENTS CONCERNING PROPERTY: ORIGINAL SIGNATURE REQUIRED FOR CERTAIN INSTRUMENTS. (a) For the purposes of this section, "paper document" means a document received by a county clerk in a form that is not electronic.

(b) A paper document concerning real or personal property may not be recorded or serve as notice of the paper document unless:

(1) the paper document contains an original signature or signatures that are acknowledged, sworn to with a proper jurat, or proved according to law; or

(2) the paper document is attached as an exhibit to a paper affidavit or other document that has an original signature or signatures that are acknowledged, sworn to with a proper jurat, or proved according to law.

(c) An original signature may not be required for an electronic instrument or other document that complies with the requirements of Chapter 15 of this code, Chapter 195, Local Government Code, Chapter 322, Business & Commerce Code, or other applicable law.

(d) This section does not apply to a child support lien notice issued by the Title IV-D agency under Chapter 157, Family Code. For purposes of this subsection, "Title IV-D agency" has the meaning assigned by Section 101.033, Family Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 213 (H.B. 732), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 20.003, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 33, eff. June 19, 2009.

Sec. 12.0012. INSTRUMENTS CONCERNING REAL PROPERTY SUBJECT TO A FORECLOSURE SALE. (a) Notwithstanding Section 12.0011(b), the following documents received by the county clerk in the manner provided by Subsection (b) shall be recorded by the clerk and serve as notice of the matter document:

(1) an instrument appointing or authorizing a trustee or substitute trustee to exercise the power of sale in a security instrument;

(2) a notice of sale pursuant to which the sale under a power of sale occurred;

(3) a notice of default on which the sale evidenced by a deed conveying title from a trustee or substitute trustee to a purchaser occurred;

(4) documentation from the United States Department of Defense indicating that a debtor was not on active duty military service on the date of a foreclosure sale;

(5) a statement of facts regarding a foreclosure sale prepared by an attorney representing the trustee, substitute trustee, or mortgage servicer; or

(6) proof of service of the mailing of any notice related to a foreclosure sale.

(b) A document described by Subsection (a) shall be accepted for recording pursuant to Subsection (a) if it is attached as an exhibit to:

(1) a deed that conveys title from a trustee or substitute trustee to a purchaser at a foreclosure sale and that meets the requirements for recording under Section 12.0011(b); or

(2) an affidavit of a trustee or substitute trustee that meets the requirements for recording under Section 12.0011(b) and relates to a foreclosure sale.

(c) This section does not prevent the recording of documents in any other manner allowed by law.

Added by Acts 2015, 84th Leg., R.S., Ch. 653 (H.B. 2063), Sec. 1, eff. September 1, 2015.

Sec. 12.002. SUBDIVISION PLAT; PENALTY. (a) The county clerk or a deputy of the clerk with whom a plat or replat of a subdivision of real property is filed for recording shall determine whether the plat or replat is required by law to be approved by a county or municipal authority or both. The clerk or deputy may not record a plat or replat unless it is approved as provided by law by the appropriate authority and unless the plat or replat has attached to it the documents required by Subsection (e) or by Section 212.0105 or

232.023, Local Government Code, if applicable. If a plat or replat does not indicate whether land covered by the plat or replat is in the extraterritorial jurisdiction of the municipality, the county clerk may require the person filing the plat or replat for recording to file with the clerk an affidavit stating that information.

(b) A person may not file for record or have recorded in the county clerk's office a plat or replat of a subdivision of real property unless it is approved as provided by law by the appropriate authority and unless the plat or replat has attached to it the documents required by Section 212.0105 or 232.023, Local Government Code, if applicable.

(c) Except as provided by Subsection (d), a person who subdivides real property may not use the subdivision's description in a deed of conveyance, a contract for a deed, or a contract of sale or other executory contract to convey that is delivered to a purchaser unless the plat or replat of the subdivision is approved and is filed for record with the county clerk of the county in which the property is located and unless the plat or replat has attached to it the documents required by Subsection (e) or by Section 212.0105 or 232.023, Local Government Code, if applicable.

(d) Except in the case of a subdivision located in a county to which Subchapter B, Chapter 232, Local Government Code, applies, Subsection (c) does not apply to using a subdivision's description in a contract to convey real property before the plat or replat of the subdivision is approved and is filed for record with the county clerk if:

(1) the conveyance is expressly contingent on approval and recording of the final plat; and

(2) the purchaser is not given use or occupancy of the real property conveyed before the recording of the final plat.

(e) A person may not file for record or have recorded in the county clerk's office a plat, replat, or amended plat or replat of a subdivision of real property unless the plat, replat, or amended plat or replat has attached to it an original tax certificate from each taxing unit with jurisdiction of the real property indicating that no delinquent ad valorem taxes are owed on the real property. If the plat, replat, or amended plat or replat is filed after September 1 of a year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for each taxing unit with jurisdiction of the property indicating that the taxes

imposed by the taxing unit for the current year have been paid or, if the taxes for the current year have not been calculated, a statement from the collector for the taxing unit indicating that the taxes to be imposed by that taxing unit for the current year have not been calculated. If the tax certificate for a taxing unit does not cover the preceding year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for the taxing unit indicating that the taxes imposed by the taxing unit for the preceding year have been paid. This subsection does not apply if:

(1) more than one person acquired the real property from a decedent under a will or by inheritance and those persons owning an undivided interest in the property obtained approval to subdivide the property to provide each person with a divided interest and a separate title to the property; or

(2) a taxing unit acquired the real property for public use through eminent domain proceedings or voluntary sale.

(f) A person commits an offense if the person violates Subsection (b), (c), or (e). An offense under this subsection is a misdemeanor punishable by a fine of not less than $10 or more than $1,000, by confinement in the county jail for a term not to exceed 90 days, or by both the fine and confinement. Each violation constitutes a separate offense and also constitutes prima facie evidence of an attempt to defraud.

(g) This section does not apply to a partition by a court.

Acts 1983, 68th Leg., p. 3489, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 149, Sec. 22, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 3.09, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 570, Sec. 1, eff. June 15, 1991; Acts 1997, 75th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 404, Sec. 27, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 812, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1382, Sec. 8, eff. June 19, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1126 (H.B. 2491), Sec. 26, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1154 (H.B. 3101), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 289 (H.B. 989), Sec. 1, eff.

September 1, 2007.

Sec. 12.003. INSTRUMENT IN GENERAL LAND OFFICE OR ARCHIVES. (a) If written evidence of title to land has been filed according to law in the General Land Office or is in the public archives, a copy of the written evidence may be recorded if:

(1) the original was properly executed under the law in effect at the time of execution; and

(2) the copy is certified by the officer having custody of the original and attested with the seal of the General Land Office.

(b) A court may not admit a title to land that was filed in the General Land Office as evidence of superior title against a location or survey of the same land that was made under a valid land warrant or certificate prior to the filing of the title in the General Land Office unless prior to the location or survey:

(1) the older title had been recorded with the county clerk of the county in which the land is located; or

(2) the person who had the location or survey made had actual notice of the older title.

Acts 1983, 68th Leg., p. 3490, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.004. FOREIGN DEED. If written evidence of title to land has been filed outside the county in which the land is located or outside the state, a copy of the written evidence may be recorded in the county in which the land is located if:

(1) the original was properly executed and recorded under the law governing the recording; and

(2) the copy is certified by the officer having legal custody of the original.

Acts 1983, 68th Leg., p. 3490, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.005. PARTITION. (a) A court order partitioning or allowing recovery of title to land must be recorded with the county clerk of the county in which the land is located in order to be admitted as evidence to support a right claimed under the order.

(b) A record of an order is sufficient under this section if it

consists of a brief statement by the clerk of the court that made the order, signed and sealed by the clerk, that includes:

(1) the identity of the case in which the partition or judgment was made;

(2) the date of the case;

(3) the names of the parties to the case;

(4) a description of the land involved that is located in the county of the recording; and

(5) the name of the party to whom the land is decreed.

Acts 1983, 68th Leg., p. 3490, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.006. GRANT FROM GOVERNMENT. A grant from this state or the United States that is executed and authenticated under the law in effect at the time the grant is made may be recorded without further acknowledgement or proof.

Acts 1983, 68th Leg., p. 3491, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.007. LIS PENDENS. (a) After the plaintiff's statement in an eminent domain proceeding is filed or during the pendency of an action involving title to real property, the establishment of an interest in real property, or the enforcement of an encumbrance against real property, a party to the action who is seeking affirmative relief may file for record with the county clerk of each county where a part of the property is located a notice that the action is pending.

(b) The party filing a lis pendens or the party's agent or attorney shall sign the lis pendens, which must state:

(1) the style and number, if any, of the proceeding;

(2) the court in which the proceeding is pending;

(3) the names of the parties;

(4) the kind of proceeding; and

(5) a description of the property affected.

(c) The county clerk shall record the notice in a lis pendens record. The clerk shall index the record in a direct and reverse index under the name of each party to the proceeding.

(d) Not later than the third day after the date a person files a notice for record under this section, the person must serve a copy

of the notice on each party to the action who has an interest in the real property affected by the notice.

Acts 1983, 68th Leg., p. 3491, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 297 (H.B. 396), Sec. 1, eff. September 1, 2009.

Sec. 12.0071. MOTION TO EXPUNGE LIS PENDENS. (a) A party to an action in connection with which a notice of lis pendens has been filed may:

(1) apply to the court to expunge the notice; and

(2) file evidence, including declarations, with the motion to expunge the notice.

(b) The court may:

(1) permit evidence on the motion to be received in the form of oral testimony; and

(2) make any orders the court considers just to provide for discovery by a party affected by the motion.

(c) The court shall order the notice of lis pendens expunged if the court determines that:

(1) the pleading on which the notice is based does not contain a real property claim;

(2) the claimant fails to establish by a preponderance of the evidence the probable validity of the real property claim; or

(3) the person who filed the notice for record did not serve a copy of the notice on each party entitled to a copy under Section 12.007(d).

(d) Notice of a motion to expunge under Subsection (a) must be served on each affected party on or before the 20th day before the date of the hearing on the motion.

(e) The court shall rule on the motion for expunction based on the affidavits and counteraffidavits on file and on any other proof the court allows.

(f) After a certified copy of an order expunging a notice of lis pendens has been recorded, the notice of lis pendens and any information derived from the notice:

(1) does not:

(A) constitute constructive or actual notice of any

matter contained in the notice or of any matter relating to the proceeding;

(B) create any duty of inquiry in a person with respect to the property described in the notice; or

(C) affect the validity of a conveyance to a purchaser for value or of a mortgage to a lender for value; and

(2) is not enforceable against a purchaser or lender described by Subdivision (1)(C), regardless of whether the purchaser or lender knew of the lis pendens action.

(g) The court in its discretion may require that the party prevailing in the expunction hearing submit an undertaking to the court in an amount determined by the court.

Added by Acts 2009, 81st Leg., R.S., Ch. 297 (H.B. 396), Sec. 2, eff. September 1, 2009.

Sec. 12.008. CANCELLATION OF LIS PENDENS. (a) On the motion of a party or other person interested in the result of or in property affected by a proceeding in which a lis pendens has been recorded and after notice to each affected party, the court hearing the action may cancel the lis pendens at any time during the proceeding, whether in term time or vacation, if the court determines that the party seeking affirmative relief can be adequately protected by the deposit of money into court or by the giving of an undertaking.

(b) If the cancellation of a lis pendens is conditioned on the payment of money, the court may order the cancellation when the party seeking the cancellation pays into the court an amount equal to the total of:

(1) the judgment sought;

(2) the interest the court considers likely to accrue during the proceeding; and

(3) costs.

(c) If the cancellation of a lis pendens is conditioned on the giving of an undertaking, the court may order the cancellation when the party seeking the cancellation gives a guarantee of payment of a judgment, plus interest and costs, in favor of the party who recorded the lis pendens. The guarantee must equal twice the amount of the judgment sought and have two sufficient sureties approved by the court. Not less than two days before the day the guarantee is

submitted to the court for approval, the party seeking the cancellation shall serve the attorney for the party who recorded the lis pendens a copy of the guarantee and notice of its submission to the court.

Acts 1983, 68th Leg., p. 3491, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.009. MORTGAGE OR DEED OF TRUST MASTER FORM. (a) A master form of a mortgage or deed of trust may be recorded in any county without acknowledgement or proof. The master form must contain on its face the designation: "Master form recorded by (name of person causing the recording)."

(b) The county clerk shall index a master form under the name of the person causing the recording and indicate in the index and records that the document is a master mortgage.

(c) The parties to an instrument may incorporate by reference a provision of a recorded master form with the same effect as if the provision were set out in full in the instrument. The reference must state:

(1) that the master form is recorded in the county in which the instrument is offered for record;

(2) the numbers of the book or volume and first page of the records in which the master form is recorded; and

(3) a definite identification of each provision being incorporated.

(d) If a mortgage or deed of trust incorporates by reference a provision of a master form, the mortgagee shall give the mortgagor a copy of the master form at the time the instrument is executed. A statement in the mortgage or deed of trust or in a separate instrument signed by the mortgagor that the mortgagor received a copy of the master form is conclusive evidence of its receipt. On written request the mortgagee shall give a copy of the master form without charge to the mortgagor, the mortgagor's successors in interest, or the mortgagor's or a successor's agent.

(e) The provisions of the Uniform Commercial Code prevail over this section.

Acts 1983, 68th Leg., p. 3492, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.011. CERTIFICATE OF REDEMPTION. An instrument issued by the United States that redeems or evidences redemption of real property from a judicial sale or from a nonjudicial sale under foreclosure of a lien, mortgage, or deed of trust may be recorded in records of conveyances in each county in which the property is located if the instrument has been issued according to the laws of the United States.

Acts 1983, 68th Leg., p. 3493, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.012. ATTACHMENT. (a) If an officer files a writ of attachment on real property with a county clerk, the clerk shall record the name of each plaintiff and defendant in attachment, the amount of the debt, and the officer's return in full.

(b) A county clerk who receives a certified copy of an order quashing or vacating a writ of attachment shall record the order and the name of each plaintiff and defendant.

Acts 1983, 68th Leg., p. 3494, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.013. JUDGMENT. A judgment of a court may be recorded if:

(1) the judgment is of a court:

(A) expressly created or established under the constitution or laws of this state or of the United States;

(B) that is a court of a foreign country and that is recognized by an Act of congress or a treaty or other international convention to which the United States is a party; or

(C) of any other jurisdiction, territory, or protectorate entitled to full faith and credit in this state under the Constitution of the United States; and

(2) the judgment is attested under the signature and seal of the clerk of the court that rendered the judgment.

Acts 1983, 68th Leg., p. 3494, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 189, Sec. 15, eff. May 21, 1997; Acts 2001, 77th Leg., ch. 668, Sec. 1, eff. Sept. 1, 2001.

Sec. 12.014. TRANSFER OF JUDGMENT OR CAUSE OF ACTION. (a) A judgment or part of a judgment of a court of record or an interest in a cause of action on which suit has been filed may be sold, regardless of whether the judgment or cause of action is assignable in law or equity, if the transfer is in writing.

(b) A transfer under this section may be filed with the papers of the suit if the transfer is acknowledged or sworn to in the form and manner required by law for acknowledgement or swearing of deeds.

(c) If a transfer of a judgment is filed, the clerk shall record the transfer appropriately. If a transfer of a cause of action in which a judgment has not been rendered is filed, the clerk shall note and briefly state the substance of the transfer on the court docket at the place where the suit is entered.

(d) A transfer filed under this section is notice to and is binding on a person subsequently dealing with the judgment or cause of action.

Acts 1983, 68th Leg., p. 3494, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 162, Sec. 3, eff. Sept. 1, 1989. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 628 (H.B. 587), Sec. 4, eff. September 1, 2007.

Sec. 12.015. JUDGMENT IN JUSTICE COURT. (a) On the application of a party interested in land that has been sold under an execution issued by a justice court, the justice of the peace having custody of the execution and the judgment under which it was issued shall make a certified transcript of the judgment, the execution, and the levy and return of the executing officer.

(b) A certified transcript under this section may be recorded in the same manner as a deed.

Acts 1983, 68th Leg., p. 3495, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.016. POWER OF ATTORNEY. A power of attorney may be recorded.

Acts 1983, 68th Leg., p. 3495, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.017. TITLE INSURANCE COMPANY AFFIDAVIT AS RELEASE OF LIEN; CIVIL PENALTY. (a) In this section:

(1) "Mortgage" means a deed of trust or other contract lien on an interest in real property.

(2) "Mortgagee" means:

(A) the grantee of a mortgage;

(B) if a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record; or

(C) if a mortgage is serviced by a mortgage servicer, the mortgage servicer.

(3) "Mortgage servicer" means the last person to whom a mortgagor has been instructed by a mortgagee to send payments for the loan secured by a mortgage. A person transmitting a payoff statement is considered the mortgage servicer for the mortgage described in the payoff statement.

(4) "Mortgagor" means the grantor of a mortgage.

(5) "Payoff statement" means a statement of the amount of:

(A) the unpaid balance of a loan secured by a mortgage, including principal, interest, and other charges properly assessed under the loan documentation of the mortgage; and

(B) interest on a per diem basis for the unpaid balance.

(6) "Title insurance company" means a corporation or other business entity authorized to engage in the business of insuring titles to interests in real property in this state.

(7) "Authorized title insurance agent," with respect to an Affidavit as Release of Lien under this section, means a person licensed as a title insurance agent under Chapter 2651, Insurance Code, and authorized in writing by a title insurance company by instrument recorded in the real property records in the county in which the property to which the affidavit relates is located to execute one or more Affidavits as Release of Lien in compliance with this section, subject to any terms, limitations, and conditions that are set forth in the instrument executed by the title insurance company.

(b) This section applies only to a mortgage on:

(1) property consisting exclusively of a one-to-four-family residence, including a residential unit in a condominium regime; or

(2) property other than property described by Subdivision (1), if the original face amount of the indebtedness secured by the

mortgage on the property is less than $1.5 million.

(c) An authorized officer of a title insurance company or an authorized title insurance agent may, on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the mortgage, execute an affidavit that complies with the requirements of this section and record the affidavit in the real property records of each county in which the mortgage was recorded.

(d) An affidavit executed under Subsection (c) must be in substantially the following form:

AFFIDAVIT AS RELEASE OF LIEN

Before me, the undersigned authority, on this day personally appeared (insert name of affiant) ("Affiant") who, being first duly sworn, upon his/her oath states:

1. My name is (insert name of Affiant), and I am an authorized officer of (insert name of title insurance company or authorized title insurance agent) ("Title Company").

2. This affidavit is made on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the following mortgage:
(describe mortgage, the name of the mortgagor, and the property described in the mortgage)

3. (Insert name of Mortgagee) ("Mortgagee") provided a payoff statement with respect to the loan secured by the mortgage.

4. Affiant has ascertained that Title Company delivered to Mortgagee payment of the loan secured by the mortgage in the amount and time and to the location required by the payoff statement.

5. The mortgage relates to:

(A) property consisting exclusively of a one-to-four-family residence, which may include a residential unit in a condominium regime; or

(B) property, other than property described by Paragraph (A) above, for which the original face amount of the indebtedness secured by the mortgage on the property is less than $1.5 million.

6. Pursuant to Section 12.017, Texas Property Code, this affidavit constitutes a full and final release of the mortgage from the property.

Signed this___ day of _____, ____.

_____ (signature of affiant)

State of _____

County of _____
Sworn to and subscribed to before me on _____ (date) by _____ (insert name of affiant).
_____ (signature of notarial officer)
(Seal, if any, of notary) _____
_____ (printed name)
My commission expires:
_____

(e) An affidavit filed under Subsection (c) or (f) must include the names of the mortgagor and the mortgagee, the date of the mortgage, and the volume and page or clerk's file number of the real property records where the mortgage is recorded, together with similar information for a recorded assignment of the mortgage.

(f) On or after the date of the payment to which the affidavit relates, the title insurance company or authorized title insurance agent must notify the mortgagee at the location to which the payment is sent that the title insurance company or authorized title insurance agent may file for record at any time the affidavit as a release of lien. If notice required by this section is not provided to the mortgagee, the title insurance company or authorized title insurance agent may not file for record the affidavit as a release of lien. The mortgagee may file a separate affidavit describing the mortgage and property and controverting the affidavit by the title insurance company or authorized title insurance agent as a release of lien on or before the 45th day after the date the mortgagee receives the notice if the mortgagee mails a copy of the mortgagee's affidavit to the title insurance company or authorized title insurance agent within that 45-day period.

(g) An affidavit under Subsection (c) operates as a release of the mortgage described in the affidavit if the affidavit, as provided by this section:

(1) is executed;

(2) is recorded; and

(3) is not controverted by a separate affidavit by the mortgagee in accordance with the requirements of Subsection (f).

(h) The county clerk shall index an affidavit filed under this section in the names of the original mortgagee and the last assignee of the mortgage appearing of record as the grantors and in the name of the mortgagor as grantee.

(i) A person who knowingly causes an affidavit with false

information to be executed and recorded under this section is liable for the penalties for filing a false affidavit, including the penalties for commission of offenses under Section 37.02 of the Penal Code. The attorney general may sue to collect the penalty. A person who negligently causes an affidavit with false information to be executed and recorded under this section is liable to a party injured by the affidavit for actual damages. If the attorney general or an injured party bringing suit substantially prevails in an action under this subsection, the court may award reasonable attorney's fees and court costs to the prevailing party.

(j) A title insurance company or authorized title insurance agent that, at any time after payment of the mortgage, files for record an affidavit executed under Subsection (c) may use any recording fee collected for the recording of a release of the mortgage for the purpose of filing the affidavit.

(k) This section does not affect any agreement or obligation of a mortgagee to execute and deliver a release of mortgage.

Added by Acts 1993, 73rd Leg., ch. 1003, Sec. 1, eff. Aug. 30, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 997 (H.B. 3945), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 997 (H.B. 3945), Sec. 2, eff. September 1, 2009.

Sec. 12.018. TRANSFER BY RECEIVER OR CONSERVATOR OF FAILED DEPOSITORY INSTITUTION. If a bank, savings and loan association, savings bank, or other depository institution is placed in receivership or conservatorship by a state or federal agency, instrumentality, or institution, including the Banking Department of Texas, Department of Savings and Mortgage Lending of Texas, Office of the Comptroller of the Currency, Resolution Trust Corporation, Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or their successors, a person at any time may record an affidavit or memorandum of a sale, transfer, purchase, or acquisition agreement between the receiver or conservator of the failed depository institution and another depository institution. If the sale, transfer, purchase, or acquisition agreement transfers or sells an interest in land or in a mortgage or other lien vested

according to the real property records in the failed depository institution, a recorded affidavit or memorandum under this section is constructive notice of the transfer or sale. The failure of the affidavit or memorandum to be executed by the record owner or of the affidavit, memorandum, or agreement to contain language of conveyance does not create a defect in title to the land or the lien.

Added by Acts 1993, 73rd Leg., ch. 1004, Sec. 1, eff. Aug. 30, 1993. Renumbered from Property Code Sec. 12.017 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(43), eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.064, eff. September 1, 2007.

CHAPTER 13. EFFECTS OF RECORDING

Sec. 13.001. VALIDITY OF UNRECORDED INSTRUMENT. (a) A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.

(b) The unrecorded instrument is binding on a party to the instrument, on the party's heirs, and on a subsequent purchaser who does not pay a valuable consideration or who has notice of the instrument.

(c) This section does not apply to a financing statement, a security agreement filed as a financing statement, or a continuation statement filed for record under the Business & Commerce Code.

Acts 1983, 68th Leg., p. 3495, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 162, Sec. 4, eff. Sept. 1, 1989.

Sec. 13.002. EFFECT OF RECORDED INSTRUMENT. An instrument that is properly recorded in the proper county is:

(1) notice to all persons of the existence of the instrument; and

(2) subject to inspection by the public.

Acts 1983, 68th Leg., p. 3495, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 2003, 78th Leg., ch. 715, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 960, Sec. 2, eff. Sept. 1, 2003.

Sec. 13.003. INSTRUMENTS PREVIOUSLY RECORDED IN OTHER COUNTIES. The original or a certified copy of a conveyance, covenant, agreement, deed of trust, or mortgage, relating to land, that has been recorded in a county of this state other than the county where the land to which the instrument relates is located, is valid as to a creditor or a subsequent purchaser who has paid a valuable consideration and who does not have notice of the instrument only after it is recorded in the county in which the land is located. Recording a previously recorded instrument in the proper county does not validate an invalid instrument.

Acts 1983, 68th Leg., p. 3496, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 13.004. EFFECT OF RECORDING LIS PENDENS. (a) A recorded lis pendens is notice to the world of its contents. The notice is effective from the time it is filed for record and indexed as provided by Section 12.007(c), regardless of whether service has been made on the parties to the proceeding.

(b) A transfer or encumbrance of real property involved in a proceeding by a party to the proceeding to a third party who has paid a valuable consideration and who does not have actual or constructive notice of the proceeding is effective, even though the judgment is against the party transferring or encumbering the property, unless a notice of the pendency of the proceeding has been recorded and indexed under that party's name as provided by Section 12.007(c) in each county in which the property is located.

Acts 1983, 68th Leg., p. 3496, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 437 (S.B. 1187), Sec. 1, eff. September 1, 2011.

Sec. 13.005. EFFECT OF RECORDING JUDGMENT OF JUSTICE COURT. A certified transcript of a justice court judgment recorded under Section 12.015 of this code has the same effect as a recorded deed.

A court shall admit as evidence the transcript or a copy of the transcript, if the copy is certified with the signature and seal of the clerk of the county in which the transcript is recorded, in the same manner and with the same effect as the original judgment and execution.

Acts 1983, 68th Leg., p. 3496, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 14. UNIFORM FEDERAL LIEN REGISTRATION ACT

Sec. 14.001. SCOPE. This chapter applies only to federal tax liens and to other federal liens notices of which under any Act of Congress or any regulation adopted pursuant thereto are required or permitted to be filed in the same manner as notices of federal tax liens.

Added by Acts 1989, 71st Leg., ch. 945, Sec. 1, eff. Sept. 1, 1989.

Sec. 14.002. PLACE OF FILING. (a) Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed in accordance with this chapter.

(b) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the county clerk in the county in which the real property subject to the liens is situated.

(c) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(2) in all other cases, in the office of the county clerk in the county where the person against whose interest the lien applies resides at the time of filing of the notice of lien.

Added by Acts 1989, 71st Leg., ch. 945, Sec. 1, eff. Sept. 1, 1989.

Sec. 14.003. EXECUTION OF NOTICES AND CERTIFICATES. Certification of notices of liens, certificates, or other notices affecting federal liens by the secretary of the treasury of the United States or his delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

Added by Acts 1989, 71st Leg., ch. 945, Sec. 1, eff. Sept. 1, 1989.

Sec. 14.004. DUTIES OF FILING OFFICER. (a) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in Subsection (b) is presented to a filing officer who is:

(1) the secretary of state, he shall cause the notice to be marked, held or placed on microtext, and indexed in accordance with the provisions of Section 9.519, Business & Commerce Code, as if the notice were a financing statement within the meaning of that code; or

(2) any other officer described in Section 14.002, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically in the real property records and if requested by the party submitting the document, in the personal property files or enter it in an alphabetical index for real or personal property, as appropriate, showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the secretary of state for filing he shall:

(1) cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, but the notice of lien to which the certificate relates may not be removed from the files; and

(2) cause a certificate of discharge or subordination to be marked, held, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(c) If a refiled notice of federal lien referred to in Subsection (a) or any of the certificates or notices referred to in Subsection (b) is presented for filing to any other filing officer specified in Section 14.002, he shall permanently attach the refiled notice or the certificate to the original notice of lien unless the document is on microtext and therefore not in the files of the filing officer and enter the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on a date and time specified by the filing office, but not a date earlier than three business days before the date the filing office receives the request, any notice of lien or certificate or notice affecting any lien filed under this chapter or filed under the Uniform Federal Tax Lien Registration Act (Subchapter C, Chapter 113, Tax Code) on or after January 1, 1972, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The amount of the fee for a certificate is the same as the amount of the fee provided by Section 9.525(d), Business & Commerce Code. Upon request, the filing officer shall furnish a copy of any notice of federal lien. The fee for a copy furnished under this section is in the amount provided by Section 405.031, Government Code.

(e) Section 9.523, Business & Commerce Code, applies to a federal lien filed under this chapter.

Added by Acts 1989, 71st Leg., ch. 945, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.34, eff. July 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 547 (S.B. 1699), Sec. 10, eff. September 1, 2009.

Sec. 14.005. FEE. The fee for filing and indexing each notice of lien or certificate or notice affecting the lien is $10. The filing of the same notice of lien or certificate or notice affecting a lien in both real property records and personal property files is two filings.

Added by Acts 1989, 71st Leg., ch. 945, Sec. 1, eff. Sept. 1, 1989.

Sec. 14.006. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Added by Acts 1989, 71st Leg., ch. 945, Sec. 1, eff. Sept. 1, 1989.

Sec. 14.007. SHORT TITLE. This chapter may be cited as the Uniform Federal Lien Registration Act.

Added by Acts 1989, 71st Leg., ch. 945, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 15. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

Sec. 15.001. SHORT TITLE. This chapter may be cited as the Uniform Real Property Electronic Recording Act.

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

Sec. 15.002. DEFINITIONS. In this chapter:

(1) "Document" means information that is:

(A) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(B) eligible to be recorded in the real property records maintained by a county clerk.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by a county clerk in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Paper document" means a document that is received by a county clerk in a form that is not electronic.

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

Sec. 15.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law substantially similar to this chapter.

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

Sec. 15.004. VALIDITY OF ELECTRONIC DOCUMENTS. (a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document that complies with the requirements of this chapter.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

Sec. 15.005. RECORDING OF DOCUMENTS. (a) A county clerk who implements any of the functions described by this section shall act in compliance with rules adopted by the Texas State Library and

Archives Commission under Chapter 195, Local Government Code, and standards established by the Texas State Library and Archives Commission under Section 15.006.

(b) A county clerk may:

(1) receive, index, store, archive, and transmit electronic documents;

(2) provide for access to, and for search and retrieval of, documents and information by electronic means;

(3) convert paper documents accepted for recording into electronic form;

(4) convert into electronic form information recorded before the county clerk began to record electronic documents;

(5) accept electronically any fee or tax that the county clerk is authorized to collect; and

(6) agree with other officials of a state, a political subdivision of a state, or the United States on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

(c) A county clerk who accepts electronic documents for recording shall:

(1) continue to accept paper documents; and

(2) place entries for paper documents and electronic documents in the same index.

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

Sec. 15.006. UNIFORM STANDARDS. (a) The Texas State Library and Archives Commission by rule shall adopt standards to implement this chapter.

(b) To keep the standards and practices of county clerks in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact a law that is substantially similar to this chapter and to keep the technology used by county clerks in this state compatible with technology used by recording offices in other jurisdictions that enact a law that is substantially similar to this chapter, the Texas State Library and Archives Commission, so far as is consistent with the purposes, policies, and

provisions of this chapter, in adopting, amending, and repealing standards shall consider:

(1) standards and practices of other jurisdictions;

(2) the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association;

(3) the views of interested persons and governmental officials and entities; and

(4) the needs of counties of varying size, population, and resources.

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

Sec. 15.007. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

Sec. 15.008. CONSTRUCTION WITH OTHER LAW. Except as otherwise provided by this chapter, Chapter 195, Local Government Code, and the rules adopted by the Texas State Library and Archives Commission under that chapter apply to electronic documents filed in accordance with this chapter.

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

TITLE 4. ACTIONS AND REMEDIES

CHAPTER 21. EMINENT DOMAIN

SUBCHAPTER A. JURISDICTION

Sec. 21.001. CONCURRENT JURISDICTION. District courts and

county courts at law have concurrent jurisdiction in eminent domain cases. A county court has no jurisdiction in eminent domain cases.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.002. TRANSFER OF CASES. If an eminent domain case is pending in a county court at law and the court determines that the case involves an issue of title or any other matter that cannot be fully adjudicated in that court, the judge shall transfer the case to a district court.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.003. DISTRICT COURT AUTHORITY. A district court may determine all issues, including the authority to condemn property and the assessment of damages, in any suit:

(1) in which this state, a political subdivision of this state, a person, an association of persons, or a corporation is a party; and

(2) that involves a claim for property or for damages to property occupied by the party under the party's eminent domain authority or for an injunction to prevent the party from entering or using the property under the party's eminent domain authority.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. PROCEDURE

Sec. 21.011. STANDARD PROCEDURE. Exercise of the eminent domain authority in all cases is governed by Sections 21.012 through 21.016 of this code.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.0111. DISCLOSURE OF CERTAIN INFORMATION REQUIRED; INITIAL OFFER. (a) An entity with eminent domain authority that wants to acquire real property for a public use shall, by certified mail, return receipt requested, disclose to the property owner at the

time an offer to purchase or lease the property is made any and all appraisal reports produced or acquired by the entity relating specifically to the owner's property and prepared in the 10 years preceding the date of the offer.

(b) A property owner shall disclose to the entity seeking to acquire the property any and all current and existing appraisal reports produced or acquired by the property owner relating specifically to the owner's property and used in determining the owner's opinion of value. Such disclosure shall take place not later than the earlier of:

(1) the 10th day after the date of receipt of an appraisal report; or

(2) the third business day before the date of a special commissioner's hearing if an appraisal report is to be used at the hearing.

(c) An entity seeking to acquire property that the entity is authorized to obtain through the use of eminent domain may not include a confidentiality provision in an offer or agreement to acquire the property. The entity shall inform the owner of the property that the owner has the right to:

(1) discuss any offer or agreement regarding the entity's acquisition of the property with others; or

(2) keep the offer or agreement confidential, unless the offer or agreement is subject to Chapter 552, Government Code.

(d) A subsequent bona fide purchaser for value from the acquiring entity may conclusively presume that the requirement of this section has been met. This section does not apply to acquisitions of real property for which an entity does not have eminent domain authority.

Added by Acts 1995, 74th Leg., ch. 566, Sec. 1, eff. Aug. 28, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 7, eff. September 1, 2011.

Sec. 21.0112. PROVISION OF LANDOWNER'S BILL OF RIGHTS STATEMENT REQUIRED. (a) Not later than the seventh day before the date a governmental or private entity with eminent domain authority makes a final offer to a property owner to acquire real property, the entity

must send by first-class mail or otherwise provide a landowner's bill of rights statement provided by Section 402.031, Government Code, to the last known address of the person in whose name the property is listed on the most recent tax roll of any appropriate taxing unit authorized by law to levy property taxes against the property. In addition to the other requirements of this subsection, an entity with eminent domain authority shall provide a copy of the landowner's bill of rights statement to a landowner before or at the same time as the entity first represents in any manner to the landowner that the entity possesses eminent domain authority.

(b) The statement must be:

(1) printed in an easily readable font and type size; and

(2) if the entity is a governmental entity, made available on the Internet website of the entity if technologically feasible.

Added by Acts 2007, 80th Leg., R.S., Ch. 1201 (H.B. 1495), Sec. 3, eff. February 1, 2008.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1145 (H.B. 2685), Sec. 1, eff. January 15, 2010.

Sec. 21.0113. BONA FIDE OFFER REQUIRED. (a) An entity with eminent domain authority that wants to acquire real property for a public use must make a bona fide offer to acquire the property from the property owner voluntarily.

(b) An entity with eminent domain authority has made a bona fide offer if:

(1) an initial offer is made in writing to a property owner;

(2) a final offer is made in writing to the property owner;

(3) the final offer is made on or after the 30th day after the date on which the entity makes a written initial offer to the property owner;

(4) before making a final offer, the entity obtains a written appraisal from a certified appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property;

(5) the final offer is equal to or greater than the amount of the written appraisal obtained by the entity;

(6) the following items are included with the final offer or have been previously provided to the owner by the entity:

(A) a copy of the written appraisal;

(B) a copy of the deed, easement, or other instrument conveying the property sought to be acquired; and

(C) the landowner's bill of rights statement prescribed by Section 21.0112; and

(7) the entity provides the property owner with at least 14 days to respond to the final offer and the property owner does not agree to the terms of the final offer within that period.

Added by Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 8, eff. September 1, 2011.

Sec. 21.012. CONDEMNATION PETITION. (a) If an entity with eminent domain authority wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, the entity may begin a condemnation proceeding by filing a petition in the proper court.

(b) The petition must:

(1) describe the property to be condemned;

(2) state with specificity the public use for which the entity intends to acquire the property;

(3) state the name of the owner of the property if the owner is known;

(4) state that the entity and the property owner are unable to agree on the damages;

(5) if applicable, state that the entity provided the property owner with the landowner's bill of rights statement in accordance with Section 21.0112; and

(6) state that the entity made a bona fide offer to acquire the property from the property owner voluntarily as provided by Section 21.0113.

(c) An entity that files a petition under this section must provide a copy of the petition to the property owner by certified mail, return receipt requested.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1201 (H.B. 1495), Sec. 4, eff.

February 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 9, eff. September 1, 2011.

Sec. 21.0121. CONDEMNATION TO ACQUIRE WATER RIGHTS. (a) In addition to the contents prescribed by Section 21.012(b), a condemnation petition filed by a political subdivision of this state for the purpose of acquiring rights to groundwater or surface water must state that the facts to be proven are that the political subdivision has:

(1) prepared a drought contingency plan;

(2) developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable in the political subdivision's jurisdiction;

(3) made a bona fide good faith effort to obtain practicable alternative water supplies to the water rights the political subdivision proposes to condemn;

(4) made a bona fide good faith effort to acquire the rights to the water the political subdivision proposes to condemn by voluntary purchase or lease; and

(5) made a showing that the political subdivision needs the water rights to provide for the domestic needs of the political subdivision within the next 10-year period.

(b) A court shall deny the right to condemn unless the political subdivision proves to the court that the political subdivision has met the requirements of Subsection (a).

Added by Acts 2003, 78th Leg., ch. 1032, Sec. 1, eff. Sept. 1, 2003.

Sec. 21.013. VENUE; FEES AND PROCESSING FOR SUIT FILED IN DISTRICT COURT. (a) The venue of a condemnation proceeding is the county in which the owner of the property being condemned resides if the owner resides in a county in which part of the property is located. Otherwise, the venue of a condemnation proceeding is any county in which at least part of the property is located.

(b) Except where otherwise provided by law, a party initiating a condemnation proceeding in a county in which there is one or more

county courts at law with jurisdiction shall file the petition with any clerk authorized to handle such filings for that court or courts.

(c) A party initiating a condemnation proceeding in a county in which there is not a county court at law must file the condemnation petition with the district clerk. The filing fee shall be due at the time of filing in accordance with Section 51.317, Government Code.

(d) District and county clerks shall assign an equal number of eminent domain cases in rotation to each court with jurisdiction that the clerk serves.

Acts 1983, 68th Leg., p. 3499, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 760, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 756, Sec. 1, eff. June 18, 1999.

Sec. 21.014. SPECIAL COMMISSIONERS. (a) The judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned shall appoint three disinterested real property owners who reside in the county as special commissioners to assess the damages of the owner of the property being condemned. The judge appointing the special commissioners shall give preference to persons agreed on by the parties. The judge shall provide each party a reasonable period to strike one of the three commissioners appointed by the judge. If a person fails to serve as a commissioner or is struck by a party to the suit, the judge shall appoint a replacement.

(b) The special commissioners shall swear to assess damages fairly, impartially, and according to the law.

(c) Special commissioners may compel the attendance of witnesses and the production of testimony, administer oaths, and punish for contempt in the same manner as a county judge.

Acts 1983, 68th Leg., p. 3499, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 10, eff. September 1, 2011.

Sec. 21.015. HEARING. (a) The special commissioners in an eminent domain proceeding shall promptly schedule a hearing for the parties at the earliest practical time but may not schedule a hearing

to assess damages before the 20th day after the date the special commissioners were appointed. The special commissioners shall schedule a hearing for the parties at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being held.

(b) After notice of the hearing has been served, the special commissioners shall hear the parties at the scheduled time and place or at any other time or place to which they may adjourn the hearing.

Acts 1983, 68th Leg., p. 3500, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 11, eff. September 1, 2011.

Sec. 21.016. NOTICE. (a) Each party in an eminent domain proceeding is entitled to written notice issued by the special commissioners informing the party of the time and place of the hearing.

(b) Notice of the hearing must be served on a party not later than the 20th day before the day set for the hearing. A person competent to testify may serve the notice.

(c) A person who serves a notice shall return the original notice to the special commissioners on or before the day set for hearing. The person shall write a return of service on the notice that states how and when it was served.

(d) Notice may be served:

(1) by delivering a copy of the notice to the party or to the party's agent or attorney;

(2) if the property being condemned belongs to a deceased's estate or to a minor or other legally disabled person and the person or estate has a legal representative, by delivering a copy of the notice to the legal representative; or

(3) if the property being condemned belongs to a nonresident of this state and there has been no personal service on the owner, if the identity or the residence of the property owner is unknown, or if the property owner avoids service of notice by hiding, by publication in the same manner as service of citation by publication in other civil cases in the district courts or county courts at law.

Acts 1983, 68th Leg., p. 3500, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 12, eff. September 1, 2011.

Sec. 21.017. ALTERNATIVE PLEADINGS. (a) This state, a political subdivision of this state, a person, an association of persons, or a corporation that is a party to a suit covered by Section 21.003 of this code by petition, cross-bill, or plea of intervention may assert a claim to the property or, alternatively, seek to condemn the property.

(b) A plea under this section is not an admission of an adverse party's title to the property in controversy.

Acts 1983, 68th Leg., p. 3501, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.018. APPEAL FROM COMMISSIONERS' FINDINGS. (a) A party to a condemnation proceeding may object to the findings of the special commissioners by filing a written statement of the objections and their grounds with the court that has jurisdiction of the proceeding. The statement must be filed on or before the first Monday following the 20th day after the day the commissioners file their findings with the court.

(b) If a party files an objection to the findings of the special commissioners, the court shall cite the adverse party and try the case in the same manner as other civil causes.

Acts 1983, 68th Leg., p. 3501 ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.019. DISMISSAL OF CONDEMNATION PROCEEDINGS. (a) A party that files a condemnation petition may move to dismiss the proceedings, and the court shall conduct a hearing on the motion. However, after the special commissioners have made an award, in an effort to obtain a lower award a condemnor may not dismiss the condemnation proceedings merely to institute new proceedings that involve substantially the same condemnation against the same property owner.

(b) A court that hears and grants a motion to dismiss a

condemnation proceeding made by a condemnor under Subsection (a) shall make an allowance to the property owner for reasonable and necessary fees for attorneys, appraisers, and photographers and for the other expenses incurred by the property owner to the date of the hearing.

(c) A court that hears and grants a motion to dismiss a condemnation proceeding made by a property owner seeking a judicial denial of the right to condemn or that otherwise renders a judgment denying the right to condemn may make an allowance to the property owner for reasonable and necessary fees for attorneys, appraisers, and photographers and for the other expenses incurred by the property owner to the date of the hearing or judgment.

Acts 1983, 68th Leg., p. 3501, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 483, Sec. 1, eff. Aug. 31, 1987.

Sec. 21.0195. DISMISSAL OF CERTAIN CONDEMNATION PROCEEDINGS; TEXAS DEPARTMENT OF TRANSPORTATION. (a) This section applies only to the dismissal of a condemnation proceeding that involves the Texas Department of Transportation.

(b) The department may move to dismiss a proceeding it files, and the court shall conduct a hearing on the motion. The court may grant the motion only if the court determines that the property owner's interest will not be materially affected by the dismissal. The department may not dismiss the condemnation proceedings merely to institute new proceedings that involve substantially the same condemnation against the same property owner solely to obtain a lower condemnation award.

(c) If a court dismisses a condemnation proceeding on the motion of the department or as a result of the failure of the department to bring the proceeding properly, the court shall make an allowance to the property owner for the value of the department's use of the property while in possession of the property, any damage that the condemnation has caused to the property owner, and any expenses the property owner has incurred in connection with the condemnation, including reasonable and necessary fees for attorneys.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 1.46(a), eff. Sept. 1, 1997.

Sec. 21.020. REINSTATEMENT OF CONDEMNATION PROCEEDINGS. If a condemnor moves to dismiss a condemnation proceeding and subsequently files a petition to condemn substantially the same property interest from the same property owner, the court may not appoint new special commissioners but shall enter the award of the special commissioners in the first proceeding as the award in the second. The court shall award the property owner triple the amount of the expenses that were allowed the property owner prior to the dismissal of the first proceeding.

Acts 1983, 68th Leg., p. 3502, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.021. POSSESSION PENDING LITIGATION. (a) After the special commissioners have made an award in a condemnation proceeding, except as provided by Subsection (c) of this section, the condemnor may take possession of the condemned property pending the results of further litigation if the condemnor:

(1) pays to the property owner the amount of damages and costs awarded by the special commissioners or deposits that amount of money with the court subject to the order of the property owner;

(2) deposits with the court either the amount of money awarded by the special commissioners as damages or a surety bond in the same amount issued by a surety company qualified to do business in this state, conditioned to secure the payment of an award of damages by the court in excess of the award of the special commissioners; and

(3) executes a bond that has two or more good and solvent sureties approved by the judge of the court in which the proceeding is pending and conditioned to secure the payment of additional costs that may be awarded to the property owner by the trial court or on appeal.

(b) A court shall hold money or a bond deposited under Subdivision (1) or (2) of Subsection (a) to secure the payment of the damages that have been or that may be awarded against the condemnor.

(c) This state, a county, or a municipal corporation or an irrigation, water improvement, or water power control district created under legal authority is not required to deposit a bond or the amount equal to the award of damages under Subdivisions (2) and (3) of Subsection (a).

(d) If a condemnor deposits money with a court under Subdivision (2) of Subsection (a), the condemnor may instruct the court to deposit or invest the money in any account with or certificate or security issued by a state or national bank in this state. The court shall pay the interest that accrues from the deposit or investment to the condemnor.

Acts 1983, 68th Leg., p. 3502, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 1(b), eff. Oct. 2, 1984.

Sec. 21.0211. PAYMENT OF AD VALOREM TAXES. (a) A court may not authorize withdrawal of any money deposited under Section 21.021 unless the petitioner for the money files with the court:

(1) a tax certificate issued under Section 31.08, Tax Code, by the tax collector for each taxing unit that imposes ad valorem taxes on the condemned property showing that there are no delinquent taxes, penalties, interest, or costs owing on the condemned property or on any larger tract of which the condemned property forms a part; and

(2) in the case of a whole taking that occurs after the date the ad valorem tax bill for taxes imposed by a taxing unit on the property is sent, a tax receipt issued under Section 31.075, Tax Code, by the tax collector of the taxing unit that imposes ad valorem taxes showing that the taxes on the condemned property for the current tax year, prorated under Section 26.11, Tax Code, have been paid.

(b) For purposes of Subsection (a)(2), a "case of a whole taking" means a case in which the location, size, and boundaries of the property assessed for ad valorem taxes are identical to that of the condemned property.

Added by Acts 2005, 79th Leg., Ch. 1126 (H.B. 2491), Sec. 27, eff. September 1, 2005.

Sec. 21.022. AUTHORITY OF COURTS. Laws that formerly governed the performance of functions by county clerks and judges in eminent domain proceedings are applicable to the clerks and judges of district courts and county courts at law.

Acts 1983, 68th Leg., p. 3503, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF ACQUISITION. An entity with eminent domain authority shall disclose in writing to the property owner, at the time of acquisition of the property through eminent domain, that:

(1) the owner or the owner's heirs, successors, or assigns may be entitled to:

(A) repurchase the property under Subchapter E; or

(B) request from the entity certain information relating to the use of the property and any actual progress made toward that use; and

(2) the repurchase price is the price paid to the owner by the entity at the time the entity acquired the property through eminent domain.

Added by Acts 2003, 78th Leg., ch. 1307, Sec. 1, eff. Jan. 1, 2004. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 13, eff. September 1, 2011.

Sec. 21.025. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES. (a) Notwithstanding any other law, an entity that is not subject to Chapter 552, Government Code, and is authorized by law to acquire private property through the use of eminent domain is required to produce information as provided by this section if the information is:

(1) requested by a person who owns property that is the subject of a proposed or existing eminent domain proceeding; and

(2) related to the taking of the person's private property by the entity through the use of eminent domain.

(b) An entity described by Subsection (a) is required under this section only to produce information relating to the condemnation of the specific property owned by the requestor as described in the request. A request under this section must contain sufficient details to allow the entity to identify the specific tract of land in relation to which the information is sought.

(c) The entity shall respond to a request in accordance with

the Texas Rules of Civil Procedure as if the request was made in a matter pending before a state district court.

(d) Exceptions to disclosure provided by this chapter and the Texas Rules of Civil Procedure apply to the disclosure of information under this section.

(e) Jurisdiction to enforce the provisions of this section resides in:

(1) the court in which the condemnation was initiated; or

(2) if the condemnation proceeding has not been initiated:

(A) a court that would have jurisdiction over a proceeding to condemn the requestor's property; or

(B) a court with eminent domain jurisdiction in the county in which the entity has its principal place of business.

(f) If the entity refuses to produce information requested in accordance with this section and the court determines that the refusal violates this section, the court may award the requestor's reasonable attorney's fees incurred to compel the production of the information.

Added by Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 14, eff. September 1, 2011.

SUBCHAPTER C. DAMAGES AND COSTS

Sec. 21.041. EVIDENCE. As the basis for assessing actual damages to a property owner from a condemnation, the special commissioners shall admit evidence on:

(1) the value of the property being condemned;

(2) the injury to the property owner;

(3) the benefit to the property owner's remaining property; and

(4) the use of the property for the purpose of the condemnation.

Acts 1983, 68th Leg., p. 3504, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.042. ASSESSMENT OF DAMAGES. (a) The special commissioners shall assess damages in a condemnation proceeding according to the evidence presented at the hearing.

(b) If an entire tract or parcel of real property is condemned,

the damage to the property owner is the local market value of the property at the time of the special commissioners' hearing.

(c) If a portion of a tract or parcel of real property is condemned, the special commissioners shall determine the damage to the property owner after estimating the extent of the injury and benefit to the property owner, including the effect of the condemnation on the value of the property owner's remaining property.

(d) In estimating injury or benefit under Subsection (c), the special commissioners shall consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, including a material impairment of direct access on or off the remaining property that affects the market value of the remaining property, but they may not consider an injury or benefit that the property owner experiences in common with the general community, including circuity of travel and diversion of traffic. In this subsection, "direct access" means ingress and egress on or off a public road, street, or highway at a location where the remaining property adjoins that road, street, or highway.

(e) If a portion of a tract or parcel of real property is condemned for the use, construction, operation, or maintenance of the state highway system or of a county toll project described by Chapter 284, Transportation Code, that is eligible for designation as part of the state highway system, or for the use, construction, development, operation, or maintenance of an improvement or project by a metropolitan rapid transit authority created before January 1, 1980, with a principal municipality having a population of less than 1.9 million and established under Chapter 451, Transportation Code, the special commissioners shall determine the damage to the property owner regardless of whether the property owner makes a claim for damages to the remaining property. In awarding compensation or assessing the damages, the special commissioners shall consider any special and direct benefits that arise from the highway improvement or the transit authority improvement or project that are peculiar to the property owner and that relate to the property owner's ownership, use, or enjoyment of the particular parcel of remaining real property.

(f) In awarding compensation or assessing damages for a condemnation by an institution of higher education, as defined by Section 61.003, Education Code, the special commissioners may not

include in the compensation or damages any amount that compensates for, or is based on the present value of, an exemption from ad valorem taxation applicable to the property before its condemnation.

(g) Notwithstanding Subsection (d), if a portion of a tract or parcel of real property that, for the then current tax year was appraised for ad valorem tax purposes under a law enacted under Section 1-d or 1-d-1, Article VIII, Texas Constitution, and is outside the municipal limits or the extraterritorial jurisdiction of a municipality with a population of 5,000 or more is condemned for state highway purposes, the special commissioners shall consider the loss of reasonable access to or from the remaining property in determining the damage to the property owner.

Acts 1983, 68th Leg., p. 3504, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 29, Sec. 1, eff. Oct. 2, 1984; Acts 1989, 71st Leg., ch. 734, Sec. 5, eff. June 15, 1989; Acts 1997, 75th Leg., ch. 165, Sec. 30.244, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 669, Sec. 117, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1266, Sec. 1.15, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.94, eff. June 14, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 15, eff. September 1, 2011.

Sec. 21.0421. ASSESSMENT OF DAMAGES: GROUNDWATER RIGHTS. (a) In a condemnation proceeding initiated by a political subdivision under this chapter, the special commissioners or court shall admit evidence relating to the market value of groundwater rights as property apart from the land in addition to the local market value of the real property if:

(1) the political subdivision proposes to condemn the fee title of real property; and

(2) the special commissioners or court finds, based on evidence submitted at the hearing, that the real property may be used by the political subdivision to develop or use the rights to groundwater for a public purpose.

(b) The evidence submitted under Subsection (a) on the market value of the groundwater rights as property apart from the land shall

be based on generally accepted appraisal methods and techniques, including the methods of appraisal under Subchapter A, Chapter 23, Tax Code.

(c) If the special commissioners or court finds that the real property may be used by the political subdivision to develop or use the rights to groundwater for a public purpose, the special commissioners or court may assess damages to the property owner based on:

(1) the local market value of the real property, excluding the value of the groundwater in place, at the time of the hearing; and

(2) the market value of the groundwater rights as property apart from the land at the time of the hearing.

(d) In assessing damages based on the market value of groundwater rights under Subsection (c)(2), the special commissioners or court shall consider:

(1) the amount of groundwater the political subdivision can reasonably be expected to produce from the property on an annual basis;

(2) the number of years the political subdivision can reasonably be expected to produce groundwater from the property;

(3) the quality of the groundwater;

(4) the location of the real property in relation to the political subdivision for conveyance purposes;

(5) any potential environmental impact of producing groundwater from the real property;

(6) whether or not the real property is located within the boundaries of a political subdivision that can regulate the production of groundwater from the real property;

(7) the cost of alternative water supplies to the political subdivision; and

(8) any other reasonable factor that affects the market value of a groundwater right.

(e) This section does not:

(1) authorize groundwater rights appraised separately from the real property under this section to be appraised separately from real property for property tax appraisal purposes; or

(2) subject real property condemned for the purpose described by Subsection (a) to an additional tax as provided by Section 23.46 or 23.55, Tax Code.

Added by Acts 2003, 78th Leg., ch. 1032, Sec. 2, eff. Sept. 1, 2003.

Sec. 21.043. DISPLACEMENT FROM DWELLING OR PLACE OF BUSINESS. (a) A property owner who is permanently physically displaced from the property owner's dwelling or place of business and who is not entitled to reimbursement for moving expenses under another law may recover, in addition to the property owner's other damages, the reasonable expenses of moving the property owner's personal property from the dwelling or place of business.

(b) A recovery under this section may not exceed the market value of the property being moved. The maximum distance of movement to be considered is 50 miles.

Acts 1983, 68th Leg., p. 3504, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.044. DAMAGES FROM TEMPORARY POSSESSION. (a) If a court finally determines that a condemnor who has taken possession of property pending litigation did not have the right to condemn the property, the court may award to the property owner the damages that resulted from the temporary possession.

(b) The court may order the payment of damages awarded under this section from the award or other money deposited with the court. However, if the award paid to or appropriated by the property owner exceeds the court's final determination of the value of the property, the court shall order the property owner to return the excess to the condemnor.

Acts 1983, 68th Leg., p. 3505, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.045. TITLE ACQUIRED. Except where otherwise expressly provided by law, the interest acquired by a condemnor under this chapter does not include the fee simple title to real property, either public or private. An interest acquired by a condemnor is not lost by the forfeiture or expiration of the condemnor's charter and is subject to an extension of the charter or the grant of a new charter without a new condemnation.

Acts 1983, 68th Leg., p. 3505, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.046. RELOCATION ASSISTANCE PROGRAM. (a) A department, agency, instrumentality, or political subdivision of this state shall provide a relocation advisory service for an individual, a family, a business concern, a farming or ranching operation, or a nonprofit organization that is compatible with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, et seq.

(b) This state or a political subdivision of this state shall, as a cost of acquiring real property, pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is displaced in connection with the acquisition.

(c) A department, agency, instrumentality, or political subdivision of this state that initiates a program under Subsection (b) shall adopt rules relating to the administration of the program.

(d) Neither this state nor a political subdivision of this state may authorize expenditures under Subsection (b) that exceed payments authorized under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, et seq.

(e) If a person moves or discontinues the person's business, moves personal property, or moves from the person's dwelling as a direct result of code enforcement, rehabilitation, or a demolition program, the person is considered to be displaced because of the acquisition of real property.

Acts 1983, 68th Leg., p. 3505, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 16, eff. September 1, 2011.

Sec. 21.047. ASSESSMENT OF COSTS AND FEES. (a) Special commissioners may adjudge the costs of an eminent domain proceeding against any party. If the commissioners award greater damages than

the condemnor offered to pay before the proceedings began or if the decision of the commissioners is appealed and a court awards greater damages than the commissioners awarded, the condemnor shall pay all costs. If the commissioners' award or the court's determination of the damages is less than or equal to the amount the condemnor offered before proceedings began, the property owner shall pay the costs.

(b) A condemnor shall pay the initial cost of serving a property owner with notice of a condemnation proceeding. If the property owner is ordered to pay the costs of the proceeding, the condemnor may recover the expense of notice from the property owner as part of the costs.

(c) A court that has jurisdiction of an eminent domain proceeding may tax $10 or more as a reasonable fee for each special commissioner as part of the court costs of the proceeding.

(d) If a court hearing a suit under this chapter determines that a condemnor did not make a bona fide offer to acquire the property from the property owner voluntarily as required by Section 21.0113, the court shall abate the suit, order the condemnor to make a bona fide offer, and order the condemnor to pay:

(1) all costs as provided by Subsection (a); and

(2) any reasonable attorney's fees and other professional fees incurred by the property owner that are directly related to the violation.

Acts 1983, 68th Leg., p. 3506, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 17, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 18, eff. September 1, 2011.

Sec. 21.048. STATEMENT OF DAMAGES AND COSTS. After the special commissioners in an eminent domain proceeding have assessed the damages, they shall:

(1) make a written statement of their decision stating the damages, date it, sign it, and file it and all other papers connected with the proceeding with the court on the day the decision is made or on the next working day after the day the decision is made; and

(2) make and sign a written statement of the accrued costs

of the proceeding, naming the party against whom the costs are adjudged, and file the statement with the court.

Acts 1983, 68th Leg., p. 3507, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 1(c), eff. Oct. 2, 1984.

Sec. 21.049. NOTICE OF DECISION OF SPECIAL COMMISSIONERS. The judge of a court hearing a proceeding under this chapter shall inform the clerk of the court as to a decision by the special commissioners on the day the decision is filed or on the next working day after the day the decision is filed. Not later than the next working day after the day the decision is filed, the clerk shall send notice of the decision by certified or registered United States mail, return receipt requested, to the parties in the proceeding, or to their attorneys of record, at their addresses of record.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 1(d), eff. Oct. 2, 1984.

SUBCHAPTER D. JUDGMENT

Sec. 21.061. JUDGMENT ON COMMISSIONERS' FINDINGS. If no party in a condemnation proceeding files timely objections to the findings of the special commissioners, the judge of the court that has jurisdiction of the proceeding shall adopt the commissioners' findings as the judgment of the court, record the judgment in the minutes of the court, and issue the process necessary to enforce the judgment.

Acts 1983, 68th Leg., p. 3507, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.062. WRIT OF POSSESSION. If a condemnor in a condemnation proceeding has taken possession of property pending litigation and the court finally decides that the condemnor does not have the right to condemn the property, the court shall order the condemnor to surrender possession of the property and issue a writ of possession to the property owner.

Acts 1983, 68th Leg., p. 3507, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.063. APPEAL. (a) The appeal of a judgment in a condemnation proceeding is as in other civil cases.

(b) A court hearing an appeal from the decision of a trial court in a condemnation proceeding may not suspend the judgment of the trial court pending the appeal.

Acts 1983, 68th Leg., p. 3507, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.064. INJUNCTIVE RELIEF. (a) A court hearing a suit covered by Section 21.003 of this code may grant injunctive relief under the rules of equity.

(b) Instead of granting an injunction under this section, a court may require a condemnor to provide security adequate to compensate the property owner for damages that might result from the condemnation.

Acts 1983, 68th Leg., p. 3508, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.065. VESTED INTEREST. A judgment of a court under this chapter vests a right granted to a condemnor.

Acts 1983, 68th Leg., p. 3508, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER E. REPURCHASE OF REAL PROPERTY FROM CONDEMNING ENTITY

Sec. 21.101. RIGHT OF REPURCHASE. (a) A person from whom a real property interest is acquired by an entity through eminent domain for a public use, or that person's heirs, successors, or assigns, is entitled to repurchase the property as provided by this subchapter if:

(1) the public use for which the property was acquired through eminent domain is canceled before the property is used for that public use;

(2) no actual progress is made toward the public use for which the property was acquired between the date of acquisition and the 10th anniversary of that date; or

(3) the property becomes unnecessary for the public use for which the property was acquired, or a substantially similar public use, before the 10th anniversary of the date of acquisition.

(b) In this section, "actual progress" means the completion of two or more of the following actions:

(1) the performance of a significant amount of labor to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(2) the provision of a significant amount of materials to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(3) the hiring of and performance of a significant amount of work by an architect, engineer, or surveyor to prepare a plan or plat that includes the property or other property acquired for the same public use project for which the property owner's property was acquired;

(4) application for state or federal funds to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(5) application for a state or federal permit to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(6) the acquisition of a tract or parcel of real property adjacent to the property for the same public use project for which the owner's property was acquired; or

(7) for a governmental entity, the adoption by a majority of the entity's governing body at a public hearing of a development plan for a public use project that indicates that the entity will not complete more than one action described by Subdivisions (1)-(6) before the 10th anniversary of the date of acquisition of the property.

(c) A district court may determine all issues in any suit regarding the repurchase of a real property interest acquired through eminent domain by the former property owner or the owner's heirs, successors, or assigns.

Added by Acts 2003, 78th Leg., ch. 1307, Sec. 2, eff. Jan. 1, 2004.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.

Sec. 21.102. NOTICE TO PREVIOUS PROPERTY OWNER REQUIRED. Not later than the 180th day after the date an entity that acquired a real property interest through eminent domain determines that the former property owner is entitled to repurchase the property under Section 21.101, the entity shall send by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns a notice containing:

(1) an identification, which is not required to be a legal description, of the property that was acquired;

(2) an identification of the public use for which the property had been acquired and a statement that:

(A) the public use was canceled before the property was used for the public use;

(B) no actual progress was made toward the public use; or

(C) the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition; and

(3) a description of the person's right under this subchapter to repurchase the property.

Added by Acts 2003, 78th Leg., ch. 1307, Sec. 2, eff. Jan. 1, 2004.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.

Sec. 21.1021. REQUESTS FOR INFORMATION REGARDING CONDEMNED PROPERTY. (a) On or after the 10th anniversary of the date on which real property was acquired by an entity through eminent domain, a property owner or the owner's heirs, successors, or assigns may request that the condemning entity make a determination and provide a statement and other relevant information regarding:

(1) whether the public use for which the property was acquired was canceled before the property was used for the public use;

(2) whether any actual progress was made toward the public use between the date of acquisition and the 10th anniversary of that

date, including an itemized description of the progress made, if applicable; and

(3) whether the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition.

(b) A request under this section must contain sufficient detail to allow the entity to identify the specific tract of land in relation to which the information is sought.

(c) Not later than the 90th day following the date of receipt of the request for information, the entity shall send a written response by certified mail, return receipt requested, to the requestor.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.

Sec. 21.1022. LIMITATIONS PERIOD FOR REPURCHASE RIGHT. Notwithstanding Section 21.103, the right to repurchase provided by this subchapter is extinguished on the first anniversary of the expiration of the period for an entity to provide notice under Section 21.102 if the entity:

(1) is required to provide notice under Section 21.102;

(2) makes a good faith effort to locate and provide notice to each person entitled to notice before the expiration of the deadline for providing notice under that section; and

(3) does not receive a response to any notice provided under that section in the period for response prescribed by Section 21.103.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.

Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Not later than the 180th day after the date of the postmark on a notice sent under Section 21.102 or a response to a request made under Section 21.1021 that indicates that the property owner, or the owner's heirs, successors, or assigns, is entitled to repurchase the property

interest in accordance with Section 21.101, the property owner or the owner's heirs, successors, or assigns must notify the entity of the person's intent to repurchase the property interest under this subchapter.

(b) As soon as practicable after receipt of a notice of intent to repurchase under Subsection (a), the entity shall offer to sell the property interest to the person for the price paid to the owner by the entity at the time the entity acquired the property through eminent domain. The person's right to repurchase the property expires on the 90th day after the date on which the entity makes the offer.

Added by Acts 2003, 78th Leg., ch. 1307, Sec. 2, eff. Jan. 1, 2004.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.

CHAPTER 22. TRESPASS TO TRY TITLE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 22.001. TRESPASS TO TRY TITLE. (a) A trespass to try title action is the method of determining title to lands, tenements, or other real property.

(b) The action of ejectment is not available in this state.

Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.002. TITLE SUFFICIENT TO MAINTAIN ACTION. A headright certificate, land scrip, bounty warrant, or other evidence of legal right to located and surveyed land is sufficient title to maintain a trespass to try title action.

Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.003. FINAL JUDGMENT CONCLUSIVE. A final judgment that establishes title or right to possession in an action to recover real property is conclusive against the party from whom the property is recovered and against a person claiming the property through that party by a title that arises after the action is initiated.

Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.004. EFFECT OF FORMER LAW. This chapter does not affect rights that existed before the introduction of the common law in this state. Those rights are defined by the principles of the law in effect at the time the rights accrued.

Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. JUDGMENT AND DAMAGES

Sec. 22.021. CLAIM FOR IMPROVEMENTS. (a) A defendant in a trespass to try title action who is not the rightful owner of the property, but who has possessed the property in good faith and made permanent and valuable improvements to it, is either:

(1) entitled to recover the amount by which the estimated value of the defendant's improvements exceeds the estimated value of the defendant's use and occupation of and waste or other injury to the property; or

(2) liable for the amount by which the value of the use and occupation of and waste and other injury to the property exceeds the value of the improvements and for costs.

(b) In estimating values of improvements or of use and occupation:

(1) improvements are valued at the time of trial, but only to the extent that the improvements increased the value of the property; and

(2) use and occupation is valued for the time before the date the action was filed that the defendant was in possession of the property, but excluding the value resulting from the improvements made by the defendant or those under whom the defendant claims.

(c) The defendant who makes a claim for improvements must plead:

(1) that the defendant and those under whom the defendant claims have had good faith adverse possession of the property in controversy for at least one year before the date the action began;

(2) that they or the defendant made permanent and valuable improvements to the property while in possession;

(3) the grounds for the claim;

(4) the identity of the improvements; and

(5) the value of each improvement.

(d) The defendant is not liable for damages under this section for injuries or for the value of the use and occupation more than two years before the date the action was filed, and the defendant is not liable for damages or for the value of the use and occupation in excess of the value of the improvements.

Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.022. WRIT OF POSSESSION. If in a trespass to try title action the plaintiff obtains a judgment for the contested property, but the defendant obtains a judgment for the value of the defendant's improvements in excess of the defendant's liability for use, occupation, and damages, the court may not issue a writ of possession until the first anniversary of the judgment unless the plaintiff pays to the clerk of the court for the benefit of the defendant the amount of the judgment in favor of the defendant plus interest.

Acts 1983, 68th Leg., p. 3510, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.023. FAILURE TO PAY. (a) If after a trespass to try title action a plaintiff does not pay a judgment awarded to a defendant, plus accrued interest, before the first anniversary of the judgment and if the defendant, before the sixth month after the first anniversary of the judgment, pays the value of the property, less the value of the defendant's improvements, to the clerk of the court for the benefit of the plaintiff, the plaintiff may not obtain a writ of possession or maintain any proceeding against the defendant or the defendant's heirs or assigns for the property awarded to the plaintiff in the trespass to try title action.

(b) If an eligible defendant does not exercise the option under this section, a plaintiff may apply for a writ of possession as in other cases.

Acts 1983, 68th Leg., p. 3511, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.024. PAYMENTS INTO COURT. If a party in a trespass to

try title action makes a payment to the clerk of a court under this subchapter, the clerk shall enter a dated memorandum of the payment on the page of the record on which the judgment was entered. The clerk shall pay the money on demand to the person entitled to the payment, who shall indicate receipt of the payment by dating and signing the record on the same page on which the judgment was entered.

Acts 1983, 68th Leg., p. 3511, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. REMOVAL OF IMPROVEMENTS

Sec. 22.041. PLEA FOR REMOVAL OF IMPROVEMENTS. (a) A defendant in a trespass to try title action who is not the rightful owner of the property in controversy may remove improvements made to the property if:

(1) the defendant, and those under whom the defendant claims, possessed the property, and made permanent and valuable improvements to it, without intent to defraud; and

(2) the improvements can be removed without substantial and permanent damage to the property.

(b) The pleadings of a defendant who seeks to remove improvements must contain:

(1) a statement that the defendant, and those under whom the defendant claims, adversely possessed the property, and made permanent and valuable improvements to it, without intent to defraud;

(2) a statement identifying the improvements; and

(3) an offer to provide a surety bond in an amount and conditioned as required by this section.

(c) Before removing the improvements, the defendant must post a surety bond in an amount determined by the court, conditioned on the removal of the improvements in a manner that substantially restores the property to the condition it was in before the improvements were made.

Acts 1983, 68th Leg., p. 3511, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.042. REFEREE. A court that authorizes a defendant in a trespass to try title action to remove improvements shall appoint a referee to supervise the removal. The court may require the referee

to make reports to the court concerning the removal.

Acts 1983, 68th Leg., p. 3512, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.043. RETAINED JURISDICTION. A court that authorizes a defendant in a trespass to try title action to remove improvements retains jurisdiction of the action until the court makes a final disposition of the case and a final determination of the rights, duties, and liabilities of the parties and sureties.

Acts 1983, 68th Leg., p. 3512, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.044. CONDITION FOR REMOVAL. Before a court in a trespass to try title action authorizes a defendant to remove improvements, the court may require the defendant to satisfy a money judgment in favor of the plaintiff that arises out of a claim of the plaintiff in the action.

Acts 1983, 68th Leg., p. 3512, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.045. CUMULATIVE REMEDIES. The remedy of removing improvements may be pleaded as an alternative to all other remedies at law or in equity.

Acts 1983, 68th Leg., p. 3513, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 23. PARTITION

Sec. 23.001. PARTITION. A joint owner or claimant of real property or an interest in real property or a joint owner of personal property may compel a partition of the interest or the property among the joint owners or claimants under this chapter and the Texas Rules of Civil Procedure.

Acts 1983, 68th Leg., p. 3513, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 23.002. VENUE AND JURISDICTION. (a) A joint owner or a

claimant of real property or an interest in real property may bring an action to partition the property or interest in a district court of a county in which any part of the property is located.

(b) A joint owner of personal property must bring an action to partition the property in a court that has jurisdiction over the value of the property.

Acts 1983, 68th Leg., p. 3513, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 23.003. EFFECT ON FUTURE INTERESTS. A partition of real property involving an owner of a life estate or an estate for years and other owners of equal or greater estate does not prejudice the rights of an owner of a reversion or remainder interest.

Acts 1983, 68th Leg., p. 3513, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 23.004. EFFECT OF PARTITION. (a) A person allotted a share of or an interest in real property in a partition action holds the property or interest in severalty under the conditions and covenants that applied to the property prior to the partition.

(b) A court decree confirming a report of commissioners in partition of real property gives a recipient of an interest in the property a title equivalent to a conveyance of the interest by a warranty deed from the other parties in the action.

(c) Except as provided by this chapter, a partition of real property does not affect a right in the property.

Acts 1983, 68th Leg., p. 3513, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 23.005. FEES. The judge of a court that hears an action to partition real property shall examine the report of the commissioners appointed to partition the property and shall determine from the report and from evidence submitted by the parties the complexity and difficulty of making the partition. The court shall then award the commissioners, and any surveyor appointed by the court or retained by the commissioners, a reasonable fee for the services rendered. The fees awarded shall be taxed and collected as costs of court in the same manner as the other costs in the action.

Acts 1983, 68th Leg., p. 3514, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 443, Sec. 1, eff. Sept. 1, 1991.

Sec. 23.006. ACCESS EASEMENT FOR PARTITIONED PROPERTY. (a) Unless waived by the parties in an action to partition property under this chapter, the commissioners appointed to partition property shall grant a nonexclusive access easement on a tract of partitioned property for the purpose of providing reasonable ingress to and egress from an adjoining partitioned tract that does not have a means of access through a public road or an existing easement appurtenant to the tract. The order granting the access easement shall contain a legal description of the easement.

(b) Unless waived by the parties in writing in a private partition agreement, the property owner of a partitioned tract that has a means of access through a public road or an existing easement appurtenant to the tract shall grant in the private partition agreement a nonexclusive access easement on the owner's partitioned tract for the purpose of providing reasonable ingress to and egress from an adjoining partitioned tract that does not have a means of access through a public road or an existing easement appurtenant to the tract.

(c) The access easement may not be a width greater than a width prescribed by a municipality or county for a right-of-way on a street or road. The access easement route must be the shortest route to the adjoining tract that:

(1) causes the least amount of damage to the tract subject to the easement; and

(2) is located the greatest reasonable distance from the primary residence and related improvements located on the tract subject to the easement.

(d) The adjoining tract owner who is granted an access easement under this section shall maintain the easement and keep the easement open for public use.

Added by Acts 2001, 77th Leg., ch. 647, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 24. FORCIBLE ENTRY AND DETAINER

Sec. 24.001. FORCIBLE ENTRY AND DETAINER. (a) A person

commits a forcible entry and detainer if the person enters the real property of another without legal authority or by force and refuses to surrender possession on demand.

(b) For the purposes of this chapter, a forcible entry is:

(1) an entry without the consent of the person in actual possession of the property;

(2) an entry without the consent of a tenant at will or by sufferance; or

(3) an entry without the consent of a person who acquired possession by forcible entry.

Acts 1983, 68th Leg., p. 3514, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 688, Sec. 1, eff. Sept. 1, 1989.

Sec. 24.002. FORCIBLE DETAINER. (a) A person who refuses to surrender possession of real property on demand commits a forcible detainer if the person:

(1) is a tenant or a subtenant wilfully and without force holding over after the termination of the tenant's right of possession;

(2) is a tenant at will or by sufferance, including an occupant at the time of foreclosure of a lien superior to the tenant's lease; or

(3) is a tenant of a person who acquired possession by forcible entry.

(b) The demand for possession must be made in writing by a person entitled to possession of the property and must comply with the requirements for notice to vacate under Section 24.005.

Acts 1983, 68th Leg., p. 3514, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 200, Sec. 1, eff. Aug. 26, 1985; Acts 1989, 71st Leg., ch. 688, Sec. 2, eff. Sept. 1, 1989.

Sec. 24.003. SUBSTITUTION OF PARTIES. If a tenancy for a term expires while the tenant's suit for forcible entry is pending, the landlord may prosecute the suit in the tenant's name for the landlord's benefit and at the landlord's expense. It is immaterial whether the tenant received possession from the landlord or became a tenant after obtaining possession of the property.

Acts 1983, 68th Leg., p. 3515, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 891, Sec. 1, eff. Aug. 26, 1985.

Sec. 24.004. JURISDICTION; DISMISSAL. (a) Except as provided by Subsection (b), a justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits. A justice court has jurisdiction to issue a writ of possession under Sections 24.0054(a), (a-2), and (a-3).

(b) A justice court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and shall dismiss the suit if the defendant files a sworn statement alleging the suit is based on a deed executed in violation of Chapter 21A, Business & Commerce Code.

Acts 1983, 68th Leg., p. 3515, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 891, Sec. 1, eff. Aug. 26, 1985; Acts 1997, 75th Leg., ch. 1205, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 958 (H.B. 1111), Sec. 1, eff. January 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 1242 (S.B. 1320), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(28), eff. September 1, 2013.

Sec. 24.005. NOTICE TO VACATE PRIOR TO FILING EVICTION SUIT. (a) If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least three days' written notice to vacate the premises before the landlord files a forcible detainer suit, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. A landlord who files a forcible detainer suit on grounds that the tenant is holding over beyond the end of the rental term or renewal period must also comply with the tenancy termination requirements of Section 91.001.

(b) If the occupant is a tenant at will or by sufferance, the

landlord must give the tenant at least three days' written notice to vacate before the landlord files a forcible detainer suit unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. If a building is purchased at a tax foreclosure sale or a trustee's foreclosure sale under a lien superior to the tenant's lease and the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure, the purchaser must give a residential tenant of the building at least 30 days' written notice to vacate if the purchaser chooses not to continue the lease. The tenant is considered to timely pay the rent under this subsection if, during the month of the foreclosure sale, the tenant pays the rent for that month to the landlord before receiving any notice that a foreclosure sale is scheduled during the month or pays the rent for that month to the foreclosing lienholder or the purchaser at foreclosure not later than the fifth day after the date of receipt of a written notice of the name and address of the purchaser that requests payment. Before a foreclosure sale, a foreclosing lienholder may give written notice to a tenant stating that a foreclosure notice has been given to the landlord or owner of the property and specifying the date of the foreclosure.

(c) If the occupant is a tenant of a person who acquired possession by forcible entry, the landlord must give the person at least three days' written notice to vacate before the landlord files a forcible detainer suit.

(d) In all situations in which the entry by the occupant was a forcible entry under Section 24.001, the person entitled to possession must give the occupant oral or written notice to vacate before the landlord files a forcible entry and detainer suit. The notice to vacate under this subsection may be to vacate immediately or by a specified deadline.

(e) If the lease or applicable law requires the landlord to give a tenant an opportunity to respond to a notice of proposed eviction, a notice to vacate may not be given until the period provided for the tenant to respond to the eviction notice has expired.

(f) Except as provided by Subsection (f-1), the notice to vacate shall be given in person or by mail at the premises in question. Notice in person may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises and affixing the notice to

the inside of the main entry door. Notice by mail may be by regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question.

(f-1) As an alternative to the procedures of Subsection (f), a landlord may deliver the notice to vacate by securely affixing to the outside of the main entry door a sealed envelope that contains the notice and on which is written the tenant's name, address, and in all capital letters, the words "IMPORTANT DOCUMENT" or substantially similar language and, not later than 5 p.m. of the same day, depositing in the mail in the same county in which the premises in question is located a copy of the notice to the tenant if:

(1) the premises has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to affix the notice to vacate to the inside of the main entry door; or

(2) the landlord reasonably believes that harm to any person would result from personal delivery to the tenant or a person residing at the premises or from personal delivery to the premises by affixing the notice to the inside of the main entry door.

(f-2) Notice to vacate under Subsection (f-1) is considered delivered on the date the envelope is affixed to the outside of the door and is deposited in the mail, regardless of the date the notice is received.

(g) The notice period is calculated from the day on which the notice is delivered.

(h) A notice to vacate shall be considered a demand for possession for purposes of Subsection (b) of Section 24.002.

(i) If before the notice to vacate is given as required by this section the landlord has given a written notice or reminder to the tenant that rent is due and unpaid, the landlord may include in the notice to vacate required by this section a demand that the tenant pay the delinquent rent or vacate the premises by the date and time stated in the notice.

Acts 1983, 68th Leg., p. 3515, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 891, Sec. 1, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 688, Sec. 3, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1205, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1198 (S.B. 1367), Sec. 1, eff.

January 1, 2016.

Sec. 24.0051. PROCEDURES APPLICABLE IN SUIT TO EVICT AND RECOVER UNPAID RENT. (a) In a suit filed in justice court in which the landlord files a sworn statement seeking judgment against a tenant for possession of the premises and unpaid rent, personal service on the tenant or service on the tenant under Rule 742a, Texas Rules of Civil Procedure, is procedurally sufficient to support a default judgment for possession of the premises and unpaid rent.

(b) A landlord may recover unpaid rent under this section regardless of whether the tenant vacated the premises after the date the landlord filed the sworn statement and before the date the court renders judgment.

(c) In a suit to recover possession of the premises, whether or not unpaid rent is claimed, the citation required by Rule 739, Texas Rules of Civil Procedure, must include the following notice to the defendant:

FAILURE TO APPEAR FOR TRIAL MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU.

(d) In a suit described by Subsection (c), the citation required by Rule 739, Texas Rules of Civil Procedure, must include the following notice to the defendant on the first page of the citation in English and Spanish and in conspicuous bold print:

SUIT TO EVICT

THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL RIGHTS OR RELIEF RELATED TO THIS SUIT UNDER FEDERAL LAW, INCLUDING THE SERVICEMEMBERS CIVIL RELIEF ACT (50 U.S.C. APP. SECTION 501 ET SEQ.), OR STATE LAW, INCLUDING SECTION 92.017, TEXAS PROPERTY CODE. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE.

Added by Acts 1999, 76th Leg., ch. 1464, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 712 (S.B. 439), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 812 (S.B. 1483), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 252 (H.B. 1127), Sec. 1, eff. January 1, 2012.

Sec. 24.00511. APPEAL BOND FOR CERTAIN EVICTION SUITS. (a) In a residential eviction suit for nonpayment of rent, the justice court shall state in the court's judgment the amount of the appeal bond, taking into consideration the money required to be paid into the court registry under Section 24.0053.

(b) In addition to meeting all other requirements of law, the bond must require the surety to provide the surety's contact information, including an address, phone number, and e-mail address, if any. If any of the contact information changes, the surety shall inform the court of the surety's new contact information.

Added by Acts 2015, 84th Leg., R.S., Ch. 1027 (H.B. 1334), Sec. 1, eff. January 1, 2016.

Sec. 24.00512. CONTEST OF CERTAIN APPEAL BONDS. (a) This section does not apply to an appeal bond issued by a corporate surety authorized by the Texas Department of Insurance to engage in business in this state.

(b) If a party appeals the judgment of a justice court in a residential eviction suit for nonpayment of rent by filing an appeal bond, the opposing party may contest the bond amount, form of the bond, or financial ability of a surety to pay the bond by filing a written notice with the justice court contesting the appeal bond on or before the fifth day after the date the appeal bond is filed and serving a copy on the other party. After the notice is filed, the justice court shall notify the other party and the surety of the contest.

(c) Not later than the fifth day after the date the contest is filed, the justice court shall hold a hearing to hear evidence to determine whether to approve or disapprove the amount or form of the bond or the surety.

(d) If a party contests the amount or form of the bond, the contesting party has the burden to prove, by a preponderance of the evidence, that the amount or form of the bond, as applicable, is insufficient. If a party contests the financial ability of a surety

to pay the bond, the party filing the bond must prove, by a preponderance of the evidence, that the surety has sufficient nonexempt assets to pay the appeal bond. If the justice court determines that the amount or form of the bond is insufficient or the surety does not have sufficient nonexempt assets to pay the appeal bond, the justice court must disapprove the bond. If the surety fails to appear at the contest hearing, the failure to appear is prima facie evidence that the bond should be disapproved.

(e) Not later than the fifth day after the date the justice court disapproves an appeal bond, the party appealing may make a cash deposit, file a sworn statement of inability to pay with the justice court, or appeal the decision disapproving the appeal bond to the county court. If the party appealing fails to make a cash deposit, file a sworn statement of inability to pay, or appeal the decision disapproving the appeal bond, the judgment of the justice court becomes final and a writ of possession and other processes to enforce the judgment must be issued on the payment of the required fee.

(f) If an appeal is filed, the justice court shall transmit to the county court the contest to the appeal bond and all relevant documents. The county court shall docket the appeal, schedule a hearing to be held not later than the fifth day after the date the appeal is docketed, notify the parties and the surety of the hearing time and date, and hear the contest de novo. The failure of the county court to hold a timely hearing is not grounds for approval or denial of the appeal. A writ of possession may not be issued before the county court issues a final decision on the appeal bond.

(g) After the contest is heard by the county court, the county clerk shall transmit the transcript and records of the case to the justice court. If the county court disapproves the appeal bond, the party may, not later than the fifth day after the date the court disapproves the appeal bond, perfect the appeal of the judgment on the eviction suit by making a cash deposit in the justice court in an amount determined by the county court or by filing a sworn statement of inability to pay with the justice court pursuant to the Texas Rules of Civil Procedure. If the tenant is the appealing party and a cash deposit in the required amount is not timely made or a sworn statement of inability to pay is not timely filed, the judgment of the justice court becomes final and a writ of possession and other processes to enforce the judgment must be issued on the payment of the required fee. If the landlord is the appealing party and a cash

deposit is not timely made or a sworn statement of inability to pay is not timely filed, the judgment of the justice court becomes final. If the appeal bond is approved by the county court, the court shall transmit the transcript and other records of the case to the justice court, and the justice court shall proceed as if the appeal bond was originally approved.

Added by Acts 2015, 84th Leg., R.S., Ch. 1027 (H.B. 1334), Sec. 1, eff. January 1, 2016.

Sec. 24.0052. TENANT APPEAL ON PAUPER'S AFFIDAVIT. (a) If a tenant in a residential eviction suit is unable to pay the costs of appeal or file an appeal bond as required by the Texas Rules of Civil Procedure, the tenant may appeal the judgment of the justice court by filing with the justice court, not later than the fifth day after the date the judgment is signed, a pauper's affidavit sworn before the clerk of the justice court or a notary public that states that the tenant is unable to pay the costs of appeal or file an appeal bond. The affidavit must contain the following information:

(1) the tenant's identity;

(2) the nature and amount of the tenant's employment income;

(3) the income of the tenant's spouse, if applicable and available to the tenant;

(4) the nature and amount of any governmental entitlement income of the tenant;

(5) all other income of the tenant;

(6) the amount of available cash and funds available in savings or checking accounts of the tenant;

(7) real and personal property owned by the tenant, other than household furnishings, clothes, tools of a trade, or personal effects;

(8) the tenant's debts and monthly expenses; and

(9) the number and age of the tenant's dependents and where those dependents reside.

(b) The justice court shall make available an affidavit form that a person may use to comply with the requirements of Subsection (a).

(c) The justice court shall promptly notify the landlord if a

pauper's affidavit is filed by the tenant.

(d) A landlord may contest a pauper's affidavit on or before the fifth day after the date the affidavit is filed. If the landlord contests the affidavit, the justice court shall notify the parties and hold a hearing to determine whether the tenant is unable to pay the costs of appeal or file an appeal bond. The hearing shall be held not later than the fifth day after the date the landlord notifies the court clerk of the landlord's contest. At the hearing, the tenant has the burden to prove by competent evidence, including documents or credible testimony of the tenant or others, that the tenant is unable to pay the costs of appeal or file an appeal bond.

(e) If the justice court approves the pauper's affidavit of a tenant, the tenant is not required to pay the county court filing fee or file an additional affidavit in the county court under Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1185 (H.B. 62), Sec. 1, eff. September 1, 2005.

Sec. 24.00521. CONTEST OF CERTAIN APPEAL BONDS IN COUNTY COURT. A contest under Section 24.00512 does not preclude a party from contesting the appeal bond in the county court after the county court has jurisdiction over the eviction suit. After the county court has jurisdiction over the eviction suit, the county court may modify the amount or form of the bond and determine the sufficiency of the surety.

Added by Acts 2015, 84th Leg., R.S., Ch. 1027 (H.B. 1334), Sec. 2, eff. January 1, 2016.

Sec. 24.0053. PAYMENT OF RENT DURING APPEAL OF EVICTION. (a) If the justice court enters judgment for the landlord in a residential eviction case based on nonpayment of rent, the court shall determine the amount of rent to be paid each rental pay period during the pendency of any appeal and shall note that amount in the judgment. If a portion of the rent is payable by a government agency, the court shall determine and note in the judgment the portion of the rent to be paid by the government agency and the portion to be paid by the tenant. The court's determination shall be

in accordance with the terms of the rental agreement and applicable laws and regulations. This subsection does not require or prohibit payment of rent into the court registry or directly to the landlord during the pendency of an appeal of an eviction case based on grounds other than nonpayment of rent.

(a-1) In an eviction suit for nonpayment of rent, if a tenant files a pauper's affidavit in the period prescribed by Section 24.0052 or an appeal bond pursuant to the Texas Rules of Civil Procedure, the justice court shall provide to the tenant a written notice at the time the pauper's affidavit or appeal bond is filed that contains the following information in bold or conspicuous type:

(1) the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the justice court registry;

(2) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;

(3) the calendar date by which the initial deposit must be paid into the justice court registry;

(4) for a court that closes before 5 p.m. on the date specified by Subdivision (3), the time the court closes; and

(5) a statement that failure to pay the required amount into the justice court registry by the date prescribed by Subdivision (3) may result in the court issuing a writ of possession without a hearing.

(a-2) The date by which an initial deposit must be paid into the justice court registry under Subsection (a-1)(3) must be within five days of the date the tenant files the pauper's affidavit as required by the Texas Rules of Civil Procedure.

(a-3) If a tenant files an appeal bond to appeal an eviction for nonpayment of rent, the tenant must, not later than the fifth day after the date the tenant filed the appeal bond, pay into the justice court registry the amount of rent to be paid in one rental pay period as determined by the court under Subsection (a). If the tenant fails to timely pay that amount into the justice court registry and the transcript has not yet been transmitted to the county court, the plaintiff may request a writ of possession. On request and payment of the applicable fee, the justice court shall issue the writ of possession immediately and without a hearing. Regardless of whether a writ of possession is issued, the justice court shall transmit the transcript and appeal documents to the county court for trial de novo

on issues relating to possession, rent, or attorney's fees.

(a-4) On sworn motion and hearing, the plaintiff in the eviction suit may withdraw money deposited in the court registry before the final determination in the case, dismissal of the appeal, or order of the court after final hearing. The county court shall give precedence to a hearing or motion under this subsection.

(b) If an eviction case is based on nonpayment of rent and the tenant appeals by filing a pauper's affidavit, the tenant shall pay the rent, as it becomes due, into the justice court or the county court registry, as applicable, during the pendency of the appeal, in accordance with the Texas Rules of Civil Procedure and Subsection (a). If a government agency is responsible for all or a portion of the rent under an agreement with the landlord, the tenant shall pay only that portion of the rent determined by the justice court under Subsection (a) to be paid by the tenant during appeal, subject to either party's right to contest that determination under Subsection (c).

(c) If an eviction case is based on nonpayment of rent and the tenant's rent during the rental agreement term has been paid wholly or partly by a government agency, either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by the tenant under this section. The contest must be filed on or before the fifth day after the date the justice signs the judgment. If a contest is filed, not later than the fifth day after the date the contest is filed the justice court shall notify the parties and hold a hearing to determine the amount owed by the tenant in accordance with the terms of the rental agreement and applicable laws and regulations. After hearing the evidence, the justice court shall determine the portion of the rent that must be paid by the tenant under this section.

(d) If the tenant objects to the justice court's ruling under Subsection (c) on the portion of the rent to be paid by the tenant during appeal, the tenant shall be required to pay only the portion claimed by the tenant to be owed by the tenant until the issue is tried de novo along with the case on the merits in county court. During the pendency of the appeal, either party may file a motion with the county court to reconsider the amount of the rent that must be paid by the tenant into the registry of the court.

(e) If either party files a contest under Subsection (c) and the tenant files a pauper's affidavit that is contested by the

landlord under Section 24.0052(d), the justice court shall hold the hearing on both contests at the same time.

Added by Acts 2005, 79th Leg., Ch. 1185 (H.B. 62), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 958 (H.B. 1111), Sec. 2, eff. January 1, 2012.
Acts 2015, 84th Leg., R.S., Ch. 1027 (H.B. 1334), Sec. 3, eff. January 1, 2016.

Sec. 24.0054. TENANT'S FAILURE TO PAY RENT DURING APPEAL. (a) During an appeal of an eviction case for nonpayment of rent, the justice court on request shall immediately issue a writ of possession, without hearing, if:

(1) a tenant fails to pay the initial rent deposit into the justice court registry within five days of the date the tenant filed a pauper's affidavit as required by Rule 749b(1), Texas Rules of Civil Procedure, and Section 24.0053;

(2) the justice court has provided the written notice required by Section 24.0053(a-1); and

(3) the justice court has not yet forwarded the transcript and original papers to the county court as provided by Subsection (a-2).

(a-1) The sheriff or constable shall execute a writ of possession under Subsection (a) in accordance with Sections 24.0061(d) through (h). The landlord shall bear the costs of issuing and executing the writ of possession.

(a-2) The justice court shall forward the transcript and original papers in an appeal of an eviction case to the county court but may not forward the transcript and original papers before the sixth day after the date the tenant files a pauper's affidavit, except that, if the court confirms that the tenant has timely paid the initial deposit of rent into the justice court registry in accordance with Section 24.0053, the court may forward the transcript and original papers immediately. If the tenant has not timely paid the initial deposit into the justice court registry, the justice court on request shall issue a writ of possession notwithstanding the fact that the tenant has perfected an appeal by filing a pauper's

affidavit that has been approved by the court. The justice court shall forward the transcript and original papers in the case to the county court for trial de novo, notwithstanding the fact that a writ of possession under this section has already been issued.

(a-3) Notwithstanding Subsections (a) and (a-2), the justice court may not issue a writ of possession if the tenant has timely deposited the tenant's portion of the rent claimed by the tenant under Section 24.0053(d).

(a-4) During an appeal of an eviction case for nonpayment of rent, if a tenant fails to pay rent into the justice court or county court registry as the rent becomes due under the rental agreement in accordance with the Texas Rules of Civil Procedure and Section 24.0053, the landlord may file with the county court a sworn motion that the tenant failed to pay rent as required. The landlord shall notify the tenant of the motion and the hearing date.

(b) If the county court finds that the tenant has not complied with the payment requirements of the Texas Rules of Civil Procedure and Section 24.0053, the county court shall immediately issue a writ of possession unless on or before the day of the hearing the tenant pays into the court registry:

(1) all rent not paid in accordance with the Texas Rules of Civil Procedure and Section 24.0053; and

(2) the landlord's reasonable attorney's fees, if any, in filing the motion.

(c) If the court finds that a tenant has failed to timely pay the rent into the court registry on more than one occasion:

(1) the tenant is not entitled to stay the issuance of the writ by paying the rent and the landlord's reasonable attorney's fees, if any; and

(2) the county court shall immediately issue a writ of possession.

(d) A writ of possession issued under Subsection (c) may not be executed before the sixth day after the date the writ is issued.

(e) In a motion or hearing under Subsection (a-4), or in a motion to dismiss an appeal of an eviction case in county court, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys.

(f) During the appeal of an eviction case, if a government agency is responsible for payment of a portion of the rent and does not pay that portion to the landlord or into the justice court or

county court registry, the landlord may file a motion with the county court requesting that the tenant be required to pay into the county court registry, as a condition of remaining in possession, the full amount of each rental period's rent, as it becomes due under the rental agreement. After notice and hearing, the court shall grant the motion if the landlord proves by credible evidence that:

(1) a portion of the rent is owed by a government agency;

(2) the portion of the rent owed by the government agency is unpaid;

(3) the landlord did not cause wholly or partly the agency to cease making the payments;

(4) the landlord did not cause wholly or partly the agency to pay the wrong amount; and

(5) the landlord is not able to take reasonable action that will cause the agency to resume making the payments of its portion of the total rent due under the rental agreement.

Added by Acts 2005, 79th Leg., Ch. 1185 (H.B. 62), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 958 (H.B. 1111), Sec. 3, eff. January 1, 2012.

Sec. 24.006. ATTORNEY'S FEES AND COSTS OF SUIT. (a) Except as provided by Subsection (b), to be eligible to recover attorney's fees in an eviction suit, a landlord must give a tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the premises. The demand must state that if the tenant does not vacate the premises before the 11th day after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney's fees. The demand must be sent by registered mail or by certified mail, return receipt requested, at least 10 days before the date the suit is filed.

(b) If the landlord provides the tenant notice under Subsection (a) or if a written lease entitles the landlord to recover attorney's fees, a prevailing landlord is entitled to recover reasonable attorney's fees from the tenant.

(c) If the landlord provides the tenant notice under Subsection (a) or if a written lease entitles the landlord or the tenant to

recover attorney's fees, the prevailing tenant is entitled to recover reasonable attorney's fees from the landlord. A prevailing tenant is not required to give notice in order to recover attorney's fees under this subsection.

(d) The prevailing party is entitled to recover all costs of court.

Acts 1983, 68th Leg., p. 3516, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 891, Sec. 1, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 688, Sec. 4, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1205, Sec. 3, eff. Sept. 1, 1997.

Sec. 24.0061. WRIT OF POSSESSION. (a) A landlord who prevails in an eviction suit is entitled to a judgment for possession of the premises and a writ of possession. In this chapter, "premises" means the unit that is occupied or rented and any outside area or facility that the tenant is entitled to use under a written lease or oral rental agreement, or that is held out for the use of tenants generally.

(b) A writ of possession may not be issued before the sixth day after the date on which the judgment for possession is rendered unless a possession bond has been filed and approved under the Texas Rules of Civil Procedure and judgment for possession is thereafter granted by default.

(c) The court shall notify a tenant in writing of a default judgment for possession by sending a copy of the judgment to the premises by first class mail not later than 48 hours after the entry of the judgment.

(d) The writ of possession shall order the officer executing the writ to:

(1) post a written warning of at least 8-1/2 by 11 inches on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than 24 hours after the warning is posted; and

(2) when the writ is executed:

(A) deliver possession of the premises to the landlord;

(B) instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and, if the persons

fail to comply, physically remove them;

(C) instruct the tenant to remove or to allow the landlord, the landlord's representatives, or other persons acting under the officer's supervision to remove all personal property from the rental unit other than personal property claimed to be owned by the landlord; and

(D) place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing, except as provided by Subsection (d-1).

(d-1) A municipality may provide, without charge to the landlord or to the owner of personal property removed from a rental unit under Subsection (d), a portable, closed container into which the removed personal property shall be placed by the officer executing the writ or by the authorized person. The municipality may remove the container from the location near the rental unit and dispose of the contents by any lawful means if the owner of the removed personal property does not recover the property from the container within a reasonable time after the time the property is placed in the container.

(e) The writ of possession shall authorize the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, part or all of the property at no cost to the landlord or the officer executing the writ.

(f) The officer may not require the landlord to store the property.

(g) The writ of possession shall contain notice to the officer that under Section 7.003, Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

(h) A sheriff or constable may use reasonable force in executing a writ under this section.

Added by Acts 1985, 69th Leg., ch. 319, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 314, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 745, Sec. 6, eff. June 20, 1987; Acts 1987, 70th Leg., ch. 1089, Sec. 1, eff. Aug. 31, 1987; Acts 1989,

71st Leg., ch. 2, Sec. 13.01, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 688, Sec. 5, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1205, Sec. 4, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 355 (H.B. 1853), Sec. 1, eff. September 1, 2015.

Sec. 24.0062. WAREHOUSEMAN'S LIEN. (a) If personal property is removed from a tenant's premises as the result of an action brought under this chapter and stored in a bonded or insured public warehouse, the warehouseman has a lien on the property to the extent of any reasonable storage and moving charges incurred by the warehouseman. The lien does not attach to any property until the property has been stored by the warehouseman.

(b) If property is to be removed and stored in a public warehouse under a writ of possession, the officer executing the writ shall, at the time of execution, deliver in person to the tenant, or by first class mail to the tenant's last known address not later than 72 hours after execution of the writ if the tenant is not present, a written notice stating the complete address and telephone number of the location at which the property may be redeemed and stating that:

(1) the tenant's property is to be removed and stored by a public warehouseman under Section 24.0062 of the Property Code;

(2) the tenant may redeem any of the property, without payment of moving or storage charges, on demand during the time the warehouseman is removing the property from the tenant's premises and before the warehouseman permanently leaves the tenant's premises;

(3) within 30 days from the date of storage, the tenant may redeem any of the property described by Section 24.0062(e), Property Code, on demand by the tenant and on payment of the moving and storage charges reasonably attributable to the items being redeemed;

(4) after the 30-day period and before sale, the tenant may redeem the property on demand by the tenant and on payment of all moving and storage charges; and

(5) subject to the previously stated conditions, the warehouseman has a lien on the property to secure payment of moving and storage charges and may sell all the property to satisfy reasonable moving and storage charges after 30 days, subject to the requirements of Section 24.0062(j) of the Property Code.

(c) The statement required by Subsection (b)(2) must be underlined or in boldfaced print.

(d) On demand by the tenant during the time the warehouseman is removing the property from the tenant's premises and before the warehouseman permanently leaves the tenant's premises, the warehouseman shall return to the tenant all property requested by the tenant, without charge.

(e) On demand by the tenant within 30 days after the date the property is stored by the warehouseman and on payment by the tenant of the moving and storage charges reasonably attributable to the items being redeemed, the warehouseman shall return to the tenant at the warehouse the following property:

(1) wearing apparel;

(2) tools, apparatus, and books of a trade or profession;

(3) school books;

(4) a family library;

(5) family portraits and pictures;

(6) one couch, two living room chairs, and a dining table and chairs;

(7) beds and bedding;

(8) kitchen furniture and utensils;

(9) food and foodstuffs;

(10) medicine and medical supplies;

(11) one automobile and one truck;

(12) agricultural implements;

(13) children's toys not commonly used by adults;

(14) goods that the warehouseman or the warehouseman's agent knows are owned by a person other than the tenant or an occupant of the residence;

(15) goods that the warehouseman or the warehouseman's agent knows are subject to a recorded chattel mortgage or financing agreement; and

(16) cash.

(f) During the first 30 days after the date of storage, the warehouseman may not require payment of removal or storage charges for other items as a condition for redeeming the items described by Subsection (e).

(g) On demand by the tenant to the warehouseman after the 30-day period and before sale and on payment by the tenant of all unpaid moving and storage charges on all the property, the warehouseman

shall return all the previously unredeemed property to the tenant at the warehouse.

(h) A warehouseman may not recover any moving or storage charges if the court determines under Subsection (i) that the warehouseman's moving or storage charges are not reasonable.

(i) Before the sale of the property by the warehouseman, the tenant may file suit in the justice court in which the eviction judgment was rendered, or in another court of competent jurisdiction in the county in which the rental premises are located, to recover the property described by Subsection (e) on the ground that the landlord failed to return the property after timely demand and payment by the tenant, as provided by this section. Before sale, the tenant may also file suit to recover all property moved or stored by the warehouseman on the ground that the amount of the warehouseman's moving or storage charges is not reasonable. All proceedings under this subsection have precedence over other matters on the court's docket. The justice court that issued the writ of possession has jurisdiction under this section regardless of the amount in controversy.

(j) Any sale of property that is subject to a lien under this section shall be conducted in accordance with Section 7.210 and Subchapters D and F, Chapter 9, Business & Commerce Code.

(k) In a proceeding under this section, the prevailing party is entitled to recover actual damages, reasonable attorney's fees, court costs, and, if appropriate, any property withheld in violation of this section or the value of that property if it has been sold.

Added by Acts 1985, 69th Leg., ch. 747, Sec. 1, eff. Sept. 1, 1985. Renumbered from Sec. 24.009 and amended by Acts 1987, 70th Leg., ch. 314, Sec. 2, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 745, Sec. 7, eff. June 20, 1987; Acts 1993, 73rd Leg., ch. 48, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 414, Sec. 2.35, eff. July 1, 2001.

Sec. 24.007. APPEAL. A final judgment of a county court in an eviction suit may not be appealed on the issue of possession unless the premises in question are being used for residential purposes only. A judgment of a county court may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the

judgment, the appellant files a supersedeas bond in an amount set by the county court. In setting the supersedeas bond the county court shall provide protection for the appellee to the same extent as in any other appeal, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the court may deem appropriate.

Acts 1983, 68th Leg., p. 3516, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 891, Sec. 1, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1205, Sec. 5, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 2.02(a), eff. January 1, 2012.
Acts 2015, 84th Leg., R.S., Ch. 1113 (H.B. 3364), Sec. 1, eff. January 1, 2016.

Sec. 24.008. EFFECT ON OTHER ACTIONS. An eviction suit does not bar a suit for trespass, damages, waste, rent, or mesne profits.

Acts 1983, 68th Leg., p. 3516, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 891, Sec. 1, eff. Aug. 26, 1985; Acts 1997, 75th Leg., ch. 1205, Sec. 6, eff. Sept. 1, 1997.

Sec. 24.011. NONLAWYER REPRESENTATION. In eviction suits in justice court for nonpayment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys. In any eviction suit in justice court, an authorized agent requesting or obtaining a default judgment need not be an attorney.

Added by Acts 1985, 69th Leg., ch. 891, Sec. 1, eff. Aug. 26, 1985. Renumbered from Sec. 24.009 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(49), eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1205, Sec. 7, eff. Sept. 1, 1997.

CHAPTER 24A. ACCESS TO RESIDENCE OR FORMER RESIDENCE TO RETRIEVE PERSONAL PROPERTY

Sec. 24A.001. DEFINITION. In this chapter, "peace officer" means a person listed under Article 2.12(1) or (2), Code of Criminal Procedure.

Added by Acts 2015, 84th Leg., R.S., Ch. 1076 (H.B. 2486), Sec. 1, eff. September 1, 2015.

Sec. 24A.002. ORDER AUTHORIZING ENTRY AND PROPERTY RETRIEVAL; PEACE OFFICER TO ACCOMPANY. (a) If a person is unable to enter the person's residence or former residence to retrieve personal property belonging to the person or the person's dependent because the current occupant is denying the person entry, the person may apply to the justice court for an order authorizing the person to enter the residence accompanied by a peace officer to retrieve specific items of personal property.

(b) An application under Subsection (a) must:

(1) certify that the applicant is unable to enter the residence because the current occupant of the residence has denied the applicant access to the residence;

(2) certify that, to the best of the applicant's knowledge, the applicant is not:

(A) the subject of an active protective order under Title 4, Family Code, a magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure, or another court order prohibiting entry to the residence; or

(B) otherwise prohibited by law from entering the residence;

(3) allege that the applicant or the applicant's minor dependent requires personal items located in the residence that are only of the following types:

(A) medical records;

(B) medicine and medical supplies;

(C) clothing;

(D) child-care items;

(E) legal or financial documents;

(F) checks or bank or credit cards in the name of the applicant;

(G) employment records; or

(H) personal identification documents;

(4) describe with specificity the items that the applicant intends to retrieve;

(5) allege that the applicant or the applicant's dependent will suffer personal harm if the items listed in the application are not retrieved promptly; and

(6) include a lease or other documentary evidence that shows the applicant is currently or was formerly authorized to occupy the residence.

(c) Before the justice of the peace may issue an order under this section, the applicant must execute a bond that:

(1) has two or more good and sufficient non-corporate sureties or one corporate surety authorized to issue bonds in this state;

(2) is payable to the occupant of the residence;

(3) is in an amount required by the justice; and

(4) is conditioned on the applicant paying all damages and costs adjudged against the applicant for wrongful property retrieval.

(d) The applicant shall deliver the bond to the justice of the peace issuing the order for the justice's approval. The bond shall be filed with the justice court.

(e) On sufficient evidence of urgency and potential harm to the health and safety of any person and after sufficient notice to the current occupant and an opportunity to be heard, the justice of the peace may grant the application under this section and issue an order authorizing the applicant to enter the residence accompanied by a peace officer and retrieve the property listed in the application if the justice of the peace finds that:

(1) the applicant is unable to enter the residence because the current occupant of the residence has denied the applicant access to the residence to retrieve the applicant's personal property or the personal property of the applicant's dependent;

(2) the applicant is not:

(A) the subject of an active protective order under Title 4, Family Code, a magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure, or another court order prohibiting entry to the residence; or

(B) otherwise prohibited by law from entering the residence;

(3) there is a risk of personal harm to the applicant or the applicant's dependent if the items listed in the application are

not retrieved promptly;

(4) the applicant is currently or was formerly authorized to occupy the residence according to a lease or other documentary evidence; and

(5) the current occupant received notice of the application and was provided an opportunity to appear before the court to contest the application.

Added by Acts 2015, 84th Leg., R.S., Ch. 1076 (H.B. 2486), Sec. 1, eff. September 1, 2015.

Sec. 24A.003. AUTHORIZED ENTRY PROCEDURES; DUTIES OF PEACE OFFICER. (a) If the justice of the peace grants an application under Section 24A.002, a peace officer shall accompany and assist the applicant in making the authorized entry and retrieving the items of personal property listed in the application.

(b) If the current occupant of the residence is present at the time of the entry, the peace officer shall provide the occupant with a copy of the court order authorizing the entry and property retrieval.

(c) Before removing the property listed in the application from the residence, the applicant must submit all property retrieved to the peace officer assisting the applicant under this section to be inventoried. The peace officer shall create an inventory listing the items taken from the residence, provide a copy of the inventory to the applicant, provide a copy of the inventory to the current occupant or, if the current occupant is not present, leave the copy in a conspicuous place in the residence, and return the property to be removed from the residence to the applicant. The officer shall file the original inventory with the court that issued the order authorizing the entry and property retrieval.

(d) A peace officer may use reasonable force in providing assistance under this section.

(e) A peace officer who provides assistance under this section in good faith and with reasonable diligence is not:

(1) civilly liable for an act or omission of the officer that arises in connection with providing the assistance; or

(2) civilly or criminally liable for the wrongful appropriation of any personal property by the person the officer is

assisting.

Added by Acts 2015, 84th Leg., R.S., Ch. 1076 (H.B. 2486), Sec. 1, eff. September 1, 2015.

Sec. 24A.004. IMMUNITY FROM LIABILITY. A landlord or a landlord's agent who permits or facilitates entry into a residence in accordance with a court order issued under this chapter is not civilly or criminally liable for an act or omission that arises in connection with permitting or facilitating the entry.

Added by Acts 2015, 84th Leg., R.S., Ch. 1076 (H.B. 2486), Sec. 1, eff. September 1, 2015.

Sec. 24A.005. OFFENSE. (a) A person commits an offense if the person interferes with a person or peace officer entering a residence and retrieving personal property under the authority of a court order issued under Section 24A.002.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution under this section that the actor did not receive a copy of the court order or other notice that the entry or property retrieval was authorized.

Added by Acts 2015, 84th Leg., R.S., Ch. 1076 (H.B. 2486), Sec. 1, eff. September 1, 2015.

Sec. 24A.006. HEARING; REVIEW. (a) The occupant of a residence that is the subject of a court order issued under Section 24A.002, not later than the 10th day after the date of the authorized entry, may file a complaint in the court that issued the order alleging that the applicant has appropriated property belonging to the occupant or the occupant's dependent.

(b) The court shall promptly hold a hearing on a complaint submitted under this section and rule on the disposition of the disputed property.

(c) This section does not limit the occupant's remedies under any other law for recovery of the property of the occupant or the occupant's dependent.

Added by Acts 2015, 84th Leg., R.S., Ch. 1076 (H.B. 2486), Sec. 1, eff. September 1, 2015.

CHAPTER 25. TRIAL OF RIGHT OF PROPERTY

Sec. 25.001. JURISDICTION. A trial of the right of property is an action that applies only to personal property. A trial of the right of property must be tried in a court with jurisdiction of the amount in controversy.

Acts 1983, 68th Leg., p. 3516, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 25.002. DAMAGES. If a claimant in a trial of the right of property does not establish a right to the property, the court shall adjudge damages against the obligors in the claimant's bond equal to 10 percent of the lesser of:

(1) the property's value; or

(2) the amount claimed under the writ levied against the property.

Acts 1983, 68th Leg., p. 3517, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 26. USE OF A DECEASED INDIVIDUAL'S NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR LIKENESS

Sec. 26.001. DEFINITIONS. In this chapter:

(1) "Photograph" means a photograph or photographic reproduction, still or moving, videotape, or live television transmission of an individual in a manner that allows a person viewing the photograph with the naked eye to reasonably determine the identity of the individual.

(2) "Property right" means the property right created by this chapter.

(3) "Name" means the actual or assumed name used by an individual which, when used in conjunction with other information, is intended to identify a particular person.

(4) "Media enterprise" means a newspaper, magazine, radio station or network, television station or network, or cable television system.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.002. PROPERTY RIGHT ESTABLISHED. An individual has a property right in the use of the individual's name, voice, signature, photograph, or likeness after the death of the individual.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.003. APPLICABILITY. This chapter applies to an individual:

(1) alive on or after September 1, 1987, or who died before September 1, 1987, but on or after January 1, 1937; and

(2) whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death or comes to have commercial value after that time.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.004. TRANSFERABILITY. (a) The property right is freely transferable, in whole or in part, by contract or by means of trust or testamentary documents.

(b) The property right may be transferred before or after the death of the individual.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.005. OWNERSHIP AFTER DEATH OF INDIVIDUAL. (a) If the ownership of the property right of an individual has not been transferred at or before the death of the individual, the property right vests as follows:

(1) if there is a surviving spouse but there are no surviving children or grandchildren, the entire interest vests in the surviving spouse;

(2) if there is a surviving spouse and surviving children or grandchildren, one-half the interest vests in the surviving spouse and one-half the interest vests in the surviving children or grandchildren;

(3) if there is no surviving spouse, the entire interest vests in the surviving children of the deceased individual and the surviving children of any deceased children of the deceased individual; or

(4) if there is no surviving spouse, children, or grandchildren, the entire interest vests in the surviving parents of the deceased individual.

(b) The interests of the deceased individual's children and grandchildren are divided among them and exercisable on a per stirpes basis in the manner provided by Section 43, Texas Probate Code, according to the number of the deceased individual's children represented. If there is more than one child of a deceased child of the deceased individual, the share of a child of a deceased child may only be exercised by a majority of the children of the deceased child.

(c) If the property right is split among more than one person, those persons who own more than a one-half interest in the aggregate may exercise the right on behalf of all persons who own the right.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.006. REGISTRATION OF CLAIM. (a) A person who claims to own a property right may register that claim with the secretary of state.

(b) The secretary of state shall provide a form for registration of a claim under this section. The form must be verified and must include:

(1) the name and date of death of the deceased individual;

(2) the name and address of the claimant;

(3) a statement of the basis of the claim; and

(4) a statement of the right claimed.

(c) The secretary of state may microfilm or reproduce by another technique a document filed under this section and destroy the original document.

(d) A document or a reproduction of a document filed under this section is admissible in evidence.

(e) The secretary of state may destroy all documents filed under this section after the 50th anniversary of the date of death of the individual whose property right they concern.

(f) The fee for filing a claim is $25.

(g) A document filed under this section is a public record.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.007. EFFECT OF REGISTRATION. (a) Registration of a claim is prima facie evidence of a valid claim to a property right.

(b) A registered claim is superior to a conflicting, unregistered claim unless a court invalidates the registered claim.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.008. EXERCISE OF OWNERSHIP FOR FIRST YEAR FOLLOWING DEATH OF INDIVIDUAL. (a) Except as provided by Subsection (b), for the first year following the death of the individual a property right may be exercised, if authorized by law or an appointing court, by the following persons who may be appointed by a court for the benefit of the estate of the deceased individual:

(1) an independent executor;

(2) an executor;

(3) an independent administrator;

(4) a temporary or permanent administrator; or

(5) a temporary or permanent guardian.

(b) For the first year following the death of the individual, an owner of a property right may exercise that right only if the owner registers a valid claim as provided by Section 26.006.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.009. EXERCISE OF OWNERSHIP AFTER FIRST YEAR FOLLOWING DEATH OF INDIVIDUAL. After the first year following the death of the individual, an owner of a property right may exercise that right whether or not the owner has registered a claim as provided by Section 26.006.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.010. TERMINATION. A property right expires on the first anniversary of the date of death of the individual if:

(1) the individual has not transferred the right; and

(2) a surviving person under Section 26.005 does not exist.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.011. UNAUTHORIZED USES. Except as provided by Section 26.012, a person may not use, without the written consent of a person who may exercise the property right, a deceased individual's name, voice, signature, photograph, or likeness in any manner, including:

(1) in connection with products, merchandise, or goods; or

(2) for the purpose of advertising, selling, or soliciting the purchase of products, merchandise, goods, or services.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.012. PERMITTED USES. (a) A person may use a deceased individual's name, voice, signature, photograph, or likeness in:

(1) a play, book, film, radio program, or television program;

(2) a magazine or newspaper article;

(3) material that is primarily of political or newsworthy value;

(4) single and original works of fine art; or

(5) an advertisement or commercial announcement concerning a use under this subsection.

(b) A media enterprise may use a deceased individual's name, voice, signature, photograph, or likeness in connection with the coverage of news, public affairs, a sporting event, or a political campaign without consent. Any use other than the above by a media enterprise of a deceased individual's name, voice, signature, photograph, or likeness shall require consent if the material constituting the use is integrally and directly connected with commercial sponsorship or paid advertising. No consent shall be required for the use of the deceased individual's name, voice, signature, photograph, or likeness by a media enterprise if the broadcast or article is not commercially sponsored or does not contain paid advertising.

(c) A person who is an owner or employee of a media enterprise, including a newspaper, magazine, radio station or network, television station or network, cable television system, billboard, or transit ad, that is used for advertising a deceased individual's name, voice, signature, photograph, or likeness in a manner not authorized by this section is not liable for damages as provided by this section unless the person:

(1) knew that the use was not authorized by this section; or

(2) used the deceased individual's name, voice, signature, photograph, or likeness in a manner primarily intended to advertise or promote the media enterprise itself.

(d) A person may use a deceased individual's name, voice, signature, photograph, or likeness in any manner after the 50th anniversary of the date of the individual's death.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.013. LIABILITY FOR UNAUTHORIZED USE. (a) A person who uses a deceased individual's name, voice, signature, photograph, or likeness in a manner not authorized by this chapter is liable to the person who owns the property right for:

(1) the amount of any damages sustained, as a result of the unauthorized use, by the person who owns the property right or $2,500, whichever is greater;

(2) the amount of any profits from the unauthorized use that are attributable to that use;

(3) the amount of any exemplary damages that may be awarded; and

(4) reasonable attorney's fees and expenses and court costs incurred in recovering the damages and profits established by this section.

(b) The amount of profits under Subsection (a)(2) may be established by a showing of the gross revenue attributable to the unauthorized use minus any expenses that the person who committed the unauthorized use may prove.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.014. OTHER RIGHTS NOT AFFECTED. This chapter does not affect a right an individual may have in the use of the individual's name, voice, signature, photograph, or likeness before the death of the individual.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.015. DEFENSES TO LIABILITY. A person shall not be liable for damages under this chapter if he has acted in reliance on the results of a probate proceeding governing the estate of the deceased personality in question.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 27. RESIDENTIAL CONSTRUCTION LIABILITY

Sec. 27.001. DEFINITIONS. In this chapter:

(1) "Action" means a court or judicial proceeding or an arbitration.

(2) "Appurtenance" means any structure or recreational facility that is appurtenant to a residence but is not a part of the dwelling unit.

(3) "Commission" means the Texas Residential Construction Commission.

(4) "Construction defect" has the meaning assigned by Section 401.004 for an action to which Subtitle D, Title 16, applies and for any other action means a matter concerning the design, construction, or repair of a new residence, of an alteration of or repair or addition to an existing residence, or of an appurtenance to a residence, on which a person has a complaint against a contractor. The term may include any physical damage to the residence, any appurtenance, or the real property on which the residence and appurtenance are affixed proximately caused by a construction defect.

(5) "Contractor":

(A) means:

(i) a builder, as defined by Section 401.003, contracting with an owner for the construction or repair of a new residence, for the repair or alteration of or an addition to an existing residence, or for the construction, sale, alteration, addition, or repair of an appurtenance to a new or existing

residence;

(ii) any person contracting with a purchaser for the sale of a new residence constructed by or on behalf of that person; or

(iii) a person contracting with an owner or the developer of a condominium for the construction of a new residence, for an alteration of or an addition to an existing residence, for repair of a new or existing residence, or for the construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence; and

(B) includes:

(i) an owner, officer, director, shareholder, partner, or employee of the contractor; and

(ii) a risk retention group registered under Article 21.54, Insurance Code, that insures all or any part of a contractor's liability for the cost to repair a residential construction defect.

(6) "Economic damages" means compensatory damages for pecuniary loss proximately caused by a construction defect. The term does not include exemplary damages or damages for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society.

(7) "Residence" means the real property and improvements for a single-family house, duplex, triplex, or quadruplex or a unit and the common elements in a multiunit residential structure in which title to the individual units is transferred to the owners under a condominium or cooperative system.

(8) "Structural failure" has the meaning assigned by Section 401.002 for an action to which Subtitle D, Title 16, applies and for any other action means actual physical damage to the load-bearing portion of a residence caused by a failure of the load-bearing portion.

(9) "Third-party inspector" has the meaning assigned by Section 401.002.

(10) "Developer of a condominium" means a declarant, as defined by Section 82.003, of a condominium consisting of one or more residences.

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 797, Sec. 1, 2 eff. Aug. 30,

1993; Acts 1999, 76th Leg., ch. 189, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 458, Sec. 2.01, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 750 (H.B. 3147), Sec. 1, eff. September 1, 2007.

Sec. 27.002. APPLICATION OF CHAPTER. (a) This chapter applies to:

(1) any action to recover damages or other relief arising from a construction defect, except a claim for personal injury, survival, or wrongful death or for damage to goods; and

(2) any subsequent purchaser of a residence who files a claim against a contractor.

(b) Except as provided by this subsection, to the extent of conflict between this chapter and any other law, including the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) or a common law cause of action, this chapter prevails. To the extent of conflict between this chapter and Title 16, Title 16 prevails.

(c) In this section:

(1) "Goods" does not include a residence.

(2) "Personal injury" does not include mental anguish.

(d) This chapter does not apply to an action to recover damages that arise from:

(1) a violation of Section 27.01, Business & Commerce Code;

(2) a contractor's wrongful abandonment of an improvement project before completion; or

(3) a violation of Chapter 162.

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 797, Sec. 3, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 189, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 458, Sec. 2.02, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 843 (H.B. 1038), Sec. 2, eff. September 1, 2007.

Sec. 27.003. LIABILITY. (a) In an action to recover damages

or other relief arising from a construction defect:

(1) a contractor is not liable for any percentage of damages caused by:

(A) negligence of a person other than the contractor or an agent, employee, or subcontractor of the contractor;

(B) failure of a person other than the contractor or an agent, employee, or subcontractor of the contractor to:

(i) take reasonable action to mitigate the damages; or

(ii) take reasonable action to maintain the residence;

(C) normal wear, tear, or deterioration;

(D) normal shrinkage due to drying or settlement of construction components within the tolerance of building standards; or

(E) the contractor's reliance on written information relating to the residence, appurtenance, or real property on which the residence and appurtenance are affixed that was obtained from official government records, if the written information was false or inaccurate and the contractor did not know and could not reasonably have known of the falsity or inaccuracy of the information; and

(2) if an assignee of the claimant or a person subrogated to the rights of a claimant fails to provide the contractor with the written notice and opportunity to inspect and offer to repair required by Section 27.004 or fails to request state-sponsored inspection and dispute resolution under Chapter 428, if applicable, before performing repairs, the contractor is not liable for the cost of any repairs or any percentage of damages caused by repairs made to a construction defect at the request of an assignee of the claimant or a person subrogated to the rights of a claimant by a person other than the contractor or an agent, employee, or subcontractor of the contractor.

(b) Except as provided by this chapter, this chapter does not limit or bar any other defense or defensive matter or other defensive cause of action applicable to an action to recover damages or other relief arising from a construction defect.

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 797, Sec. 4, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 189, Sec. 3, eff. Sept. 1, 1999; Acts

2003, 78th Leg., ch. 458, Sec. 2.03, eff. Sept. 1, 2003.

Sec. 27.0031. FRIVOLOUS SUIT; HARASSMENT. A party who files a suit under this chapter that is groundless and brought in bad faith or for purposes of harassment is liable to the defendant for reasonable and necessary attorney's fees and court costs.

Added by Acts 1999, 76th Leg., ch. 189, Sec. 4, eff. Sept. 1, 1999.

Sec. 27.004. NOTICE AND OFFER OF SETTLEMENT. (a) In a claim not subject to Subtitle D, Title 16, before the 60th day preceding the date a claimant seeking from a contractor damages or other relief arising from a construction defect initiates an action, the claimant shall give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the construction defects that are the subject of the complaint. On the request of the contractor, the claimant shall provide to the contractor any evidence that depicts the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, including expert reports, photographs, and videotapes, if that evidence would be discoverable under Rule 192, Texas Rules of Civil Procedure. During the 35-day period after the date the contractor receives the notice, and on the contractor's written request, the contractor shall be given a reasonable opportunity to inspect and have inspected the property that is the subject of the complaint to determine the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect. The contractor may take reasonable steps to document the defect. In a claim subject to Subtitle D, Title 16, a contractor is entitled to make an offer of repair in accordance with Subsection (b). A claimant is not required to give written notice to a contractor under this subsection in a claim subject to Subtitle D, Title 16.

(b) Not later than the 15th day after the date of a final, unappealable determination of a dispute under Subtitle D, Title 16, if applicable, or not later than the 45th day after the date the contractor receives the notice under this section, if Subtitle D, Title 16, does not apply, the contractor may make a written offer of

settlement to the claimant. The offer must be sent to the claimant at the claimant's last known address or to the claimant's attorney by certified mail, return receipt requested. The offer may include either an agreement by the contractor to repair or to have repaired by an independent contractor partially or totally at the contractor's expense or at a reduced rate to the claimant any construction defect described in the notice and shall describe in reasonable detail the kind of repairs which will be made. The repairs shall be made not later than the 45th day after the date the contractor receives written notice of acceptance of the settlement offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. If a contractor makes a written offer of settlement that the claimant considers to be unreasonable:

(1) on or before the 25th day after the date the claimant receives the offer, the claimant shall advise the contractor in writing and in reasonable detail of the reasons why the claimant considers the offer unreasonable; and

(2) not later than the 10th day after the date the contractor receives notice under Subdivision (1), the contractor may make a supplemental written offer of settlement to the claimant by sending the offer to the claimant or the claimant's attorney.

(c) If compliance with Subtitle D, Title 16, or the giving of the notice under Subsections (a) and (b) within the period prescribed by those subsections is impracticable because of the necessity of initiating an action at an earlier date to prevent expiration of the statute of limitations or if the complaint is asserted as a counterclaim, compliance with Subtitle D, Title 16, or the notice is not required. However, the action or counterclaim shall specify in reasonable detail each construction defect that is the subject of the complaint. If Subtitle D, Title 16, applies to the complaint, simultaneously with the filing of an action by a claimant, the claimant must submit a request under Section 428.001. If Subtitle D, Title 16, does not apply, the inspection provided for by Subsection (a) may be made not later than the 75th day after the date of service of the suit, request for arbitration, or counterclaim on the contractor, and the offer provided for by Subsection (b) may be made not later than the 15th day after the date the state-sponsored inspection and dispute resolution process is completed, if Subtitle D, Title 16, applies, or not later than the 60th day after the date of service, if Subtitle D, Title 16, does not apply. If, while an

action subject to this chapter is pending, the statute of limitations for the cause of action would have expired and it is determined that the provisions of Subsection (a) were not properly followed, the action shall be abated to allow compliance with Subsections (a) and (b).

(d) The court or arbitration tribunal shall abate an action governed by this chapter if Subsection (c) does not apply and the court or tribunal, after a hearing, finds that the contractor is entitled to abatement because the claimant failed to comply with the requirements of Subtitle D, Title 16, if applicable, failed to provide the notice or failed to give the contractor a reasonable opportunity to inspect the property as required by Subsection (a), or failed to follow the procedures specified by Subsection (b). An action is automatically abated without the order of the court or tribunal beginning on the 11th day after the date a motion to abate is filed if the motion:

(1) is verified and alleges that the person against whom the action is pending did not receive the written notice required by Subsection (a), the person against whom the action is pending was not given a reasonable opportunity to inspect the property as required by Subsection (a), or the claimant failed to follow the procedures specified by Subsection (b) or Subtitle D, Title 16; and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date on which the motion to abate is filed.

(e) If a claimant rejects a reasonable offer made under Subsection (b) or does not permit the contractor or independent contractor a reasonable opportunity to inspect or repair the defect pursuant to an accepted offer of settlement, the claimant:

(1) may not recover an amount in excess of:

(A) the fair market value of the contractor's last offer of settlement under Subsection (b); or

(B) the amount of a reasonable monetary settlement or purchase offer made under Subsection (n); and

(2) may recover only the amount of reasonable and necessary costs and attorney's fees as prescribed by Rule 1.04, Texas Disciplinary Rules of Professional Conduct, incurred before the offer was rejected or considered rejected.

(f) If a contractor fails to make a reasonable offer under Subsection (b), the limitations on damages provided for in Subsection

(e) shall not apply.

(g) Except as provided by Subsection (e), in an action subject to this chapter the claimant may recover only the following economic damages proximately caused by a construction defect:

(1) the reasonable cost of repairs necessary to cure any construction defect;

(2) the reasonable and necessary cost for the replacement or repair of any damaged goods in the residence;

(3) reasonable and necessary engineering and consulting fees;

(4) the reasonable expenses of temporary housing reasonably necessary during the repair period;

(5) the reduction in current market value, if any, after the construction defect is repaired if the construction defect is a structural failure; and

(6) reasonable and necessary attorney's fees.

(h) A homeowner and a contractor may agree in writing to extend any time period described in this chapter.

(i) An offer of settlement made under this section that is not accepted before the 25th day after the date the offer is received by the claimant is considered rejected.

(j) An affidavit certifying rejection of a settlement offer under this section may be filed with the court or arbitration tribunal. The trier of fact shall determine the reasonableness of a final offer of settlement made under this section.

(k) A contractor who makes or provides for repairs under this section is entitled to take reasonable steps to document the repair and to have it inspected.

(l) If Subtitle D, Title 16, applies to the claim and the contractor's offer of repair is accepted by the claimant, the contractor, on completion of the repairs and at the contractor's expense, shall engage the third-party inspector who provided the recommendation regarding the construction defect involved in the claim to inspect the repairs and determine whether the residence, as repaired, complies with the applicable limited statutory warranty and building and performance standards adopted by the commission. The contractor is entitled to a reasonable period not to exceed 15 days to address minor cosmetic items that are necessary to fully complete the repairs. The determination of the third-party inspector of whether the repairs comply with the applicable limited statutory

warranty and building and performance standards adopted by the commission establishes a rebuttable presumption on that issue. A party seeking to dispute, vacate, or overcome that presumption must establish by clear and convincing evidence that the determination is inconsistent with the applicable limited statutory warranty and building and performance standards.

(m) Notwithstanding Subsections (a), (b), and (c), a contractor who receives written notice of a construction defect resulting from work performed by the contractor or an agent, employee, or subcontractor of the contractor and creating an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus attorney's fees and costs in addition to any other damages recoverable under any law not inconsistent with the provisions of this chapter.

(n) This section does not preclude a contractor from making a monetary settlement offer or an offer to purchase the residence.

(o) A notice and response letter prescribed by this chapter must be sent by certified mail, return receipt requested, to the last known address of the recipient. If previously disclosed in writing that the recipient of a notice or response letter is represented by an attorney, the letter shall be sent to the recipient's attorney in accordance with Rule 21a, Texas Rules of Civil Procedure.

(p) If the contractor provides written notice of a claim for damages arising from a construction defect to a subcontractor, the contractor retains all rights of contribution from the subcontractor if the contractor settles the claim with the claimant.

(q) If a contractor refuses to initiate repairs under an accepted offer made under this section, the limitations on damages provided for in this section shall not apply.

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 797, Sec. 5, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 414, Sec. 10, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 189, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 458, Sec. 2.04, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 843 (H.B. 1038), Sec. 3, eff.

September 1, 2007.

Sec. 27.0041. MEDIATION. (a) If a claimant files suit seeking from a contractor damages arising from a construction defect in an amount greater than $7,500, the claimant or contractor may file a motion to compel mediation of the dispute. The motion must be filed not later than the 90th day after the date the suit is filed.

(b) Not later than the 30th day after the date a motion is filed under Subsection (a), the court shall order the parties to mediate the dispute. If the parties cannot agree on the appointment of a mediator, the court shall appoint the mediator.

(c) The court shall order the parties to begin mediation of the dispute not later than the 30th day after the date the court enters its order under Subsection (b) unless the parties agree otherwise or the court determines additional time is required. If the court determines that additional time is required, the court may order the parties to begin mediation of the dispute not later than the 60th day after the date the court enters its order under Subsection (b).

(d) Unless each party who has appeared in a suit filed under this chapter agrees otherwise, each party shall participate in the mediation and contribute equally to the cost of the mediation.

(e) Section 154.023, Civil Practice and Remedies Code, and Subchapters C and D, Chapter 154, Civil Practice and Remedies Code, apply to a mediation under this section to the extent those laws do not conflict with this section.

Added by Acts 1999, 76th Leg., ch. 189, Sec. 6, eff. Sept. 1, 1999.

Sec. 27.0042. CONDITIONAL SALE TO BUILDER. (a) A written agreement between a contractor and a homeowner may provide that, except as provided by Subsection (b), if the reasonable cost of repairs necessary to repair a construction defect that is the responsibility of the contractor exceeds an agreed percentage of the current fair market value of the residence, as determined without reference to the construction defects, then, in an action subject to this chapter, the contractor may elect as an alternative to the damages specified in Section 27.004(g) that the contractor who sold the residence to the homeowner purchase it.

(b) A contractor may not elect to purchase the residence under Subsection (a) if:

(1) the residence is more than five years old at the time an action is initiated; or

(2) the contractor makes such an election later than the 15th day after the date of a final, unappealable determination of a dispute under Subtitle D, Title 16, if applicable.

(c) If a contractor elects to purchase the residence under Subsection (a):

(1) the contractor shall pay the original purchase price of the residence and closing costs incurred by the homeowner and the cost of transferring title to the contractor under the election;

(2) the homeowner may recover:

(A) reasonable and necessary attorney's and expert fees as identified in Section 27.004(g);

(B) reimbursement for permanent improvements the owner made to the residence after the date the owner purchased the residence from the builder; and

(C) reasonable costs to move from the residence; and

(3) conditioned on the payment of the purchase price, the homeowner shall tender a special warranty deed to the contractor, free of all liens and claims to liens as of the date the title is transferred to the contractor, and without damage caused by the homeowner.

(d) An offer to purchase a claimant's home that complies with this section is considered reasonable absent clear and convincing evidence to the contrary.

Added by Acts 2003, 78th Leg., ch. 458, Sec. 2.05, eff. Sept. 1, 2003.

Sec. 27.005. LIMITATIONS ON EFFECT OF CHAPTER. This chapter does not create a cause of action or derivative liability or extend a limitations period.

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 189, Sec. 7, eff. Sept. 1, 1999.

Sec. 27.006. CAUSATION. In an action to recover damages

resulting from a construction defect, the claimant must prove that the damages were proximately caused by the construction defect.

Added by Acts 1993, 73rd Leg., ch. 797, Sec. 6, eff. Aug. 30, 1993.

Sec. 27.007. DISCLOSURE STATEMENT REQUIRED. (a) A written contract subject to this chapter, other than a contract between a developer of a condominium and a contractor for the construction or repair of a residence or appurtenance to a residence in a condominium, must contain in the contract a notice printed or typed in 10-point boldface type or the computer equivalent that reads substantially similar to the following:

"This contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code."

(b) If a contract does not contain the notice required by this section, the claimant may recover from the contractor a civil penalty of $500 in addition to any other remedy provided by this chapter.

(c) This section does not apply to a contract relating to a home required to be registered under Section 426.003.

Added by Acts 1999, 76th Leg., ch. 189, Sec. 8, eff. Sept. 1, 2000.
Amended by Acts 2003, 78th Leg., ch. 458, Sec. 2.06, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 750 (H.B. 3147), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 843 (H.B. 1038), Sec. 4, eff. September 1, 2007.

CHAPTER 28. PROMPT PAYMENT TO CONTRACTORS AND SUBCONTRACTORS

Sec. 28.001. DEFINITIONS. In this chapter:

(1) "Contractor" means a person who contracts with an owner to improve real property or perform construction services for an owner.

(2) "Improve" means to:

(A) build, construct, effect, erect, alter, repair, or demolish any improvement on, connected with, or beneath the surface of real property;

(B) excavate, clear, grade, fill, or landscape real property;

(C) construct a driveway or roadway;

(D) furnish any material, including trees or shrubbery, for the purpose of taking any action described by Paragraphs (A)-(C) of this subdivision; or

(E) perform any labor on or in connection with an improvement.

(3) "Improvement" includes all or any part of:

(A) a building, structure, erection, alteration, demolition, or excavation on, connected with, or beneath the surface of real property; and

(B) the act of clearing, grading, filling, or landscaping real property, including constructing a driveway or roadway or furnishing trees or shrubbery.

(4) "Owner" means a person or entity, other than a governmental entity, with an interest in real property that is improved, for whom an improvement is made, and who ordered the improvement to be made.

(5) "Real property" includes lands, leaseholds, tenements, hereditaments, and improvements placed on the real property.

(6) "Subcontractor" means a person who contracts to furnish labor or material to, or has performed labor or supplied materials for, a contractor or another subcontractor in connection with a contract to improve real property.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

Sec. 28.002. PROMPT PAY REQUIRED. (a) If an owner or a person authorized to act on behalf of the owner receives a written payment

request from a contractor for an amount that is allowed to the contractor under the contract for properly performed work or suitably stored or specially fabricated materials, the owner shall pay the amount to the contractor, less any amount withheld as authorized by statute, not later than the 35th day after the date the owner receives the request.

(b) A contractor who receives a payment under Subsection (a) or otherwise from an owner in connection with a contract to improve real property shall pay each of its subcontractors the portion of the owner's payment, including interest, if any, that is attributable to work properly performed or materials suitably stored or specially fabricated as provided under the contract by that subcontractor, to the extent of that subcontractor's interest in the owner's payment. The payment required by this subsection must be made not later than the seventh day after the date the contractor receives the owner's payment.

(c) A subcontractor who receives a payment under Subsection (b) or otherwise from a contractor in connection with a contract to improve real property shall pay each of its subcontractors the portion of the payment, including interest, if any, that is attributable to work properly performed or materials suitably stored or specially fabricated as provided under the contract by that subcontractor, to the extent of that subcontractor's interest in the payment. The payment required by this subsection must be made not later than the seventh day after the date the subcontractor receives the contractor's payment.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 805, Sec. 1, eff. Sept. 1, 1999.

Sec. 28.003. EXCEPTION FOR GOOD FAITH DISPUTE; WITHHOLDING. (a) If a good faith dispute exists concerning the amount owed for a payment requested or required by this chapter under a contract for construction of or improvements to a detached single-family residence, duplex, triplex, or quadruplex, the owner, contractor, or subcontractor that is disputing its obligation to pay or the amount of payment may withhold from the payment owed not more than 110 percent of the difference between the amount the obligee claims is due and the amount the obligor claims is due. A good faith dispute

includes a dispute regarding whether the work was performed in a proper manner.

(b) If a good faith dispute exists concerning the amount owed for a payment requested or required by this chapter under a contract for construction of or improvements to real property, excluding a detached single-family residence, duplex, triplex, or quadruplex, the owner, contractor, or subcontractor that is disputing its obligation to pay or the amount of payment may withhold from the payment owed not more than 100 percent of the difference between the amount the obligee claims is due and the amount the obligor claims is due. A good faith dispute includes a dispute regarding whether the work was performed in a proper manner.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 805, Sec. 2, eff. Sept. 1, 1999.

Sec. 28.004. INTEREST ON OVERDUE PAYMENT. (a) An unpaid amount required under this chapter begins to accrue interest on the day after the date on which the payment becomes due.

(b) An unpaid amount bears interest at the rate of 1-1/2 percent each month.

(c) Interest on an unpaid amount stops accruing under this section on the earlier of:

(1) the date of delivery;

(2) the date of mailing, if payment is mailed and delivery occurs within three days; or

(3) the date a judgment is entered in an action brought under this chapter.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

Sec. 28.005. ACTION TO ENFORCE PAYMENT. (a) A person may bring an action to enforce the person's rights under this chapter.

(b) In an action brought under this chapter, the court may award costs and reasonable attorney's fees as the court determines equitable and just.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

Sec. 28.006. NO WAIVER. (a) Except as provided by Subsection (b), an attempted waiver of a provision of this chapter is void.

(b) A written contract between an owner and a contractor for improvements to or construction of a single-family residence may provide that the payment required under Section 28.002(a) be made not later than a date that occurs before the 61st day after the date the owner receives the payment request. Notwithstanding Section 28.004(b), an unpaid amount under contract subject to this subsection that allows payment later than the date otherwise required under Section 28.002(a) bears interest at the rate of 1-1/2 percent each month.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

Sec. 28.007. LEGAL CONSTRUCTION. (a) This chapter may not be interpreted to void a contractor's or subcontractor's entitlement to payment for properly performed work or suitably stored materials.

(b) Nothing in this statute shall be interpreted to change the rights and obligations set forth in Chapter 53, Property Code.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

Sec. 28.008. EXCEPTION FOR FAILURE OF LENDER TO DISBURSE FUNDS. The date of payment required of the owner pursuant to Section 28.002(a) shall change from the 35th day after the date the owner receives the payment request to the fifth day after the date the owner receives loan proceeds, in the event that:

(1) the owner has obtained a loan intended to pay for all or part of a contract to improve real property;

(2) the owner has timely and properly requested disbursement of proceeds from that loan; and

(3) the lender is legally obligated to disburse such proceeds to the owner, but has failed to do so within 35 days after the date the owner received the contractor's payment request.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 805, Sec. 3, eff. Sept. 1, 1999.

Sec. 28.009. RIGHT TO SUSPEND WORK. (a) If an owner fails to pay the contractor the undisputed amount within the time limits provided by this chapter, the contractor or any subcontractor may suspend contractually required performance the 10th day after the date the contractor or subcontractor gives the owner and the owner's lender written notice:

(1) informing the owner and lender that payment has not been received; and

(2) stating the intent of the contractor or subcontractor to suspend performance for nonpayment.

(b) For purposes of Subsection (a), the contractor or subcontractor must give the owner's lender the written notice only if:

(1) the owner has obtained a loan intended to pay for all or part of the construction project;

(2) the lender has remitted funds, including acquisition funds, for construction purposes;

(3) the loan obtained:

(A) is evidenced by a promissory note secured by a deed of trust recorded in the real property records of the county in which the real property that is the subject of the contract is located; and

(B) is not only for the acquisition of personal property or secured only by a security instrument;

(4) the owner or lender, at the lender's option:

(A) securely posts not later than the 10th day after the date construction commences a sign on the project site in a prominent place accessible to each contractor, subcontractor, and supplier that states the lender's name, address, and the person to whom any notice should be sent; and

(B) maintains the sign during the pendency of the construction project;

(5) not later than the 10th day after the date construction commences, the owner or lender, at the lender's option, provides a written copy of the notice prescribed by Subdivision (4) to the contractor and any subcontractor or supplier identified by the contractor by depositing the notice properly addressed in the United States mail, first class, postage paid; and

(6) not later than the 10th day after the date a subcontractor or supplier performs labor or furnishes materials or

equipment for the construction project, the owner, contractor, or subcontractor provides a written copy of the notice prescribed by Subdivision (4) to the subcontractor or supplier.

(c) A contractor or subcontractor who suspends performance as provided by this section is not:

(1) required to supply further labor, services, or materials until the person is paid the amount provided by this chapter, plus costs for demobilization and remobilization; or

(2) responsible for damages resulting from suspending work if the contractor or subcontractor has not been notified in writing before suspending performance that payment has been made or that a good faith dispute for payment exists.

(d) A notification that a good faith dispute for payment exists provided under Subsection (c) must include a list of specific reasons for nonpayment. If a reason specified includes labor, services, or materials provided by a subcontractor that are not provided in compliance with the contract, the subcontractor is entitled to a reasonable opportunity to:

(1) cure the listed items; or

(2) offer a reasonable amount to compensate for listed items that cannot be promptly cured.

(e) This section does not apply to:

(1) a contract for the construction of or improvements to a detached single-family residence, duplex, triplex, or quadruplex; or

(2) a contract to improve real property for a governmental entity.

(f) The rights and remedies provided by this section are in addition to rights and remedies provided by this chapter or other law.

Added by Acts 1999, 76th Leg., ch. 805, Sec. 4, eff. Sept. 1, 1999.

Sec. 28.010. EXEMPTION FOR MINERAL DEVELOPMENT AND OILFIELD SERVICES. (a) This chapter does not apply to any agreement:

(1) to explore, produce, or develop oil, natural gas, natural gas liquids, synthetic gas, sulphur, ore, or other mineral substances, including any lease or royalty agreement, joint interest agreement, production or production-related agreement, operating agreement, farmout agreement, area of mutual interest agreement, or

other related agreement;

(2) for any well or mine services; or

(3) to purchase, sell, gather, store, or transport oil, natural gas, natural gas liquids, synthetic gas, or other hydrocarbon substances by pipeline or by a fixed, associated facility.

(b) In this section:

(1) "Agreement" includes a written or oral agreement or understanding:

(A) to provide work or services, including any construction, operating, repair, or maintenance services; or

(B) to perform a part of the services covered by Paragraph (A) or an act collateral to those services, including furnishing or renting equipment, incidental transportation, or other goods and services furnished in connection with those services.

(2) "Well or mine services" includes:

(A) drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, purchasing, gathering, storing, or transporting oil or natural gas, brine water, fresh water, produced water, condensate, petroleum products, or other liquid commodities, or otherwise rendering services in connection with a well drilled to produce or dispose of oil, gas, or other minerals or water; and

(B) designing, excavating, constructing, improving, or otherwise rendering services in connection with an oil, gas, or other mineral production platform or facility, mine shaft, drift, or other structure intended directly for use in exploring for or producing a mineral.

Added by Acts 1999, 76th Leg., ch. 805, Sec. 4, eff. Sept. 1, 1999.

CHAPTER 29. FORCED SALE OF OWNER'S INTEREST IN CERTAIN REAL PROPERTY AS REIMBURSEMENT FOR PROPERTY TAXES PAID BY CO-OWNER ON OWNER'S BEHALF

Sec. 29.001. APPLICATION OF CHAPTER. This chapter applies only to real property that is not exempt from forced sale under the constitution or laws of this state and is:

(1) received by a person as a result of the death of another person:

(A) by inheritance;

(B) under a will;

(C) by a joint tenancy with a right of survivorship; or

(D) by any other survivorship agreement in which the interest of the decedent passes to a surviving beneficiary other than an agreement between spouses for community property with a right of survivorship; or

(2) owned in part by a nonprofit organization that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3), Internal Revenue Code of 1986, and its subsequent amendments, that:

(A) has been incorporated in this state for at least one year;

(B) has a corporate purpose to develop affordable housing that is stated in the articles of incorporation or charter;

(C) has at least one-fourth of its board of directors residing in the county in which the property is located; and

(D) engages primarily in the building, repair, rental, or sale of housing for low-income individuals or families.

Added by Acts 1995, 74th Leg., ch. 981, Sec. 1, eff. Aug. 28, 1995. Amended by Acts 2001, 77th Leg., ch. 891, Sec. 1, eff. Sept. 1, 2001.

Sec. 29.002. PETITION FOR FORCED SALE. (a) A person, including a nonprofit organization, that owns an undivided interest in real property to which this chapter applies may file in the district court in a county in which the property is located a petition for a court order to require another owner of an undivided interest in that property to sell the other owner's interest in the property to the person if:

(1) the person has paid the other owner's share of ad valorem taxes imposed on the property for any three years in a five-year period or, in the case of a nonprofit organization, has paid the other owner's share of ad valorem taxes imposed on the property for any two years in a three-year period; and

(2) the other owner has not reimbursed the person for more than half of the total amount paid by the person for the taxes on the owner's behalf.

(b) The petition must contain:

(1) a description of the property;

(2) the name of each known owner of the property;

(3) the interest held by each known owner of the property;

(4) the total amount paid by the petitioner for the defendant's share of ad valorem taxes imposed on the property; and

(5) if applicable, the amount paid by the defendant to the petitioner to reimburse the petitioner for paying the defendant's share of ad valorem taxes imposed on the property.

Added by Acts 1995, 74th Leg., ch. 981, Sec. 1, eff. Aug. 28, 1995. Amended by Acts 2001, 77th Leg., ch. 891, Sec. 1, eff. Sept. 1, 2001.

Sec. 29.003. HEARING ON PETITION FOR FORCED SALE. At a hearing on a petition filed under Section 29.002, the petitioner must prove by clear and convincing evidence that:

(1) the petitioner has paid the defendant's share of ad valorem taxes imposed on the property that is the subject of the petition for any three years in a five-year period or, in the case of a nonprofit organization, the petitioner has paid the defendant's share of ad valorem taxes imposed on the property that is the subject of the petition for any two years in a three-year period;

(2) before the date on which the petition was filed the petitioner made a demand that the defendant reimburse the petitioner for the amount of the defendant's share of ad valorem taxes imposed on the property paid by the petitioner; and

(3) the defendant has not reimbursed the petitioner more than half of the amount of money the petitioner paid on the defendant's behalf for the defendant's share of ad valorem taxes imposed on the property.

Added by Acts 1995, 74th Leg., ch. 981, Sec. 1, eff. Aug. 28, 1995. Amended by Acts 2001, 77th Leg., ch. 891, Sec. 1, eff. Sept. 1, 2001.

Sec. 29.0035. DEMAND TO UNKNOWN DEFENDANT. If the address or identity of the defendant is unknown, the demand of the petitioner for reimbursement from the defendant required by Section 29.003(2) may be met by publication in a newspaper in the county in which the property is located once each week for four consecutive weeks, with

the final publication occurring not later than the 30th day before the date on which the petition is filed. The publication must contain the demand for reimbursement and:

(1) a general description of the property involved;

(2) the legal description of the property according to the survey of the property, including the number of the lot and block or any other plat description that may be of record if the property is located in a municipality;

(3) the county in which the property is located;

(4) the interest of the defendant; and

(5) the name and address of the petitioner.

Added by Acts 2001, 77th Leg., ch. 891, Sec. 2, eff. Sept. 1, 2001.

Sec. 29.004. COURT-ORDERED SALE. On completion of the hearing on a petition filed under Section 29.002, if the court is satisfied that the petitioner has made the requisite proof under Section 29.003, the court shall enter an order that divests the defendant's interest in the real property that is the subject of the petition and that orders the petitioner to pay to the defendant an amount computed by subtracting the outstanding amount of money the defendant owes to the petitioner for payment of the defendant's share of ad valorem taxes imposed on the property from the fair market value of the defendant's interest in the property as determined by an independent appraiser appointed by the court. The court's order may also direct the defendant to execute and deliver to the petitioner a deed that conveys to the petitioner the defendant's interest in the property.

Added by Acts 1995, 74th Leg., ch. 981, Sec. 1, eff. Aug. 28, 1995.

CHAPTER 30. WRIT OF ASSISTANCE FOR REPOSSESSION OF AIRCRAFT

Sec. 30.01. DEFINITIONS. In this chapter:

(1) "Aircraft" means a self-propelled motor vehicle that can be used to transport a person by flight in the air.

(2) "Repossession" means the recovery of an aircraft that has been sold under a security agreement containing a repossession clause authorizing the lender to recover the aircraft if the borrower defaults under the agreement.

(3) "Repossession agent" means an individual who is

authorized to engage in a repossession for a lender.

Added by Acts 2015, 84th Leg., R.S., Ch. 1125 (H.B. 3901), Sec. 1, eff. September 1, 2015.

Sec. 30.02. WRIT OF ASSISTANCE FOR REPOSSESSION OF AIRCRAFT. (a) A writ of assistance for the repossession of an aircraft authorizes a peace officer to assist and protect a repossession agent in gaining possession of the aircraft while the agent:

(1) secures the aircraft on site; or

(2) prepares the aircraft, which may include a mechanical inspection, for removal from the site by flight or otherwise to another location.

(b) A writ of assistance for the repossession of an aircraft is valid for 30 days.

(c) A justice court may grant unlimited extensions of a writ of assistance issued under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1125 (H.B. 3901), Sec. 1, eff. September 1, 2015.

Sec. 30.03. PETITION FOR WRIT OF ASSISTANCE. (a) A repossession agent may file a petition in a justice court for a writ of assistance for the repossession of an aircraft.

(b) The repossession agent is entitled to the writ if the repossession agent establishes that:

(1) the aircraft is subject to the proposed repossession; and

(2) the repossession agent is authorized to engage in the repossession.

(c) The petition for the writ must include a copy of:

(1) the security agreement relating to the aircraft;

(2) the notice of default under the security agreement sent by the lender to the borrower;

(3) the instrument in which a power of attorney for the repossession is granted to the repossession agent by the lender; and

(4) the results of a title search of the Federal Aviation Administration's records for the aircraft.

Added by Acts 2015, 84th Leg., R.S., Ch. 1125 (H.B. 3901), Sec. 1, eff. September 1, 2015.

TITLE 5. EXEMPT PROPERTY AND LIENS
SUBTITLE A. PROPERTY EXEMPT FROM CREDITORS' CLAIMS
CHAPTER 41. INTERESTS IN LAND
SUBCHAPTER A. EXEMPTIONS IN LAND DEFINED

Sec. 41.001. INTERESTS IN LAND EXEMPT FROM SEIZURE. (a) A homestead and one or more lots used for a place of burial of the dead are exempt from seizure for the claims of creditors except for encumbrances properly fixed on homestead property.

(b) Encumbrances may be properly fixed on homestead property for:

(1) purchase money;

(2) taxes on the property;

(3) work and material used in constructing improvements on the property if contracted for in writing as provided by Sections 53.254(a), (b), and (c);

(4) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(5) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(6) an extension of credit that meets the requirements of Section 50(a)(6), Article XVI, Texas Constitution; or

(7) a reverse mortgage that meets the requirements of Sections 50(k)-(p), Article XVI, Texas Constitution.

(c) The homestead claimant's proceeds of a sale of a homestead are not subject to seizure for a creditor's claim for six months after the date of sale.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1993, 73rd Leg., ch. 48, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 121, Sec. 1.01, eff. May 17, 1995; Acts 1995, 74th Leg., ch. 121, Sec. 2.01; Acts 1997, 75th Leg., ch. 526, Sec. 1,

eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 516, Sec. 1, eff. Sept. 1, 2001.

Sec. 41.002. DEFINITION OF HOMESTEAD. (a) If used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business, the homestead of a family or a single, adult person, not otherwise entitled to a homestead, shall consist of not more than 10 acres of land which may be in one or more contiguous lots, together with any improvements thereon.

(b) If used for the purposes of a rural home, the homestead shall consist of:

(1) for a family, not more than 200 acres, which may be in one or more parcels, with the improvements thereon; or

(2) for a single, adult person, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, with the improvements thereon.

(c) A homestead is considered to be urban if, at the time the designation is made, the property is:

(1) located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; and

(2) served by police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:

(A) electric;

(B) natural gas;

(C) sewer;

(D) storm sewer; and

(E) water.

(d) The definition of a homestead as provided in this section applies to all homesteads in this state whenever created.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1989, 71st Leg., ch. 391, Sec. 2, eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 1510, Sec. 1, eff. Jan. 1, 2000; Acts 1999, 76th Leg., ch. 1510, Sec. 2, eff. Sept. 1, 1999.

Sec. 41.0021. HOMESTEAD IN QUALIFYING TRUST. (a) In this section, "qualifying trust" means an express trust:

(1) in which the instrument or court order creating the express trust provides that a settlor or beneficiary of the trust has the right to:

(A) revoke the trust without the consent of another person;

(B) exercise an inter vivos general power of appointment over the property that qualifies for the homestead exemption; or

(C) use and occupy the residential property as the settlor's or beneficiary's principal residence at no cost to the settlor or beneficiary, other than payment of taxes and other costs and expenses specified in the instrument or court order:

(i) for the life of the settlor or beneficiary;

(ii) for the shorter of the life of the settlor or beneficiary or a term of years specified in the instrument or court order; or

(iii) until the date the trust is revoked or terminated by an instrument or court order recorded in the real property records of the county in which the property is located and that describes the property with sufficient certainty to identify the property; and

(2) the trustee of which acquires the property in an instrument of title or under a court order that:

(A) describes the property with sufficient certainty to identify the property and the interest acquired; and

(B) is recorded in the real property records of the county in which the property is located.

(b) Property that a settlor or beneficiary occupies and uses in a manner described by this subchapter and in which the settlor or beneficiary owns a beneficial interest through a qualifying trust is considered the homestead of the settlor or beneficiary under Section 50, Article XVI, Texas Constitution, and Section 41.001.

(c) A married person who transfers property to the trustee of a qualifying trust must comply with the requirements relating to the joinder of the person's spouse as provided by Chapter 5, Family Code.

(d) A trustee may sell, convey, or encumber property transferred as described by Subsection (c) without the joinder of either spouse unless expressly prohibited by the instrument or court order creating the trust.

(e) This section does not affect the rights of a surviving

spouse or surviving children under Section 52, Article XVI, Texas Constitution, or Part 3, Chapter VIII, Texas Probate Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 984 (H.B. 3767), Sec. 1, eff. September 1, 2009.

Sec. 41.003. TEMPORARY RENTING OF A HOMESTEAD. Temporary renting of a homestead does not change its homestead character if the homestead claimant has not acquired another homestead.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985.

Sec. 41.004. ABANDONMENT OF A HOMESTEAD. If a homestead claimant is married, a homestead cannot be abandoned without the consent of the claimant's spouse.

Added by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985.

Sec. 41.005. VOLUNTARY DESIGNATION OF HOMESTEAD. (a) If a rural homestead of a family is part of one or more parcels containing a total of more than 200 acres, the head of the family and, if married, that person's spouse may voluntarily designate not more than 200 acres of the property as the homestead. If a rural homestead of a single adult person, not otherwise entitled to a homestead, is part of one or more parcels containing a total of more than 100 acres, the person may voluntarily designate not more than 100 acres of the property as the homestead.

(b) If an urban homestead of a family, or an urban homestead of a single adult person not otherwise entitled to a homestead, is part of one or more contiguous lots containing a total of more than 10 acres, the head of the family and, if married, that person's spouse or the single adult person, as applicable, may voluntarily designate not more than 10 acres of the property as the homestead.

(c) Except as provided by Subsection (e) or Subchapter B, to designate property as a homestead, a person or persons, as applicable, must make the designation in an instrument that is signed and acknowledged or proved in the manner required for the recording of other instruments. The person or persons must file the

designation with the county clerk of the county in which all or part of the property is located. The clerk shall record the designation in the county deed records. The designation must contain:

(1) a description sufficient to identify the property designated;

(2) a statement by the person or persons who executed the instrument that the property is designated as the homestead of the person's family or as the homestead of a single adult person not otherwise entitled to a homestead;

(3) the name of the current record title holder of the property; and

(4) for a rural homestead, the number of acres designated and, if there is more than one survey, the number of acres in each.

(d) A person or persons, as applicable, may change the boundaries of a homestead designated under Subsection (c) by executing and recording an instrument in the manner required for a voluntary designation under that subsection. A change under this subsection does not impair rights acquired by a party before the change.

(e) Except as otherwise provided by this subsection, property on which a person receives an exemption from taxation under Section 11.43, Tax Code, is considered to have been designated as the person's homestead for purposes of this subchapter if the property is listed as the person's residence homestead on the most recent appraisal roll for the appraisal district established for the county in which the property is located. If a person designates property as a homestead under Subsection (c) or Subchapter B and a different property is considered to have been designated as the person's homestead under this subsection, the designation under Subsection (c) or Subchapter B, as applicable, prevails for purposes of this chapter.

(f) If a person or persons, as applicable, have not made a voluntary designation of a homestead under this section as of the time a writ of execution is issued against the person, any designation of the person's or persons' homestead must be made in accordance with Subchapter B.

(g) An instrument that made a voluntary designation of a homestead in accordance with prior law and that is on file with the county clerk on September 1, 1987, is considered a voluntary designation of a homestead under this section.

Added by Acts 1987, 70th Leg., ch. 727, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 3, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 297, Sec. 1, eff. Aug. 1, 1993; Acts 1997, 75th Leg., ch. 846, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1510, Sec. 3, eff. Jan. 1, 2000.

Sec. 41.0051. DISCLAIMER AND DISCLOSURE REQUIRED. (a) A person may not deliver a written advertisement offering, for a fee, to designate property as a homestead as provided by Section 41.005 unless there is a disclaimer on the advertisement that is conspicuous and printed in 14-point boldface type or 14-point uppercase typewritten letters that makes the following statement or a substantially similar statement:

THIS DOCUMENT IS AN ADVERTISEMENT OF SERVICES. IT IS NOT AN OFFICIAL DOCUMENT OF THE STATE OF TEXAS.

(b) A person who solicits solely by mail or by telephone a homeowner to pay a fee for the service of applying for a property tax refund from a tax appraisal district or other governmental body on behalf of the homeowner shall, before accepting money from the homeowner or signing a contract with the homeowner for the person's services, disclose to the homeowner the name of the tax appraisal district or other governmental body that owes the homeowner a refund.

(c) A person's failure to provide a disclaimer on an advertisement as required by Subsection (a) or to provide the disclosure required by Subsection (b) is considered a false, misleading, or deceptive act or practice for purposes of Section 17.46(a), Business & Commerce Code, and is subject to action by the consumer protection division of the attorney general's office as provided by Section 17.46(a), Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 341, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1191, Sec. 1, 2, eff. Sept. 1, 2003.

Sec. 41.006. CERTAIN SALES OF HOMESTEAD. (a) Except as provided by Subsection (c), any sale or purported sale in whole or in part of a homestead at a fixed purchase price that is less than the appraised fair market value of the property at the time of the sale

or purported sale, and in connection with which the buyer of the property executes a lease of the property to the seller at lease payments that exceed the fair rental value of the property, is considered to be a loan with all payments made from the seller to the buyer in excess of the sales price considered to be interest subject to Title 4, Finance Code.

(b) The taking of any deed in connection with a transaction described by this section is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and the deed is void and no lien attaches to the homestead property as a result of the purported sale.

(c) This section does not apply to the sale of a family homestead to a parent, stepparent, grandparent, child, stepchild, brother, half brother, sister, half sister, or grandchild of an adult member of the family.

Added by Acts 1987, 70th Leg., ch. 1130, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.84, eff. Sept. 1, 1999.

Sec. 41.007. HOME IMPROVEMENT CONTRACT. (a) A contract for improvements to an existing residence described by Section 41.001(b)(3) must contain:

(1) the contractor's certificate of registration number from the Texas Residential Construction Commission if the contractor is required to register as a builder with the commission;

(2) the address and telephone number at which the owner may file a complaint with the Texas Residential Construction Commission about the conduct of the contractor if the contractor is required to register as a builder with the commission; and

(3) the following warning conspicuously printed, stamped, or typed in a size equal to at least 10-point bold type or computer equivalent:

"IMPORTANT NOTICE: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

(b) A violation of Subsection (a) of this section is a false,

misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under the provisions of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

(c) A provision of a contract for improvements to an existing residence described by Section 41.001(b)(3) that requires the parties to submit a dispute arising under the contract to binding arbitration must be conspicuously printed or typed in a size equal to at least 10-point bold type or the computer equivalent.

(d) A provision described by Subsection (c) is not enforceable against the owner unless the requirements of Subsection (c) are met.

Added by Acts 1987, 70th Leg., ch. 116, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 41.005 by Acts 1989, 71st Leg., ch. 2, Sec. 16.01(30), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 4, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 843 (H.B. 1038), Sec. 5, eff. September 1, 2007.

Sec. 41.008. CONFLICT WITH FEDERAL LAW. To the extent of any conflict between this subchapter and any federal law that imposes an upper limit on the amount, including the monetary amount or acreage amount, of homestead property a person may exempt from seizure, this subchapter prevails to the extent allowed under federal law.

Added by Acts 1999, 76th Leg., ch. 1510, Sec. 4.

SUBCHAPTER B. DESIGNATION OF A HOMESTEAD IN AID OF ENFORCEMENT OF A JUDGMENT DEBT

Sec. 41.021. NOTICE TO DESIGNATE. If an execution is issued against a holder of an interest in land of which a homestead may be a part and the judgment debtor has not made a voluntary designation of a homestead under Section 41.005, the judgment creditor may give the judgment debtor notice to designate the homestead as defined in Section 41.002. The notice shall state that if the judgment debtor fails to designate the homestead within the time allowed by Section 41.022, the court will appoint a commissioner to make the designation

at the expense of the judgment debtor.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1987, 70th Leg., ch. 727, Sec. 2, eff. Aug. 31, 1987.

Sec. 41.022. DESIGNATION BY HOMESTEAD CLAIMANT. At any time before 10 a.m. on the Monday next after the expiration of 20 days after the date of service of the notice to designate, the judgment debtor may designate the homestead as defined in Section 41.002 by filing a written designation, signed by the judgment debtor, with the justice or clerk of the court from which the writ of execution was issued, together with a plat of the area designated.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985.

Sec. 41.023. DESIGNATION BY COMMISSIONER. (a) If a judgment debtor who has not made a voluntary designation of a homestead under Section 41.005 does not designate a homestead as provided in Section 41.022, on motion of the judgment creditor, filed within 90 days after the issuance of the writ of execution, the court from which the writ of execution issued shall appoint a commissioner to designate the judgment debtor's homestead. The court may appoint a surveyor and others as may be necessary to assist the commissioner. The commissioner shall file his designation of the judgment debtor's homestead in a written report, together with a plat of the area designated, with the justice or clerk of the court not more than 60 days after the order of appointment is signed or within such time as the court may allow.

(b) Within 10 days after the commissioner's report is filed, the judgment debtor or the judgment creditor may request a hearing on the issue of whether the report should be confirmed, rejected, or modified as may be deemed appropriate in the particular circumstances of the case. The commissioner's report may be contradicted by evidence from either party, when exceptions to it or any item thereof have been filed before the hearing, but not otherwise. After the hearing, or if there is no hearing requested, the court shall designate the homestead as deemed appropriate and order sale of the excess.

(c) The commissioner, a surveyor, and others appointed to

assist the commissioner are entitled to such fees and expenses as are deemed reasonable by the court. The court shall tax these fees and expenses against the judgment debtor as part of the costs of execution.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1987, 70th Leg., ch. 727, Sec. 3, eff. Aug. 31, 1987.

Sec. 41.024. SALE OF EXCESS. An officer holding an execution sale of property of a judgment debtor whose homestead has been designated under this chapter may sell the excess of the judgment debtor's interest in land not included in the homestead.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1987, 70th Leg., ch. 727, Sec. 4, eff. Aug. 31, 1987.

CHAPTER 42. PERSONAL PROPERTY

Sec. 42.001. PERSONAL PROPERTY EXEMPTION. (a) Personal property, as described in Section 42.002, is exempt from garnishment, attachment, execution, or other seizure if:

(1) the property is provided for a family and has an aggregate fair market value of not more than $100,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property; or

(2) the property is owned by a single adult, who is not a member of a family, and has an aggregate fair market value of not more than $50,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property.

(b) The following personal property is exempt from seizure and is not included in the aggregate limitations prescribed by Subsection (a):

(1) current wages for personal services, except for the enforcement of court-ordered child support payments;

(2) professionally prescribed health aids of a debtor or a dependent of a debtor;

(3) alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor; and

(4) a religious bible or other book containing sacred

writings of a religion that is seized by a creditor other than a lessor of real property who is exercising the lessor's contractual or statutory right to seize personal property after a tenant breaches a lease agreement for or abandons the real property.

(c) Except as provided by Subsection (b)(4), this section does not prevent seizure by a secured creditor with a contractual landlord's lien or other security in the property to be seized.

(d) Unpaid commissions for personal services not to exceed 25 percent of the aggregate limitations prescribed by Subsection (a) are exempt from seizure and are included in the aggregate.

(e) A religious bible or other book described by Subsection (b)(4) that is seized by a lessor of real property in the exercise of the lessor's contractual or statutory right to seize personal property after a tenant breaches a lease agreement for the real property or abandons the real property may not be included in the aggregate limitations prescribed by Subsection (a).

Acts 1983, 68th Leg., p. 3522, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 175, Sec. 1, eff. May 24, 1991; Acts 1997, 75th Leg., ch. 1046, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 444 (H.B. 167), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 793 (H.B. 2706), Sec. 1, eff. September 1, 2015.

Sec. 42.002. PERSONAL PROPERTY. (a) The following personal property is exempt under Section 42.001(a):

(1) home furnishings, including family heirlooms;

(2) provisions for consumption;

(3) farming or ranching vehicles and implements;

(4) tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;

(5) wearing apparel;

(6) jewelry not to exceed 25 percent of the aggregate limitations prescribed by Section 42.001(a);

(7) two firearms;

(8) athletic and sporting equipment, including bicycles;

(9) a two-wheeled, three-wheeled, or four-wheeled motor

vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the nonlicensed person;

(10) the following animals and forage on hand for their consumption:

(A) two horses, mules, or donkeys and a saddle, blanket, and bridle for each;

(B) 12 head of cattle;

(C) 60 head of other types of livestock; and

(D) 120 fowl; and

(11) household pets.

(b) Personal property, unless precluded from being encumbered by other law, may be encumbered by a security interest under Subchapter B, Chapter 9, Business & Commerce Code, or Subchapter F, Chapter 501, Transportation Code, or by a lien fixed by other law, and the security interest or lien may not be avoided on the ground that the property is exempt under this chapter.

Acts 1983, 68th Leg., p. 3522, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 175, Sec. 1, eff. May 24, 1991; Acts 1993, 73rd Leg., ch. 216, Sec. 1, eff. May, 17, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 30.245, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 414, Sec. 2.36, eff. July 1, 2001; Acts 1999, 76th Leg., ch. 846, Sec. 1, eff. Aug. 30, 1999.

Sec. 42.0021. ADDITIONAL EXEMPTION FOR CERTAIN SAVINGS PLANS. (a) In addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or to receive payments, whether vested or not, under any stock bonus, pension, annuity, deferred compensation, profit-sharing, or similar plan, including a retirement plan for self-employed individuals, or a simplified employee pension plan, an individual retirement account or individual retirement annuity, including an inherited individual retirement account, individual retirement annuity, Roth IRA, or inherited Roth IRA, or a health savings account, and under any annuity or similar contract purchased with assets distributed from that type of plan or account, is exempt from attachment, execution, and seizure for the satisfaction of debts to the extent the plan, contract, annuity, or

account is exempt from federal income tax, or to the extent federal income tax on the person's interest is deferred until actual payment of benefits to the person under Section 223, 401(a), 403(a), 403(b), 408(a), 408A, 457(b), or 501(a), Internal Revenue Code of 1986, including a government plan or church plan described by Section 414(d) or (e), Internal Revenue Code of 1986. For purposes of this subsection, the interest of a person in a plan, annuity, account, or contract acquired by reason of the death of another person, whether as an owner, participant, beneficiary, survivor, coannuitant, heir, or legatee, is exempt to the same extent that the interest of the person from whom the plan, annuity, account, or contract was acquired was exempt on the date of the person's death. If this subsection is held invalid or preempted by federal law in whole or in part or in certain circumstances, the subsection remains in effect in all other respects to the maximum extent permitted by law.

(b) Contributions to an individual retirement account that exceed the amounts permitted under the applicable provisions of the Internal Revenue Code of 1986 and any accrued earnings on such contributions are not exempt under this section unless otherwise exempt by law. Amounts qualifying as nontaxable rollover contributions under Section 402(a)(5), 403(a)(4), 403(b)(8), or 408(d)(3) of the Internal Revenue Code of 1986 before January 1, 1993, are treated as exempt amounts under Subsection (a). Amounts treated as qualified rollover contributions under Section 408A, Internal Revenue Code of 1986, are treated as exempt amounts under Subsection (a). In addition, amounts qualifying as nontaxable rollover contributions under Section 402(c), 402(e)(6), 402(f), 403(a)(4), 403(a)(5), 403(b)(8), 403(b)(10), 408(d)(3), or 408A of the Internal Revenue Code of 1986 on or after January 1, 1993, are treated as exempt amounts under Subsection (a). Amounts qualifying as nontaxable rollover contributions under Section 223(f)(5) of the Internal Revenue Code of 1986 on or after January 1, 2004, are treated as exempt amounts under Subsection (a).

(c) Amounts distributed from a plan, annuity, account, or contract entitled to an exemption under Subsection (a) are not subject to seizure for a creditor's claim for 60 days after the date of distribution if the amounts qualify as a nontaxable rollover contribution under Subsection (b).

(d) A participant or beneficiary of a plan, annuity, account, or contract entitled to an exemption under Subsection (a), other than

an individual retirement account or individual retirement annuity, is not prohibited from granting a valid and enforceable security interest in the participant's or beneficiary's right to the assets held in or to receive payments under the exempt plan, annuity, account, or contract to secure a loan to the participant or beneficiary from the exempt plan, annuity, account, or contract, and the right to the assets held in or to receive payments from the plan, annuity, account, or contract is subject to attachment, execution, and seizure for the satisfaction of the security interest or lien granted by the participant or beneficiary to secure the loan.

(e) If Subsection (a) is declared invalid or preempted by federal law, in whole or in part or in certain circumstances, as applied to a person who has not brought a proceeding under Title 11, United States Code, the subsection remains in effect, to the maximum extent permitted by law, as to any person who has filed that type of proceeding.

(f) A reference in this section to a specific provision of the Internal Revenue Code of 1986 includes a subsequent amendment of the substance of that provision.

Added by Acts 1987, 70th Leg., ch. 376, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1122, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 963, Sec. 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 106, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 130 (H.B. 330), Sec. 1, eff. May 24, 2005.

Acts 2005, 79th Leg., Ch. 130 (H.B. 330), Sec. 2, eff. May 24, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 933 (S.B. 1810), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 91 (S.B. 649), Sec. 2, eff. September 1, 2013.

Sec. 42.0022. EXEMPTION FOR COLLEGE SAVINGS PLANS. (a) In addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or to receive payments or benefits under any of the following is exempt from attachment, execution, and seizure for the satisfaction of debts:

(1) any fund or plan established under Subchapter F, Chapter 54, Education Code, including the person's interest in a prepaid tuition contract;

(2) any fund or plan established under Subchapter G, Chapter 54, Education Code, including the person's interest in a savings trust account; or

(3) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986, as amended.

(b) If any portion of this section is held to be invalid or preempted by federal law in whole or in part or in certain circumstances, this section remains in effect in all other respects to the maximum extent permitted by law.

Added by Acts 2003, 78th Leg., ch. 113, Sec. 1, eff. Sept. 1, 2003.

Sec. 42.003. DESIGNATION OF EXEMPT PROPERTY. (a) If the number or amount of a type of personal property owned by a debtor exceeds the exemption allowed by Section 42.002 and the debtor can be found in the county where the property is located, the officer making a levy on the property shall ask the debtor to designate the personal property to be levied on. If the debtor cannot be found in the county or the debtor fails to make a designation within a reasonable time after the officer's request, the officer shall make the designation.

(b) If the aggregate value of a debtor's personal property exceeds the amount exempt from seizure under Section 42.001(a), the debtor may designate the portion of the property to be levied on. If, after a court's request, the debtor fails to make a designation within a reasonable time or if for any reason a creditor contests that the property is exempt, the court shall make the designation.

Acts 1983, 68th Leg., p. 3524, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 175, Sec. 1, eff. May 24, 1991.

Sec. 42.004. TRANSFER OF NONEXEMPT PROPERTY. (a) If a person uses the property not exempt under this chapter to acquire, obtain an interest in, make improvement to, or pay an indebtedness on personal property which would be exempt under this chapter with the intent to

defraud, delay, or hinder an interested person from obtaining that to which the interested person is or may be entitled, the property, interest, or improvement acquired is not exempt from seizure for the satisfaction of liabilities. If the property, interest, or improvement is acquired by discharging an encumbrance held by a third person, a person defrauded, delayed, or hindered is subrogated to the rights of the third person.

(b) A creditor may not assert a claim under this section more than two years after the transaction from which the claim arises. A person with a claim that is unliquidated or contingent at the time of the transaction may not assert a claim under this section more than one year after the claim is reduced to judgment.

(c) It is a defense to a claim under this section that the transfer was made in the ordinary course of business by the person making the transfer.

Acts 1983, 68th Leg., p. 3524, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 175, Sec. 1, eff. May 24, 1991.

Sec. 42.005. CHILD SUPPORT LIENS. Sections 42.001, 42.002, and 42.0021 of this code do not apply to a child support lien established under Subchapter G, Chapter 157, Family Code.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 4.07, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.56, eff. Sept. 1, 1997.

CHAPTER 43. EXEMPT PUBLIC PROPERTY

Sec. 43.001. EXEMPT PUBLIC LIBRARY. A public library is exempt from attachment, execution, and forced sale.

Acts 1983, 68th Leg., p. 3525, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 43.002. EXEMPT PROPERTY. The real property of the state, including the real property held in the name of state agencies and funds, and the real property of a political subdivision of the state are exempt from attachment, execution, and forced sale. A judgment lien or abstract of judgment may not be filed or perfected against

the state, a unit of state government, or a political subdivision of the state on property owned by the state, a unit of state government, or a political subdivision of the state; any such judgment lien or abstract of judgment is void and unenforceable.

Added by Acts 1997, 75th Leg., ch. 159, Sec. 1, eff. May 20, 1997.

CHAPTER 44. TAXATION OF RETIREMENT BENEFITS BY ANOTHER STATE

Sec. 44.001. DEFINITION. In this chapter, "pension or other retirement plan" includes:

(1) an annuity, pension, or profit-sharing or stock bonus or similar plan established to provide retirement benefits for an officer or employee of a public or private employer or for a self-employed individual;

(2) an annuity, pension, or military retirement pay plan or other retirement plan administered by the United States; and

(3) an individual retirement account.

Added by Acts 1993, 73rd Leg., ch. 95, Sec. 1, eff. May 7, 1993.

Sec. 44.002. PROPERTY EXEMPT. All property in this state is exempt from attachment, execution, and seizure for the satisfaction of a judgment or claim in favor of another state or political subdivision of another state for failure to pay that state's or that political subdivision's income tax on benefits received from a pension or other retirement plan.

Added by Acts 1993, 73rd Leg., ch. 95, Sec. 1, eff. May 7, 1993.

Sec. 44.003. LIEN NOT CREATED. A claim or judgment in favor of another state or political subdivision of another state for failure to pay that state's or that political subdivision's income tax on benefits received from a pension or other retirement plan may not be a lien on any property in this state owned by a resident of this state.

Added by Acts 1993, 73rd Leg., ch. 95, Sec. 1, eff. May 7, 1993.

SUBTITLE B. LIENS

CHAPTER 51. PROVISIONS GENERALLY APPLICABLE TO LIENS

Sec. 51.0001. DEFINITIONS. In this chapter:

(1) "Book entry system" means a national book entry system for registering a beneficial interest in a security instrument that acts as a nominee for the grantee, beneficiary, owner, or holder of the security instrument and its successors and assigns.

(2) "Debtor's last known address" means:

(A) for a debt secured by the debtor's residence, the debtor's residence address unless the debtor provided the mortgage servicer a written change of address before the date the mortgage servicer mailed a notice required by Section 51.002; or

(B) for a debt other than a debt described by Paragraph (A), the debtor's last known address as shown by the records of the mortgage servicer of the security instrument unless the debtor provided the current mortgage servicer a written change of address before the date the mortgage servicer mailed a notice required by Section 51.002.

(3) "Mortgage servicer" means the last person to whom a mortgagor has been instructed by the current mortgagee to send payments for the debt secured by a security instrument. A mortgagee may be the mortgage servicer.

(4) "Mortgagee" means:

(A) the grantee, beneficiary, owner, or holder of a security instrument;

(B) a book entry system; or

(C) if the security interest has been assigned of record, the last person to whom the security interest has been assigned of record.

(5) "Mortgagor" means the grantor of a security instrument.

(6) "Security instrument" means a deed of trust, mortgage, or other contract lien on an interest in real property.

(7) "Substitute trustee" means a person appointed by the current mortgagee or mortgage servicer under the terms of the security instrument to exercise the power of sale.

(8) "Trustee" means a person or persons authorized to exercise the power of sale under the terms of a security instrument in accordance with Section 51.0074.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 903 (H.B. 2738), Sec. 1, eff. June 15, 2007.

Sec. 51.001. EFFECT ON OTHER LIENS. Except as provided by Chapter 59, this subtitle does not affect:

(1) the right to create a lien by special contract or agreement; or

(2) a lien that is not treated in this subtitle, including a lien arising under common law, in equity, or under another statute of this state.

Acts 1983, 68th Leg., p. 3525, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 51.0011. DEFAULT ARISING FROM DELINQUENT AD VALOREM TAXES: INSTALLMENT AGREEMENTS. (a) Notwithstanding any agreement to the contrary, a debtor is not in default under a deed of trust or other contract lien on real property used as the debtor's residence for the delinquent payment of ad valorem taxes if:

(1) the debtor gave notice to the mortgage servicer of the intent to enter into an installment agreement with the taxing unit under Section 33.02, Tax Code, for the payment of the taxes at least 10 days before the date the debtor entered into the agreement; and

(2) the property is protected from seizure and sale and a suit may not be filed to collect a delinquent tax on the property as provided by Section 33.02(d), Tax Code.

(b) A mortgage servicer who receives a notice described by Subsection (a)(1) may pay the taxes subject to the installment agreement at any time.

(c) A mortgage servicer who receives a notice described by Subsection (a)(1) and gives the debtor notice that the mortgage servicer intends to accelerate the note securing the deed of trust or other contract lien as a result of the delinquency of the taxes that are subject to the installment agreement must rescind the notice if the debtor enters into the agreement not later than the 30th day after the date the debtor delivers the notice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 935 (H.B. 1597), Sec. 4, eff. September 1, 2013.

Sec. 51.002. SALE OF REAL PROPERTY UNDER CONTRACT LIEN. (a) A sale of real property under a power of sale conferred by a deed of trust or other contract lien must be a public sale at auction held between 10 a.m. and 4 p.m. of the first Tuesday of a month. Except as provided by Subsection (h), the sale must take place at the county courthouse in the county in which the land is located, or if the property is located in more than one county, the sale may be made at the courthouse in any county in which the property is located. The commissioners court shall designate the area at the courthouse where the sales are to take place and shall record the designation in the real property records of the county. The sale must occur in the designated area. If no area is designated by the commissioners court, the notice of sale must designate the area where the sale covered by that notice is to take place, and the sale must occur in that area.

(b) Except as provided by Subsection (b-1), notice of the sale, which must include a statement of the earliest time at which the sale will begin, must be given at least 21 days before the date of the sale by:

(1) posting at the courthouse door of each county in which the property is located a written notice designating the county in which the property will be sold;

(2) filing in the office of the county clerk of each county in which the property is located a copy of the notice posted under Subdivision (1); and

(3) serving written notice of the sale by certified mail on each debtor who, according to the records of the mortgage servicer of the debt, is obligated to pay the debt.

(b-1) If the courthouse or county clerk's office is closed because of inclement weather, natural disaster, or other act of God, a notice required to be posted at the courthouse under Subsection (b)(1) or filed with the county clerk under Subsection (b)(2) may be posted or filed, as appropriate, up to 48 hours after the courthouse or county clerk's office reopens for business, as applicable.

(c) The sale must begin at the time stated in the notice of sale or not later than three hours after that time.

(d) Notwithstanding any agreement to the contrary, the mortgage servicer of the debt shall serve a debtor in default under a deed of

trust or other contract lien on real property used as the debtor's residence with written notice by certified mail stating that the debtor is in default under the deed of trust or other contract lien and giving the debtor at least 20 days to cure the default before notice of sale can be given under Subsection (b). The entire calendar day on which the notice required by this subsection is given, regardless of the time of day at which the notice is given, is included in computing the 20-day notice period required by this subsection, and the entire calendar day on which notice of sale is given under Subsection (b) is excluded in computing the 20-day notice period.

(e) Service of a notice under this section by certified mail is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the debtor at the debtor's last known address. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

(f) Each county clerk shall keep all notices filed under Subdivision (2) of Subsection (b) in a convenient file that is available to the public for examination during normal business hours. The clerk may dispose of the notices after the date of sale specified in the notice has passed. The clerk shall receive a fee of $2 for each notice filed.

(f-1) If a county maintains an Internet website, the county must post a notice of sale filed with the county clerk under Subsection (b)(2) on the website on a page that is publicly available for viewing without charge or registration.

(g) The entire calendar day on which the notice of sale is given, regardless of the time of day at which the notice is given, is included in computing the 21-day notice period required by Subsection (b), and the entire calendar day of the foreclosure sale is excluded.

(h) For the purposes of Subsection (a), the commissioners court of a county may designate an area other than an area at the county courthouse where public sales of real property under this section will take place that is in a public place within a reasonable proximity of the county courthouse as determined by the commissioners court and in a location as accessible to the public as the courthouse door. The commissioners court shall record that designation in the real property records of the county. A designation by a commissioners court under this section is not a ground for

challenging or invalidating any sale. A sale must be held at an area designated under this subsection if the sale is held on or after the 90th day after the date the designation is recorded. The posting of the notice required by Subsection (b)(1) of a sale designated under this subsection to take place at an area other than an area of the courthouse remains at the courthouse door of the appropriate county.

(i) Notice served on a debtor under this section must state the name and address of the sender of the notice and contain, in addition to any other statements required under this section, a statement that is conspicuous, printed in boldface or underlined type, and substantially similar to the following: "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."

Acts 1983, 68th Leg., p. 3525, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 3(b), eff. Oct. 2, 1984; Acts 1987, 70th Leg., ch. 540, Sec. 1, eff. Jan. 1, 1988; Acts 1993, 73rd Leg., ch. 48, Sec. 5, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 554, Sec. 2, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 533 (H.B. 961), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 555 (H.B. 1235), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 903 (H.B. 2738), Sec. 2, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 252 (H.B. 1127), Sec. 2, eff. January 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 592 (S.B. 101), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 52 (H.B. 584), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 17.001, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 642 (H.B. 699), Sec. 2, eff.

October 1, 2013.

Sec. 51.0021. NOTICE OF CHANGE OF ADDRESS REQUIRED. A debtor shall inform the mortgage servicer of the debt in a reasonable manner of any change of address of the debtor for purposes of providing notice to the debtor under Section 51.002.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.

Sec. 51.0025. ADMINISTRATION OF FORECLOSURE BY MORTGAGE SERVICER. A mortgage servicer may administer the foreclosure of property under Section 51.002 on behalf of a mortgagee if:

(1) the mortgage servicer and the mortgagee have entered into an agreement granting the current mortgage servicer authority to service the mortgage; and

(2) the notices required under Section 51.002(b) disclose that the mortgage servicer is representing the mortgagee under a servicing agreement with the mortgagee and the name of the mortgagee and:

(A) the address of the mortgagee; or

(B) the address of the mortgage servicer, if there is an agreement granting a mortgage servicer the authority to service the mortgage.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 555 (H.B. 1235), Sec. 2, eff. September 1, 2005.

Sec. 51.003. DEFICIENCY JUDGMENT. (a) If the price at which real property is sold at a foreclosure sale under Section 51.002 is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency, any action brought to recover the deficiency must be brought within two years of the foreclosure sale and is governed by this section.

(b) Any person against whom such a recovery is sought by motion may request that the court in which the action is pending determine the fair market value of the real property as of the date of the

foreclosure sale. The fair market value shall be determined by the finder of fact after the introduction by the parties of competent evidence of the value. Competent evidence of value may include, but is not limited to, the following: (1) expert opinion testimony; (2) comparable sales; (3) anticipated marketing time and holding costs; (4) cost of sale; and (5) the necessity and amount of any discount to be applied to the future sales price or the cashflow generated by the property to arrive at a current fair market value.

(c) If the court determines that the fair market value is greater than the sale price of the real property at the foreclosure sale, the persons against whom recovery of the deficiency is sought are entitled to an offset against the deficiency in the amount by which the fair market value, less the amount of any claim, indebtedness, or obligation of any kind that is secured by a lien or encumbrance on the real property that was not extinguished by the foreclosure, exceeds the sale price. If no party requests the determination of fair market value or if such a request is made and no competent evidence of fair market value is introduced, the sale price at the foreclosure sale shall be used to compute the deficiency.

(d) Any money received by a lender from a private mortgage guaranty insurer shall be credited to the account of the borrower prior to the lender bringing an action at law for any deficiency owed by the borrower. Notwithstanding the foregoing, the credit required by this subsection shall not apply to the exercise by a private mortgage guaranty insurer of its subrogation rights against a borrower or other person liable for any deficiency.

Added by Acts 1991, 72nd Leg., ch. 12, Sec. 1, eff. April 1, 1991.

Sec. 51.004. JUDICIAL FORECLOSURE--DEFICIENCY. (a) This section applies if:

(1) real property subject to a deed of trust or other contract lien is sold at a foreclosure sale under a court judgment foreclosing the lien and ordering the sale; and

(2) the price at which the real property is sold is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency.

(b) Any person obligated on the indebtedness, including a

guarantor, may bring an action in the district court in the county in which the real property is located for a determination of the fair market value of the real property as of the date of the foreclosure sale. The suit must be brought not later than the 90th day after the date of the foreclosure sale unless the suit is brought by a guarantor who did not receive actual notice of the sale before the date of sale, in which case the suit must be brought by the guarantor not later than the 90th day after the date the guarantor received actual notice of the sale. The fair market value shall be determined by the finder of fact after the introduction by the parties of competent evidence of the value. Competent evidence of value may include:

(1) expert opinion testimony;

(2) comparable sales;

(3) anticipated marketing time and holding costs;

(4) cost of sale; and

(5) the necessity and amount of any discount to be applied to the future sales price or the cash flow generated by the property to arrive at a fair market value as of the date of the foreclosure sale.

(c) If the finder of fact determines that the fair market value is greater than the sale price of the real property at the foreclosure sale, the persons obligated on the indebtedness, including guarantors, are entitled to an offset against the deficiency in the amount by which the fair market value, less the amount of any claim, indebtedness, or obligation of any kind that is secured by a lien or encumbrance on the real property that was not extinguished by the foreclosure, exceeds the sale price. If no competent evidence of fair market value is introduced, the sale price at the foreclosure sale shall be used to compute the deficiency.

(d) Any money received by a lender from a private mortgage guaranty insurer shall be credited to the account of the borrower before the lender brings an action at law for any deficiency owed by the borrower. However, the credit required by this subsection does not apply to the exercise by a private mortgage guaranty insurer of its subrogation rights against a borrower or other person liable for any deficiency.

Added by Acts 1991, 72nd Leg., ch. 361, Sec. 1, eff. June 5, 1991.

Sec. 51.005. JUDICIAL OR NONJUDICIAL FORECLOSURE AFTER JUDGMENT AGAINST GUARANTOR--DEFICIENCY. (a) This section applies if:

(1) the holder of a debt obtains a court judgment against a guarantor of the debt;

(2) real property subject to a deed of trust or other contract lien securing the guaranteed debt is sold at a foreclosure sale under Section 51.002 or under a court judgment foreclosing the lien and ordering the sale;

(3) the price at which the real property is sold is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency; and

(4) a motion or suit to determine the fair market value of the real property as of the date of the foreclosure sale has not been filed under Section 51.003 or 51.004.

(b) The guarantor may bring an action in the district court in the county in which the real property is located for a determination of the fair market value of the real property as of the date of the foreclosure sale. The suit must be brought not later than the 90th day after the date of the foreclosure sale or the date the guarantor receives actual notice of the foreclosure sale, whichever is later. The fair market value shall be determined by the finder of fact after the introduction by the parties of competent evidence of the value. Competent evidence of value may include:

(1) expert opinion testimony;

(2) comparable sales;

(3) anticipated marketing time and holding costs;

(4) cost of sale; and

(5) the necessity and amount of any discount to be applied to the future sales price or the cash flow generated by the property to arrive at a fair market value as of the date of the foreclosure sale.

(c) If the finder of fact determines that the fair market value is greater than the sale price of the real property at the foreclosure sale, the persons obligated on the indebtedness, including guarantors, are entitled to an offset against the deficiency in the amount by which the fair market value, less the amount of any claim, indebtedness, or obligation of any kind that is secured by a lien or encumbrance on the real property that was not extinguished by the foreclosure, exceeds the sale price. If no competent evidence of fair market value is introduced, the sale price

at the foreclosure sale shall be used to compute the deficiency.

(d) Any money received by a lender from a private mortgage guaranty insurer shall be credited to the account of the borrower before the lender brings an action at law for any deficiency owed by the borrower. However, the credit required by this subsection does not apply to the exercise by a private mortgage guaranty insurer of its subrogation rights against a borrower or other person liable for any deficiency.

Added by Acts 1991, 72nd Leg., ch. 361, Sec. 1, eff. June 5, 1991.

Sec. 51.006. DEED-OF-TRUST FORECLOSURE AFTER DEED IN LIEU OF FORECLOSURE. (a) This section applies to a holder of a debt under a deed of trust who accepts from the debtor a deed conveying real property subject to the deed of trust in satisfaction of the debt.

(b) The holder of a debt may void a deed conveying real property in satisfaction of the debt before the fourth anniversary of the date the deed is executed and foreclosed under the original deed of trust if:

(1) the debtor fails to disclose to the holder of the debt a lien or other encumbrance on the property before executing the deed conveying the property to the holder of the debt in satisfaction of the debt; and

(2) the holder of the debt has no personal knowledge of the undisclosed lien or encumbrance on the property.

(c) A third party may conclusively rely upon the affidavit of the holder of a debt stating that the holder has voided the deed as provided in this section.

(d) If the holder elects to void a deed in lieu of foreclosure as provided in this section, the priority of its deed of trust shall not be affected or impaired by the execution of the deed in lieu of foreclosure.

(e) If a holder accepts a deed in lieu of foreclosure, the holder may foreclose its deed of trust as provided in said deed of trust without electing to void the deed. The priority of such deed of trust shall not be affected or impaired by the deed in lieu of foreclosure.

Added by Acts 1995, 74th Leg., ch. 1020, Sec. 1, eff. Aug. 28, 1995.

Sec. 51.007. TRUSTEE UNDER DEED OF TRUST, CONTRACT LIEN OR SECURITY INSTRUMENT. (a) The trustee named in a suit or proceeding may plead in the answer that the trustee is not a necessary party by a verified denial stating the basis for the trustee's reasonable belief that the trustee was named as a party solely in the capacity as a trustee under a deed of trust, contract lien, or security instrument.

(b) Within 30 days after the filing of the trustee's verified denial, a verified response is due from all parties to the suit or proceeding setting forth all matters, whether in law or fact, that rebut the trustee's verified denial.

(c) If a party has no objection or fails to file a timely verified response to the trustee's verified denial, the trustee shall be dismissed from the suit or proceeding without prejudice.

(d) If a respondent files a timely verified response to the trustee's verified denial, the matter shall be set for hearing. The court shall dismiss the trustee from the suit or proceeding without prejudice if the court determines that the trustee is not a necessary party.

(e) A dismissal of the trustee pursuant to Subsections (c) and (d) shall not prejudice a party's right to seek injunctive relief to prevent the trustee from proceeding with a foreclosure sale.

(f) A trustee shall not be liable for any good faith error resulting from reliance on any information in law or fact provided by the mortgagor or mortgagee or their respective attorney, agent, or representative or other third party.

Added by Acts 1999, 76th Leg., ch. 1304, Sec. 1, eff. Sept. 1, 1999.

Sec. 51.0074. DUTIES OF TRUSTEE. (a) One or more persons may be authorized to exercise the power of sale under a security instrument.

(b) A trustee may not be:

(1) assigned a duty under a security instrument other than to exercise the power of sale in accordance with the terms of the security instrument; or

(2) held to the obligations of a fiduciary of the mortgagor or mortgagee.

Added by Acts 2007, 80th Leg., R.S., Ch. 903 (H.B. 2738), Sec. 3, eff.

June 15, 2007.

Sec. 51.0075. AUTHORITY OF TRUSTEE OR SUBSTITUTE TRUSTEE. (a) A trustee or substitute trustee may set reasonable conditions for conducting the public sale if the conditions are announced before bidding is opened for the first sale of the day held by the trustee or substitute trustee.

(b) A trustee or substitute trustee is not a debt collector.

(c) Notwithstanding any agreement to the contrary, a mortgagee may appoint or may authorize a mortgage servicer to appoint a substitute trustee or substitute trustees to succeed to all title, powers, and duties of the original trustee. A mortgagee or mortgage servicer may make an appointment or authorization under this subsection by power of attorney, corporate resolution, or other written instrument.

(d) A mortgage servicer may authorize an attorney to appoint a substitute trustee or substitute trustees on behalf of a mortgagee under Subsection (c).

(e) The name and a street address for a trustee or substitute trustees shall be disclosed on the notice required by Section 51.002(b).

(f) The purchase price in a sale held by a trustee or substitute trustee under this section is due and payable without delay on acceptance of the bid or within such reasonable time as may be agreed upon by the purchaser and the trustee or substitute trustee if the purchaser makes such request for additional time to deliver the purchase price. The trustee or substitute trustee shall disburse the proceeds of the sale as provided by law.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 1231 (H.B. 1234), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 903 (H.B. 2738), Sec. 4, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 323 (H.B. 655), Sec. 1, eff. September 1, 2009.

Sec. 51.0076. EFFECTIVE DATE OF APPOINTMENT. The appointment or authorization of a trustee or substitute trustee made in a notice of sale is effective as of the date of the notice if the notice:

(1) complies with Sections 51.002 and 51.0075(e);

(2) is signed by an attorney or agent of the mortgagee or mortgage servicer; and

(3) contains a statement in all capital letters, boldface type, to read as follows:

THIS INSTRUMENT APPOINTS THE SUBSTITUTE TRUSTEE(S) IDENTIFIED TO SELL THE PROPERTY DESCRIBED IN THE SECURITY INSTRUMENT IDENTIFIED IN THIS NOTICE OF SALE THE PERSON SIGNING THIS NOTICE IS THE ATTORNEY OR AUTHORIZED AGENT OF THE MORTGAGEE OR MORTGAGE SERVICER.

Added by Acts 2015, 84th Leg., R.S., Ch. 653 (H.B. 2063), Sec. 2, eff. September 1, 2015.

Sec. 51.008. CERTAIN LIENS ON REAL PROPERTY. (a) A lien on real property created under this code or another law of this state in favor of a governmental entity must be recorded as provided by Chapters 11 and 12 in the real property records of the county in which the property or a portion of the property is located unless:

(1) the lien is imposed as a result of failure to pay:

(A) ad valorem taxes; or

(B) a penalty or interest owed in connection with those taxes; or

(2) the law establishing the lien expressly states that recording the lien is not required.

(b) Any notice of the lien required by law must contain a legal description of the property.

(c) This section does not apply to:

(1) a lien created under Section 89.083, Natural Resources Code;

(2) a state tax lien under Chapter 113, Tax Code; or

(3) a lien established under Chapter 61 or 213, Labor Code.

Added by Acts 2001, 77th Leg., ch. 827, Sec. 1, eff. Sept. 1, 2001.

Sec. 51.009. FORECLOSED PROPERTY SOLD "AS IS". A purchaser at

a sale of real property under Section 51.002:

(1) acquires the foreclosed property "as is" without any expressed or implied warranties, except as to warranties of title, and at the purchaser's own risk; and

(2) is not a consumer.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.

Sec. 51.015. SALE OF CERTAIN PROPERTY OWNED BY MEMBER OF THE MILITARY. (a) In this section:

(1) "Active duty military service" means:

(A) service as a member of the armed forces of the United States; and

(B) with respect to a member of the Texas National Guard or the National Guard of another state or a member of a reserve component of the armed forces of the United States, active duty under an order of the president of the United States.

(1-a) "Assessment" and "assessments" have the meanings assigned by Sections 82.113(a) and 209.002, as applicable.

(2) "Dwelling" means a residential structure or manufactured home that contains one to four family housing units.

(3) "Military servicemember" means:

(A) a member of the armed forces of the United States;

(B) a member of the Texas National Guard or the National Guard of another state serving on active duty under an order of the president of the United States; or

(C) a member of a reserve component of the armed forces of the United States who is on active duty under an order of the president of the United States.

(4) "Person" has the meaning assigned by Section 311.005, Government Code.

(b) This section applies only to an obligation:

(1) that is secured by a mortgage, deed of trust, or other contract lien, including a lien securing payment of an assessment or assessments, as applicable, on real property or personal property that is a dwelling owned by a military servicemember;

(2) that originates before the date on which the servicemember's active duty military service commences; and

(3) for which the servicemember is still obligated.

(c) In an action filed during a military servicemember's period of active duty military service or during the nine months after the date on which that service period concludes to foreclose a lien or otherwise enforce an obligation described by Subsection (b), the court may after a hearing and on the court's own motion, and shall on the application by a servicemember whose ability to comply with the obligations of the contract secured by the lien is materially affected by the servicemember's military service:

(1) stay the proceedings for a period of time as justice and equity require; or

(2) adjust the obligations of the contract secured by the lien to preserve the interests of all parties.

(d) A sale, foreclosure, or seizure of property under a mortgage, deed of trust, or other contract lien described by Subsection (b) may not be conducted during the military servicemember's period of active duty military service or during the nine months after the date on which that service period concludes unless the sale, foreclosure, or seizure is conducted under:

(1) a court order issued before the sale, foreclosure, or seizure; or

(2) an agreement that complies with Subsection (e).

(e) A military servicemember may waive the servicemember's rights under this section only as provided by this subsection. The waiver must be:

(1) in writing in at least 12-point type;

(2) executed as an instrument separate from the obligation to which the waiver applies; and

(3) made under a written agreement:

(A) executed during or after the servicemember's period of active duty military service; and

(B) specifying the legal instrument to which the waiver applies and, if the servicemember is not a party to the instrument, the servicemember concerned.

(f) A person commits an offense if the person knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by Subsection (d). An offense under this subsection is a Class A misdemeanor.

(g) On application to a court, a dependent of a military servicemember is entitled to the protections of this section if the dependent's ability to comply with an obligation that is secured by a

mortgage, deed of trust, or other contract lien on real property or personal property that is a dwelling is materially affected by the servicemember's military service.

(h) A court that issues a stay or takes any other action under this section regarding the enforcement of an obligation that is subject to this section may grant a similar stay or take similar action with respect to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation.

(i) If a judgment or decree is vacated or set aside wholly or partly under this section, the court may also set aside or vacate, as applicable, the judgment or decree with respect to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation that is subject to the judgment or decree.

(j) This section does not prevent a waiver in writing by a surety, guarantor, endorser, accommodation maker, comaker, or other person, whether primarily or secondarily liable on an obligation, of the protections provided under Subsections (h) and (i). A waiver described by this subsection is effective only if it is executed as an instrument separate from the obligation with respect to which it applies. If a waiver under this subsection is executed by an individual who after the execution of the waiver enters active duty military service, or by a dependent of an individual who after the execution of the waiver enters active duty military service, the waiver is not valid after the beginning of the period of the active duty military service unless the waiver was executed by the individual or dependent during the applicable period described by 50 U.S.C. App. Section 516, as that section existed on January 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 992 (H.B. 3857), Sec. 1, eff. June 19, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 592 (S.B. 101), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 592 (S.B. 101), Sec. 3, eff. September 1, 2011.

Sec. 51.016. RESCISSION OF NONJUDICIAL FORECLOSURE SALES. (a)

This section applies only to a nonjudicial foreclosure sale of residential real property conducted under Section 51.002. In this subsection, "residential real property" means:

(1) a single family home, duplex, triplex, or quadraplex; or

(2) a unit in a multiunit residential structure in which title to an individual unit is transferred to the owner of the unit under a condominium or cooperative system.

(b) Not later than the 15th calendar day after the date of a foreclosure sale, a mortgagee, trustee, or substitute trustee may rescind the sale under this section if:

(1) the statutory requirements for the sale were not satisfied;

(2) the default leading to the sale was cured before the sale;

(3) a receivership or dependent probate administration involving the property was pending at the time of sale;

(4) a condition specified in the conditions of sale prescribed by the trustee or substitute trustee before the sale and made available in writing to prospective bidders at the sale was not met;

(5) the mortgagee or mortgage servicer and the debtor agreed before the sale to cancel the sale based on an enforceable written agreement by the debtor to cure the default; or

(6) at the time of the sale, a court-ordered or automatic stay of the sale imposed in a bankruptcy case filed by a person with an interest in the property was in effect.

(c) On or before the 15th calendar day after the date of the sale, the party rescinding the sale shall:

(1) serve a written notice of rescission that describes the reason for the rescission and includes recording information for any affected trustee's or substitute trustee's deed that was recorded on:

(A) the purchaser, if the mortgagee is not the purchaser; and

(B) each debtor who, according to the records of the mortgage servicer of the debt, is obligated to pay the debt; and

(2) file each notice for recording in the real property records of the county in which all or a part of the property is located.

(d) A notice required by Subsection (c) must be served by

certified mail. Service of the notice is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the purchaser or debtor, as applicable, at the purchaser's or debtor's last known address, as applicable. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

(e) Not later than the fifth calendar day after the date a foreclosure sale is rescinded under this section, the mortgagee shall return to the purchaser by certified mail, electronic or wire transfer, or courier service with delivery tracking the amount of the bid paid by the purchaser for the property at the sale. The debtor shall return to the trustee the amount of any excess proceeds received by the debtor from the sale. The return of the bid amount is considered made on the date:

(1) the bid amount is deposited postage prepaid in the United States mail or with the courier service addressed to the purchaser at the purchaser's last known address; or

(2) the electronic or wire transfer is ordered.

(f) The rescinding mortgagee, trustee, or substitute trustee shall cause to be filed for recording in the real property records of the county where the notice required under Subsection (c) was recorded an affidavit stating the date the bid amount was returned together with the certified mail, electronic or wire transfer, or courier service delivery tracking information.

(g) An affidavit executed and filed in accordance with Subsection (f) is prima facie evidence of the return of the bid amount and of the authority of the maker of the affidavit. A bona fide purchaser, lender, or other person acquiring an interest in the property or an insurer of title is entitled to rely conclusively on the record of the filed affidavit and notice, and any subsequent purchaser in good faith and for value is entitled to bona fide purchaser protection.

(h) The rescission of a foreclosure sale under this section restores the mortgagee and the debtor to their respective title, rights, and obligations under any instrument relating to the foreclosed property that existed immediately prior to the sale.

(i) A rescission of a foreclosure sale under this section is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless notice of the rescission has been acknowledged, sworn to, or proved and filed for recording as required

by law. A rescission of a foreclosure sale under this section evidenced by an unrecorded instrument is binding on a party to the instrument, on the party's heirs, and on a subsequent purchaser who does not pay a valuable consideration or who has notice of the instrument.

(j) No action challenging the effectiveness of a rescission under this section may be commenced unless the action is filed on or before the 30th calendar day after the date the notices of rescission required by Subsection (c) are filed for recording. A lis pendens notice based on the rescission not recorded within that period has no effect. This subsection does not affect the limitations period for an action claiming damages resulting from the rescission.

(k) If the foreclosure sale is rescinded under this section for a reason listed in Subsection (b), other than a stay described by Subsection (b)(6), the court in a civil action filed by the purchaser challenging the effectiveness of the rescission or claiming damages resulting from the rescission may only award as damages to the purchaser the amount of the bid paid for the property by the purchaser at the sale that has not been refunded to the purchaser, plus interest on that amount at the rate of 10 percent per year. Notwithstanding any other law, the court may not order specific performance of the sale as a remedy for the purchaser. Interest awarded under this subsection ceases to accrue on the fourth day after the date the mortgagee deposits the amount of the damages awarded in the United States mail or with a courier for delivery to the purchaser.

(l) If a foreclosure sale is rescinded under this section for a reason provided by Subsection (b)(6), the court in a civil action filed by the purchaser challenging the effectiveness of the rescission or claiming damages resulting from the rescission may only award as damages to the purchaser the amount of the bid paid for the property by the purchaser at the sale that has not been refunded to the purchaser.

(m) Nothing in this section prohibits the rescission of a sale by agreement of the affected parties on other terms or a suit to rescind a sale not rescinded under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 551 (H.B. 2066), Sec. 1, eff. September 1, 2015.

CHAPTER 52. JUDGMENT LIEN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 52.001. ESTABLISHMENT OF LIEN. Except as provided by Section 52.0011 or 52.0012, a first or subsequent abstract of judgment, when it is recorded and indexed in accordance with this chapter, if the judgment is not then dormant, constitutes a lien on and attaches to any real property of the defendant, other than real property exempt from seizure or forced sale under Chapter 41, the Texas Constitution, or any other law, that is located in the county in which the abstract is recorded and indexed, including real property acquired after such recording and indexing.

Acts 1983, 68th Leg., p. 3526, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1178, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 48, Sec. 6, eff. Sept. 1, 1993. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 374 (S.B. 512), Sec. 1, eff. September 1, 2007.

Sec. 52.0011. ESTABLISHMENT OF LIEN PENDING APPEAL OF JUDGMENT. (a) A first or subsequent abstract of a judgment rendered by a court against a defendant, when it is recorded and indexed under this chapter, does not constitute a lien on the real property of the defendant if:

(1) the defendant has posted security as provided by law or is excused by law from posting security; and

(2) the court finds that the creation of the lien would not substantially increase the degree to which a judgment creditor's recovery under the judgment would be secured when balanced against the costs to the defendant after the exhaustion of all appellate remedies. A certified copy of the finding of the court must be recorded in the real property records in each county in which the abstract of judgment or a certified copy of the judgment is filed in the abstract of judgment records.

(b) The court may withdraw its finding under Subsection (a)(2) at any time the court determines, from evidence presented to it, that the finding should be withdrawn. The lien exists on withdrawal of the finding and on the filing of a certified copy of the withdrawal of the finding of the court in the real property records in each

county in which the abstract of judgment or a certified copy of the judgment is filed in the abstract of judgment records.

Added by Acts 1989, 71st Leg., ch. 1178, Sec. 3, eff. Sept. 1, 1989.

Sec. 52.0012. RELEASE OF RECORD OF LIEN ON HOMESTEAD PROPERTY. (a) In this section:

(1) "Homestead" has the meaning assigned by Section 41.002.

(2) "Judgment debtor" and "judgment creditor" have the meanings assigned by Section 31.008(h), Civil Practice and Remedies Code.

(b) A judgment debtor may, at any time, file an affidavit in the real property records of the county in which the judgment debtor's homestead is located that substantially complies with Subsection (f).

(c) Subject to Subsection (d) and except as provided by Subsection (e), an affidavit filed under Subsection (b) serves as a release of record of a judgment lien established under this chapter.

(d) A bona fide purchaser or a mortgagee for value or a successor or assign of a bona fide purchaser or mortgagee for value may rely conclusively on an affidavit filed under Subsection (b) if included with the affidavit is evidence that:

(1) the judgment debtor sent a letter and a copy of the affidavit, without attachments and before execution of the affidavit, notifying the judgment creditor of the affidavit and the judgment debtor's intent to file the affidavit; and

(2) the letter and the affidavit were sent by registered or certified mail, return receipt requested, 30 or more days before the affidavit was filed to:

(A) the judgment creditor's last known address;

(B) the address appearing in the judgment creditor's pleadings in the action in which the judgment was rendered or another court record, if that address is different from the judgment creditor's last known address;

(C) the address of the judgment creditor's last known attorney as shown in those pleadings or another court record; and

(D) the address of the judgment creditor's last known attorney as shown in the records of the State Bar of Texas, if that address is different from the address of the attorney as shown in

those pleadings or another court record.

(e) An affidavit filed under Subsection (b) does not serve as release of record of a judgment lien established under this chapter with respect to a purchaser or mortgagee of real property that acquires the purchaser's or mortgagee's interest from the judgment debtor after the judgment creditor files a contradicting affidavit in the real property records of the county in which the real property is located asserting that:

(1) the affidavit filed by the judgment debtor under Subsection (b) is untrue; or

(2) another reason exists as to why the judgment lien attaches to the judgment debtor's property.

(f) An affidavit filed under Subsection (b) must be in substantially the following form:

HOMESTEAD AFFIDAVIT AS RELEASE OF JUDGMENT LIEN

Before me, the undersigned authority, on this day personally appeared _____ ("Affiant(s)") (insert name of one or more affiants) who, being first duly sworn, upon oath states:

(1) My/our name is/are _____ (insert name of Affiant(s)). I/we own the following described land ("Land"):

(describe the property claimed as homestead)

(2) This affidavit is made for the purpose of effecting a release of that judgment lien recorded in _____ (refer to recording information of judgment lien) ("Judgment Lien") as to the Land.

(3) The Land includes as its purpose use for a home for Affiant(s) and is the homestead of Affiant(s), as homestead is defined in Section 41.002, Property Code. The Land does not exceed:

(A) 10 acres of land, if used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business; or

(B) 200 acres for a family or 100 acres for a single, adult person not otherwise entitled to a homestead, if used for the purposes of a rural home.

(4) Attached to this affidavit is evidence that:

(A) Affiant(s) sent a letter and a copy of this affidavit, without attachments and before execution of the affidavit, notifying the judgment creditor in the Judgment Lien of this affidavit and the Affiant(s)' intent to file for record this affidavit; and

(B) the letter and this affidavit were sent by registered or certified mail, return receipt requested, 30 or more days before this affidavit was filed to:

(i) the judgment creditor's last known address;

(ii) the address appearing in the judgment creditor's pleadings in the action in which the judgment was rendered or another court record, if that address is different from the judgment creditor's last known address;

(iii) the address of the judgment creditor's last known attorney as shown in those pleadings or another court record; and

(iv) the address of the judgment creditor's last known attorney as shown in the records of the State Bar of Texas, if that address is different from the address of the attorney as shown in those pleadings or another court record.

(5) This affidavit serves as a release of the Judgment Lien as to the Land in accordance with Section 52.0012, Property Code.

Signed on this _____ day of _____, _____.

_____

_____

(Signature of Affiant(s))

State of _____

County of _____

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, 20___.

My commission expires:

_____

_____

Notary Public, State of Texas

Notary's printed name:

_____

Added by Acts 2007, 80th Leg., R.S., Ch. 374 (S.B. 512), Sec. 2, eff. September 1, 2007.

Sec. 52.002. ISSUANCE OF ABSTRACT. (a) On application of a person in whose favor a judgment is rendered or on application of that person's agent, attorney, or assignee, the judge or justice of the peace who rendered the judgment or the clerk of the court in

which the judgment is rendered shall prepare, certify, and deliver to the applicant an abstract of the judgment. The applicant for the abstract must pay the fee authorized by law for providing the abstract.

(b) The attorney of a person in whose favor a judgment is rendered in a small claims court or a justice court or a person in whose favor a judgment is rendered in a court other than a small claims court or a justice court or that person's agent, attorney, or assignee may prepare the abstract of judgment. An abstract of judgment prepared under this subsection must be verified by the person preparing the abstract.

Acts 1983, 68th Leg., p. 3527, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 663, Sec. 2, eff. Sept. 1, 1987; Acts 1999, 76th Leg., ch. 176, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 668, Sec. 2, eff. Sept. 1, 2001.

Sec. 52.003. CONTENTS OF ABSTRACT. (a) An abstract of a judgment must show:

(1) the names of the plaintiff and defendant;

(2) the birthdate of the defendant, if available to the clerk or justice;

(3) the last three numbers of the driver's license of the defendant, if available;

(4) the last three numbers of the social security number of the defendant, if available;

(5) the number of the suit in which the judgment was rendered;

(6) the defendant's address, or if the address is not shown in the suit, the nature of citation and the date and place of service of citation;

(7) the date on which the judgment was rendered;

(8) the amount for which the judgment was rendered and the balance due;

(9) the amount of the balance due, if any, for child support arrearage; and

(10) the rate of interest specified in the judgment.

(b) An abstract of a judgment may show a mailing address for each plaintiff or judgment creditor.

Acts 1983, 68th Leg., p. 3527, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 4.08, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 134, Sec. 2, eff. May 12, 1993.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 143 (S.B. 699), Sec. 2, eff. September 1, 2007.

Sec. 52.004. RECORDING AND INDEXING OF ABSTRACT. (a) The county clerk shall immediately record in the county real property records each properly authenticated abstract of judgment that is presented for recording. The clerk shall note in the records the date and hour an abstract of judgment is received.

(b) At the same time an abstract is recorded, the county clerk shall enter the abstract on the alphabetical index to the real property records, showing:

(1) the name of each plaintiff in the judgment;

(2) the name of each defendant in the judgment; and

(3) the volume and page or instrument number in the records in which the abstract is recorded.

Acts 1983, 68th Leg., p. 3527, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 2001, 77th Leg., ch. 668, Sec. 2, eff. Sept. 1, 2001.

Sec. 52.0041. ADDRESS REQUIREMENT FOR RECORDING ABSTRACT. (a) A judgment abstracted after September 1, 1993, may not be recorded unless:

(1) a mailing address for each plaintiff or judgment creditor appears on the abstract of judgment; or

(2) a penalty filing fee equal to the greater of $25 or twice the statutory recording fee for the abstract is paid.

(b) The validity of an abstracted judgment as between the parties is not affected by a failure to include an address for each plaintiff or judgment creditor in the abstracted judgment.

(c) Payment of a filing fee and acceptance of the abstract of judgment by a county clerk for recording creates a conclusive presumption that the requirements of this section have been met.

Added by Acts 1993, 73rd Leg., ch. 134, Sec. 1, eff. May 12, 1993.

Sec. 52.005. SATISFACTION OF JUDGMENT. Satisfaction of a judgment in whole or in part may be shown by recordation of:

(1) a return on an execution issued on the judgment, or a copy of the return, certified by the officer making the return and showing:

(A) the names of the parties to the judgment;

(B) the number and style of the suit;

(C) the court in which the judgment was rendered;

(D) the date and amount of the judgment; and

(E) the dates of issuance and return of the execution; or

(2) a receipt, acknowledgement, or release that is signed by the party entitled to receive payment of the judgment or by that person's agent or attorney of record and that is acknowledged or proven for record in the manner required for deeds.

Acts 1983, 68th Leg., p. 3528, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 2001, 77th Leg., ch. 668, Sec. 2, eff. Sept. 1, 2001.

Sec. 52.006. DURATION OF LIEN. (a) Except as provided by Subsection (b), a judgment lien continues for 10 years following the date of recording and indexing the abstract, except that if the judgment becomes dormant during that period the lien ceases to exist.

(b) Notwithstanding Section 34.001, Civil Practice and Remedies Code, a judgment in favor of the state or a state agency, as that term is defined by Section 403.055, Government Code, does not become dormant. A properly filed abstract of the judgment continues to constitute a lien under Section 52.001 until the earlier of the 20th anniversary of the date the abstract is recorded and indexed or the date the judgment is satisfied or the lien is released. The judgment lien may be renewed for one additional 20-year period by filing, before the expiration of the initial 20-year period, a renewed abstract of judgment in the same manner as the original abstract of judgment is filed. The renewed judgment lien relates back to the date the original abstract of judgment was filed.

Acts 1983, 68th Leg., p. 3528, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 11 (S.B. 300), Sec. 1, eff. April 23, 2007.

Sec. 52.007. FEDERAL COURT JUDGMENT. An abstract of a judgment rendered in this state by a federal court may be recorded and indexed under this chapter on the certificate of the clerk of the court.

Acts 1983, 68th Leg., p. 3528, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. CANCELLATION OF JUDGMENTS AND JUDGMENT LIENS AGAINST BANKRUPTS--ABSTRACT RECORDED BEFORE SEPTEMBER 1, 1993

Sec. 52.021. DISCHARGE AND CANCELLATION. (a) In accordance with this subchapter, a judgment and judgment lien may be discharged and canceled if the person against whom the judgment was rendered is discharged from his debts under federal bankruptcy law.

(b) This subchapter applies to judgments against persons whose debts are discharged in bankruptcy and for which the abstracts of judgment are recorded before September 1, 1993, as provided by Subchapter A, regardless of the fact that the discharge in bankruptcy occurred before this law took effect.

Acts 1983, 68th Leg., p. 3529, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 313, Sec. 2, eff. Sept. 1, 1993.

Sec. 52.022. APPLICATION FOR COURT ORDER. (a) The person who has been discharged from his debts, that person's receiver or trustee, or any other interested person may apply, on proof of the discharge, to the court in which the judgment was rendered for an order discharging and canceling the judgment and judgment lien.

(b) A person may not apply for the order before a year has elapsed since the bankruptcy discharge.

Acts 1983, 68th Leg., p. 3529, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 52.023. NOTICE OF APPLICATION. (a) Notice of the application for the order and copies of the papers on which application is made must be served on the judgment creditor or his

attorney of record in the action in which the judgment was rendered.

(b) If the residence or place of business of the judgment creditor or his attorney is known, notice must be served in the manner prescribed for service of notice in an action.

(c) As an alternative to service under Subsection (b), the court may order that notice of the application be published in a newspaper designated in the order once a week for not more than three consecutive weeks if the applicant proves by affidavit that:

(1) the address of neither the judgment creditor nor his attorney is known and the address of neither can be ascertained by due diligence; or

(2) the judgment creditor is not a resident of this state and his attorney is dead, removed from the state, or unknown.

Acts 1983, 68th Leg., p. 3529, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 52.024. COURT ORDER. (a) The court shall conduct a hearing on the application and shall enter an order of discharge and cancellation of the judgment and any abstracts of the judgment if the debtor or bankrupt has been discharged in bankruptcy from the payment of the obligation or debt represented by the judgment.

(b) In each county in which the court's order is recorded in the judgment lien records, the order constitutes a release, discharge, and cancellation of the judgment and of any unsatisfied judgment lien represented by an abstract that is of record in the county on the date of the order or is recorded in the county on or after the date of the order.

Acts 1983, 68th Leg., p. 3530, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 52.025. EFFECT ON LIEN OF DISCHARGE OF DEBT IN BANKRUPTCY. (a) A judgment lien is not affected by the order of discharge and cancellation and may be enforced, if the lien is against real property owned by the bankrupt or debtor before the debtor was adjudged bankrupt or a petition for debtor relief was filed under federal bankruptcy law, and:

(1) the debt or obligation evidenced by the judgment is not discharged in bankruptcy; or

(2) the property is nonexempt and is abandoned during the

course of the proceeding.

(b) Except as provided by Subsection (a), the judgment is of no force or validity and may not be a lien on real property acquired by the bankrupt or debtor after the discharge in bankruptcy.

Acts 1983, 68th Leg., p. 3530, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. CANCELLATION OF JUDGMENTS AND JUDGMENT LIENS AGAINST DEBTORS--ABSTRACT RECORDED ON OR AFTER SEPTEMBER 1, 1993

Sec. 52.041. APPLICATION OF SUBCHAPTER. This subchapter applies to a judgment and judgment lien for which an abstract of judgment or judgment lien is recorded on or after September 1, 1993.

Added by Acts 1993, 73rd Leg., ch. 313, Sec. 3, eff. Sept. 1, 1993.

Sec. 52.042. DISCHARGE AND CANCELLATION. (a) A judgment is discharged and any abstract of judgment or judgment lien is canceled and released without further action in any court and may not be enforced if:

(1) the lien is against real property owned by the debtor before a petition for debtor relief was filed under federal bankruptcy law; and

(2) the debt or obligation evidenced by the judgment is discharged in the bankruptcy.

(b) A judgment evidencing a debt or obligation discharged in bankruptcy does not have force or validity and may not be a lien on real property acquired by the debtor after the petition for debtor relief was filed.

Added by Acts 1993, 73rd Leg., ch. 313, Sec. 3, eff. Sept. 1, 1993.

Sec. 52.043. EXCEPTIONS TO DISCHARGE AND CANCELLATION. A judgment lien is not affected by this subchapter and may be enforced if the lien is against real property owned by the debtor before a petition for debtor relief was filed under federal bankruptcy law and:

(1) the debt or obligation evidenced by the judgment is not discharged in bankruptcy; or

(2) the property is not exempted in the bankruptcy and is abandoned during the bankruptcy.

Added by Acts 1993, 73rd Leg., ch. 313, Sec. 3, eff. Sept. 1, 1993.

CHAPTER 53. MECHANIC'S, CONTRACTOR'S, OR MATERIALMAN'S LIEN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. DEFINITIONS. In this chapter:

(1) "Contract price" means the cost to the owner for any part of construction or repair performed under an original contract.

(2) "Improvement" includes:

(A) abutting sidewalks and streets and utilities in or on those sidewalks and streets;

(B) clearing, grubbing, draining, or fencing of land;

(C) wells, cisterns, tanks, reservoirs, or artificial lakes or pools made for supplying or storing water;

(D) pumps, siphons, and windmills or other machinery or apparatuses used for raising water for stock, domestic use, or irrigation; and

(E) planting orchard trees, grubbing out orchards and replacing trees, and pruning of orchard trees.

(3) "Labor" means labor used in the direct prosecution of the work.

(4) "Material" means all or part of:

(A) the material, machinery, fixtures, or tools incorporated into the work, consumed in the direct prosecution of the work, or ordered and delivered for incorporation or consumption;

(B) rent at a reasonable rate and actual running repairs at a reasonable cost for construction equipment used or reasonably required and delivered for use in the direct prosecution of the work at the site of the construction or repair; or

(C) power, water, fuel, and lubricants consumed or ordered and delivered for consumption in the direct prosecution of the work.

(5) "Mechanic's lien" means the lien provided by this chapter.

(6) "Original contract" means an agreement to which an owner is a party either directly or by implication of law.

(7) "Original contractor" means a person contracting with

an owner either directly or through the owner's agent.

(8) "Residence" means a single-family house, duplex, triplex, or quadruplex or a unit in a multiunit structure used for residential purposes that is:

(A) owned by one or more adult persons; and

(B) used or intended to be used as a dwelling by one of the owners.

(9) "Residential construction contract" means a contract between an owner and a contractor in which the contractor agrees to construct or repair the owner's residence, including improvements appurtenant to the residence.

(10) "Residential construction project" means a project for the construction or repair of a new or existing residence, including improvements appurtenant to the residence, as provided by a residential construction contract.

(11) "Retainage" means an amount representing part of a contract payment that is not required to be paid to the claimant within the month following the month in which labor is performed, material is furnished, or specially fabricated material is delivered. The term does not include retainage under Subchapter E.

(12) "Specially fabricated material" means material fabricated for use as a component of the construction or repair so as to be reasonably unsuitable for use elsewhere.

(13) "Subcontractor" means a person who has furnished labor or materials to fulfill an obligation to an original contractor or to a subcontractor to perform all or part of the work required by an original contract.

(14) "Work" means any part of construction or repair performed under an original contract.

(15) "Completion" of an original contract means the actual completion of the work, including any extras or change orders reasonably required or contemplated under the original contract, other than warranty work or replacement or repair of the work performed under the contract.

Acts 1983, 68th Leg., p. 3533, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 1, eff. Sept. 1, 1999.

Sec. 53.002. MORE THAN ONE ORIGINAL CONTRACTOR. On any work there may be more than one original contractor for purposes of this chapter.

Acts 1983, 68th Leg., p. 3535, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.003. NOTICES. (a) This section applies to notices required by Subchapters B through G and K.

(b) Any notice or other written communication may be delivered in person to the party entitled to the notice or to that party's agent, regardless of the manner prescribed by law.

(c) If notice is sent by registered or certified mail, deposit or mailing of the notice in the United States mail in the form required constitutes compliance with the notice requirement. This subsection does not apply if the law requires receipt of the notice by the person to whom it is directed.

(d) If a written notice is received by the person entitled to receive it, the method by which the notice was delivered is immaterial.

Acts 1983, 68th Leg., p. 3535, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 3, eff. Sept. 1, 1997.

SUBCHAPTER B. PERSONS ENTITLED TO LIEN; SUBJECT PROPERTY

Sec. 53.021. PERSONS ENTITLED TO LIEN. (a) A person has a lien if:

(1) the person labors, specially fabricates material, or furnishes labor or materials for construction or repair in this state of:

(A) a house, building, or improvement;

(B) a levee or embankment to be erected for the reclamation of overflow land along a river or creek; or

(C) a railroad; and

(2) the person labors, specially fabricates the material, or furnishes the labor or materials under or by virtue of a contract with the owner or the owner's agent, trustee, receiver, contractor, or subcontractor.

(b) A person who specially fabricates material has a lien even if the material is not delivered.

(c) An architect, engineer, or surveyor who prepares a plan or plat under or by virtue of a written contract with the owner or the owner's agent, trustee, or receiver in connection with the actual or proposed design, construction, or repair of improvements on real property or the location of the boundaries of real property has a lien on the property.

(d) A person who provides labor, plant material, or other supplies for the installation of landscaping for a house, building, or improvement, including the construction of a retention pond, retaining wall, berm, irrigation system, fountain, or other similar installation, under or by virtue of a written contract with the owner or the owner's agent, contractor, subcontractor, trustee, or receiver has a lien on the property.

(e) A person who performs labor as part of, or who furnishes labor or materials for, the demolition of a structure on real property under or by virtue of a written contract with the owner of the property or the owner's agent, trustee, receiver, contractor, or subcontractor has a lien on the property.

Acts 1983, 68th Leg., p. 3535, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 395, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1138, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 16.01, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 851, Sec. 1, 6, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 896, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 410, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 1, eff. January 1, 2012.

Sec. 53.022. PROPERTY TO WHICH LIEN EXTENDS. (a) The lien extends to the house, building, fixtures, or improvements, the land reclaimed from overflow, or the railroad and all of its properties, and to each lot of land necessarily connected or reclaimed.

(b) The lien does not extend to abutting sidewalks, streets, and utilities that are public property.

(c) A lien against land in a city, town, or village extends to each lot on which the house, building, or improvement is situated or on which the labor was performed.

(d) A lien against land not in a city, town, or village extends to not more than 50 acres on which the house, building, or improvement is situated or on which the labor was performed.

Acts 1983, 68th Leg., p. 3536, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.023. PAYMENT SECURED BY LIEN. The lien secures payment for:

(1) the labor done or material furnished for the construction or repair;

(2) the specially fabricated material, even if the material has not been delivered or incorporated into the construction or repair, less its fair salvage value; or

(3) the preparation of a plan or plat by an architect, engineer, or surveyor in accordance with Section 53.021(c).

Acts 1983, 68th Leg., p. 3536, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 851, Sec. 2, eff. Sept. 1, 1995.

Sec. 53.024. LIMITATION ON SUBCONTRACTOR'S LIEN. The amount of a lien claimed by a subcontractor may not exceed:

(1) an amount equal to the proportion of the total subcontract price that the sum of the labor performed, materials furnished, materials specially fabricated, reasonable overhead costs incurred, and proportionate profit margin bears to the total subcontract price; minus

(2) the sum of previous payments received by the claimant on the subcontract.

Acts 1983, 68th Leg., p. 3536, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.025. LIMITATION ON ORDINARY RETAINAGE LIEN. A lien for retainage is valid only for the amount specified to be retained in the contract, including any amendments to the contract, between the claimant and the original contractor or between the claimant and a subcontractor.

Acts 1983, 68th Leg., p. 3537, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 2, eff. Sept. 1, 1989.

Sec. 53.026. SHAM CONTRACT. (a) A person who labors, specially fabricates materials, or furnishes labor or materials under a direct contractual relationship with another person is considered to be in direct contractual relationship with the owner and has a lien as an original contractor, if:

(1) the owner contracted with the other person for the construction or repair of a house, building, or improvements and the owner can effectively control that person through ownership of voting stock, interlocking directorships, or otherwise;

(2) the owner contracted with the other person for the construction or repair of a house, building, or improvements and that other person can effectively control the owner through ownership of voting stock, interlocking directorships, or otherwise; or

(3) the owner contracted with the other person for the construction or repair of a house, building, or improvements and the contract was made without good faith intention of the parties that the other person was to perform the contract.

(b) In this section, "owner" does not include a person who has or claims a security interest only.

Acts 1983, 68th Leg., p. 3537, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 3, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 4, eff. Sept. 1, 1997.

SUBCHAPTER C. PROCEDURE FOR PERFECTING LIEN

Sec. 53.051. NECESSARY PROCEDURES. To perfect the lien, a person must comply with this subchapter.

Acts 1983, 68th Leg., p. 3538, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.052. FILING OF AFFIDAVIT. (a) Except as provided by Subsection (b), the person claiming the lien must file an affidavit with the county clerk of the county in which the property is located or into which the railroad extends not later than the 15th day of the fourth calendar month after the day on which the indebtedness

accrues.

(b) A person claiming a lien arising from a residential construction project must file an affidavit with the county clerk of the county in which the property is located not later than the 15th day of the third calendar month after the day on which the indebtedness accrues.

(c) The county clerk shall record the affidavit in records kept for that purpose and shall index and cross-index the affidavit in the names of the claimant, the original contractor, and the owner. Failure of the county clerk to properly record or index a filed affidavit does not invalidate the lien.

Acts 1983, 68th Leg., p. 3538, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 4, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 5, eff. Sept. 1, 1997.

Sec. 53.053. ACCRUAL OF INDEBTEDNESS. (a) For purposes of Section 53.052, indebtedness accrues on a contract under which a plan or plat is prepared, labor was performed, materials furnished, or specially fabricated materials are to be furnished in accordance with this section.

(b) Indebtedness to an original contractor accrues:

(1) on the last day of the month in which a written declaration by the original contractor or the owner is received by the other party to the original contract stating that the original contract has been terminated; or

(2) on the last day of the month in which the original contract has been completed, finally settled, or abandoned.

(c) Indebtedness to a subcontractor, or to any person not covered by Subsection (b) or (d), who has furnished labor or material to an original contractor or to another subcontractor accrues on the last day of the last month in which the labor was performed or the material furnished.

(d) Indebtedness for specially fabricated material accrues:

(1) on the last day of the last month in which materials were delivered;

(2) on the last day of the last month in which delivery of the last of the material would normally have been required at the job site; or

(3) on the last day of the month of any material breach or termination of the original contract by the owner or contractor or of the subcontract under which the specially fabricated material was furnished.

(e) A claim for retainage accrues on the earliest of the last day of the month in which all work called for by the contract between the owner and the original contractor has been completed, finally settled, terminated, or abandoned.

Acts 1983, 68th Leg., p. 3539, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 5, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 851, Sec. 3, eff. Sept. 1, 1995. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 1, eff. September 1, 2011.

Sec. 53.054. CONTENTS OF AFFIDAVIT. (a) The affidavit must be signed by the person claiming the lien or by another person on the claimant's behalf and must contain substantially:

(1) a sworn statement of the amount of the claim;

(2) the name and last known address of the owner or reputed owner;

(3) a general statement of the kind of work done and materials furnished by the claimant and, for a claimant other than an original contractor, a statement of each month in which the work was done and materials furnished for which payment is requested;

(4) the name and last known address of the person by whom the claimant was employed or to whom the claimant furnished the materials or labor;

(5) the name and last known address of the original contractor;

(6) a description, legally sufficient for identification, of the property sought to be charged with the lien;

(7) the claimant's name, mailing address, and, if different, physical address; and

(8) for a claimant other than an original contractor, a statement identifying the date each notice of the claim was sent to the owner and the method by which the notice was sent.

(b) The claimant may attach to the affidavit a copy of any

applicable written agreement or contract and a copy of each notice sent to the owner.

(c) The affidavit is not required to set forth individual items of work done or material furnished or specially fabricated. The affidavit may use any abbreviations or symbols customary in the trade.

Acts 1983, 68th Leg., p. 3540, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 6, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 6, eff. Sept. 1, 1997.

Sec. 53.055. NOTICE OF FILED AFFIDAVIT. (a) A person who files an affidavit must send a copy of the affidavit by registered or certified mail to the owner or reputed owner at the owner's last known business or residence address not later than the fifth day after the date the affidavit is filed with the county clerk.

(b) If the person is not an original contractor, the person must also send a copy of the affidavit to the original contractor at the original contractor's last known business or residence address within the same period.

Acts 1983, 68th Leg., p. 3540, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 7, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 48, Sec. 7, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 526, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 2, eff. Sept. 1, 1999.

Sec. 53.056. DERIVATIVE CLAIMANT: NOTICE TO OWNER OR ORIGINAL CONTRACTOR. (a) Except as provided by Subchapter K, a claimant other than an original contractor must give the notice prescribed by this section for the lien to be valid.

(b) If the lien claim arises from a debt incurred by a subcontractor, the claimant must give to the original contractor written notice of the unpaid balance. The claimant must give the notice not later than the 15th day of the second month following each month in which all or part of the claimant's labor was performed or material delivered. The claimant must give the same notice to the owner or reputed owner and the original contractor not later than the 15th day of the third month following each month in which all or part

of the claimant's labor was performed or material or specially fabricated material was delivered.

(c) If the lien claim arises from a debt incurred by the original contractor, the claimant must give notice to the owner or reputed owner, with a copy to the original contractor, in accordance with Subsection (b).

(d) To authorize the owner to withhold funds under Subchapter D, the notice to the owner must state that if the claim remains unpaid, the owner may be personally liable and the owner's property may be subjected to a lien unless:

(1) the owner withholds payments from the contractor for payment of the claim; or

(2) the claim is otherwise paid or settled.

(e) The notice must be sent by registered or certified mail and must be addressed to the owner or reputed owner or the original contractor, as applicable, at his last known business or residence address.

(f) A copy of the statement or billing in the usual and customary form is sufficient as notice under this section.

Acts 1983, 68th Leg., p. 3540, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 8, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 8, eff. Sept. 1, 1997.

Sec. 53.057. DERIVATIVE CLAIMANT: NOTICE FOR CONTRACTUAL RETAINAGE CLAIM. (a) A claimant may give notice under this section instead of or in addition to notice under Section 53.056 or 53.252 if the claimant is to labor, furnish labor or materials, or specially fabricate materials, or has labored, furnished labor or materials, or specially fabricated materials, under an agreement with an original contractor or a subcontractor providing for retainage.

(b) The claimant must give the owner or reputed owner notice of contractual retainage not later than the earlier of:

(1) the 30th day after the date the claimant's agreement providing for retainage is completed, terminated, or abandoned; or

(2) the 30th day after the date the original contract is terminated or abandoned.

(b-1) If an agreement for contractual retainage is with a subcontractor, the claimant must also give the notice of contractual

retainage to the original contractor within the period prescribed by Subsection (b).

(c) The notice must generally state the existence of a requirement for retainage and contain:

(1) the name and address of the claimant; and

(2) if the agreement is with a subcontractor, the name and address of the subcontractor.

(d) The notice must be sent to the last known business or residence address of the owner or reputed owner or the original contractor, as applicable.

(e) If a claimant gives notice under this section and Section 53.055 or, if the claim relates to a residential construction project, under this section and Section 53.252, the claimant is not required to give any other notice as to the retainage.

(f) A claimant has a lien on, and the owner is personally liable to the claimant for, the retained funds under Subchapter E if the claimant:

(1) gives notice in accordance with this section and:

(A) complies with Subchapter E; or

(B) files an affidavit claiming a lien not later than the earliest of:

(i) the date required for filing an affidavit under Section 53.052;

(ii) the 40th day after the date stated in an affidavit of completion as the date of completion of the work under the original contract, if the owner sent the claimant notice of an affidavit of completion in the time and manner required;

(iii) the 40th day after the date of termination or abandonment of the original contract, if the owner sent the claimant a notice of such termination or abandonment in the time and manner required; or

(iv) the 30th day after the date the owner sent to the claimant to the claimant's address provided in the notice for contractual retainage, as required under Subsection (c), a written notice of demand for the claimant to file the affidavit claiming a lien; and

(2) gives the notice of the filed affidavit as required by Section 53.055.

(g) The written demand under Subsection (f)(1)(B)(iv):

(1) must contain the owner's name and address and a

description, legally sufficient for identification, of the real property on which the improvement is located;

(2) must state that the claimant must file the lien affidavit not later than the 30th day after the date the demand is sent; and

(3) is effective only for the amount of contractual retainage earned by the claimant as of the day the demand was sent.

Acts 1983, 68th Leg., p. 3541, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 9, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 9, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 3, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 2, eff. September 1, 2011.

Sec. 53.058. DERIVATIVE CLAIMANT: NOTICE FOR SPECIALLY FABRICATED ITEMS. (a) Except as provided by Subchapter K, a claimant who specially fabricates material must give notice under this section for the lien to be valid.

(b) The claimant must give the owner or reputed owner notice not later than the 15th day of the second month after the month in which the claimant receives and accepts the order for the material. If the indebtedness is incurred by a person other than the original contractor, the claimant must also give notice within that time to the original contractor.

(c) The notice must contain:

(1) a statement that the order has been received and accepted; and

(2) the price of the order.

(d) The notice must be sent by registered or certified mail to the last known business or residence address of the owner or the reputed owner or the original contractor, as applicable.

(e) In addition to notice under this section, the claimant must give notice under Section 53.056 if delivery has been made or if the normal delivery time for the job has passed.

(f) The lien of a claimant who accepts an order but fails to give notice under this section is valid as to delivered items if the claimant has given notice under Section 53.056.

(g) If a retainage agreement consists in whole or part of an obligation to furnish specially fabricated materials and the claimant has given notice under Section 53.057, the claimant is not required to give notice under this section.

Acts 1983, 68th Leg., p. 3542, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 10, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 10, eff. Sept. 1, 1997.

SUBCHAPTER D. FUNDS WITHHELD BY OWNER FOLLOWING NOTICE

Sec. 53.081. AUTHORITY TO WITHHOLD FUNDS FOR BENEFIT OF CLAIMANTS. (a) If an owner receives notice under Section 53.056, 53.057, 53.058, 53.252, or 53.253, the owner may withhold from payments to the original contractor an amount necessary to pay the claim for which he receives notice.

(b) If notice is sent in a form that substantially complies with Section 53.056 or 53.252, the owner may withhold the funds immediately on receipt of the notice.

(c) If notice is sent under Section 53.057, the owner may withhold funds immediately on receipt of a copy of the claimant's affidavit prepared in accordance with Sections 53.052 through 53.055.

(d) If notice is sent under Section 53.058, the owner may withhold funds immediately on receipt of the notices sent under Subsection (e) of that section. If notice is sent as provided by Section 53.253(b), the owner may withhold funds immediately on receipt of the notice sent as required by Section 53.252.

Acts 1983, 68th Leg., p. 3543, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 12, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 11, eff. Sept. 1, 1997.

Sec. 53.082. TIME FOR WHICH FUNDS ARE WITHHELD. Unless payment is made under Section 53.083 or the claim is otherwise settled, discharged, indemnified against under Subchapter H or I, or determined to be invalid by a final judgment of a court, the owner shall retain the funds withheld until:

(1) the time for filing the affidavit of mechanic's lien has passed; or

(2) if a lien affidavit has been filed, until the lien

claim has been satisfied or released.

Acts 1983, 68th Leg., p. 3544, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 13, eff. Sept. 1, 1989.

Sec. 53.083. PAYMENT TO CLAIMANT ON DEMAND. (a) The claimant may make written demand for payment of the claim to an owner authorized to withhold funds under this subchapter. The demand must give notice to the owner that all or part of the claim has accrued under Section 53.053 or is past due according to the agreement between the parties.

(b) The claimant must send a copy of the demand to the original contractor. The original contractor may give the owner written notice that the contractor intends to dispute the claim. The original contractor must give the notice not later than the 30th day after the day he receives the copy of the demand. If the original contractor does not give the owner timely notice, he is considered to have assented to the demand and the owner shall pay the claim.

(c) The claimant's demand may accompany the original notice of nonpayment or of a past-due claim and may be stamped or written in legible form on the face of the notice.

(d) Unless the lien has been secured, the demand may not be made after expiration of the time within which the claimant may secure the lien for the claim.

Acts 1983, 68th Leg., p. 3544, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.084. OWNER'S LIABILITY. (a) Except for the amount required to be retained under Subchapter E, the owner is not liable for any amount paid to the original contractor before the owner is authorized to withhold funds under this subchapter.

(b) If the owner has received the notices required by Subchapter C or K, if the lien has been secured, and if the claim has been reduced to final judgment, the owner is liable and the owner's property is subject to a claim for any money paid to the original contractor after the owner was authorized to withhold funds under this subchapter. The owner is liable for that amount in addition to any amount for which he is liable under Subchapter E.

Acts 1983, 68th Leg., p. 3545, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 12, eff. Sept. 1, 1997.

Sec. 53.085. AFFIDAVIT REQUIRED. (a) Any person who furnishes labor or materials for the construction of improvements on real property shall, if requested and as a condition of payment for such labor or materials, provide to the requesting party, or the party's agent, an affidavit stating that the person has paid each of the person's subcontractors, laborers, or materialmen in full for all labor and materials provided to the person for the construction. In the event, however, that the person has not paid each of the person's subcontractors, laborers, or materialmen in full, the person shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each subcontractor, laborer, or materialman to whom the payment is owed.

(b) The seller of any real property shall, upon request by the purchaser or the purchaser's agent prior to closing of the purchase of the real property, provide to the purchaser or the purchaser's agent, a written affidavit stating that the seller has paid each of the seller's contractors, laborers, or materialmen in full for all labor and materials provided to the seller through the date specified in the affidavit for any construction of improvements on the real property and that the seller is not indebted to any person, firm, or corporation by reason of any such construction through the date specified in the affidavit. In the event that the seller has not paid each of the seller's contractors, laborers, or materialmen in full for labor and material provided through the date specified in the affidavit, the seller shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each contractor, laborer, or materialman to whom the payment is owed.

(c) The affidavit may include:

(1) a waiver or release of lien rights or payment bond claims by the affiant that is conditioned on the receipt of actual payment or collection of funds when payment is made by check or draft, as provided by Subchapter L;

(2) a warranty or representation that certain bills or classes of bills will be paid by the affiant from funds paid in reliance on the affidavit; and

(3) an indemnification by the affiant for any loss or expense resulting from false or incorrect information in the affidavit.

(d) A person, including a seller, commits an offense if the person intentionally, knowingly, or recklessly makes a false or misleading statement in an affidavit under this section. An offense under this section is a misdemeanor. A person adjudged guilty of an offense under this section shall be punished by a fine not to exceed $4,000 or confinement in jail for a term not to exceed one year or both a fine and confinement. A person may not receive community supervision for the offense.

(e) A person signing an affidavit under this section is personally liable for any loss or damage resulting from any false or incorrect information in the affidavit.

Added by Acts 1987, 70th Leg., ch. 578, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 14, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 13, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 2, eff. January 1, 2012.

SUBCHAPTER E. REQUIRED RETAINAGE FOR BENEFIT OF LIEN CLAIMANTS

Sec. 53.101. REQUIRED RETAINAGE. (a) During the progress of work under an original contract for which a mechanic's lien may be claimed and for 30 days after the work is completed, the owner shall retain:

(1) 10 percent of the contract price of the work to the owner; or

(2) 10 percent of the value of the work, measured by the proportion that the work done bears to the work to be done, using the contract price or, if there is no contract price, using the reasonable value of the completed work.

(b) In this section, "owner" includes the owner's agent, trustee, or receiver.

Acts 1983, 68th Leg., p. 3545, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 15, eff. Sept. 1, 1989.

Sec. 53.102. PAYMENT SECURED BY RETAINAGE. The retained funds secure the payment of artisans and mechanics who perform labor or service and the payment of other persons who furnish material, material and labor, or specially fabricated material for any contractor, subcontractor, agent, or receiver in the performance of the work.

Acts 1983, 68th Leg., p. 3545, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.103. LIEN ON RETAINED FUNDS. A claimant has a lien on the retained funds if the claimant:

(1) sends the notices required by this chapter in the time and manner required; and

(2) except as allowed by Section 53.057(f), files an affidavit claiming a lien not later than the 30th day after the earliest of the date:

(A) the work is completed;

(B) the original contract is terminated; or

(C) the original contractor abandons performance under the original contract.

Acts 1983, 68th Leg., p. 3545, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2005, 79th Leg., Ch. 1003 (H.B. 629), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 3, eff. September 1, 2011.

Sec. 53.104. PREFERENCES. (a) Individual artisans and mechanics are entitled to a preference to the retained funds and shall share proportionately to the extent of their claims for wages and fringe benefits earned.

(b) After payment of artisans and mechanics who are entitled to a preference under Subsection (a), other participating claimants share proportionately in the balance of the retained funds.

Acts 1983, 68th Leg., p. 3546, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 16, eff. Sept. 1, 1989.

Sec. 53.105. OWNER'S LIABILITY FOR FAILURE TO RETAIN. (a) If the owner fails or refuses to comply with this subchapter, the claimants complying with Subchapter C or this subchapter have a lien, at least to the extent of the amount that should have been retained from the original contract under which they are claiming, against the house, building, structure, fixture, or improvement and all of its properties and against the lot or lots of land necessarily connected.

(b) The claimants share the lien proportionately in accordance with the preference provided by Section 53.104.

Acts 1983, 68th Leg., p. 3546, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 2, Sec. 13.02, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1138, Sec. 17, eff. Sept. 1, 1989. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 4, eff. September 1, 2011.

Sec. 53.106. AFFIDAVIT OF COMPLETION. (a) An owner may file with the county clerk of the county in which the property is located an affidavit of completion. The affidavit must contain:

(1) the name and address of the owner;

(2) the name and address of the original contractor;

(3) a description, legally sufficient for identification, of the real property on which the improvements are located;

(4) a description of the improvements furnished under the original contract;

(5) a statement that the improvements under the original contract have been completed and the date of completion; and

(6) a conspicuous statement that a claimant may not have a lien on retained funds unless the claimant files an affidavit claiming a lien not later than the 40th day after the date the work under the original contract is completed.

(b) A copy of the affidavit must be sent by certified or registered mail to the original contractor not later than the date the affidavit is filed and to each claimant who sends a notice of lien liability to the owner under Section 53.056, 53.057, 53.058, 53.252, or 53.253 not later than the date the affidavit is filed or

the 10th day after the date the owner receives the notice of lien liability, whichever is later.

(c) A copy of the affidavit must also be sent to each person who furnishes labor or materials for the property and who furnishes the owner with a written request for the copy. The owner must furnish the copy to the person not later than the date the affidavit is filed or the 10th day after the date the request is received, whichever is later.

(d) Except as provided by this subsection, an affidavit filed under this section on or before the 10th day after the date of completion of the improvements is prima facie evidence of the date the work under the original contract is completed for purposes of this subchapter and Section 53.057. If the affidavit is filed after the 10th day after the date of completion, the date of completion for purposes of this subchapter and Section 53.057 is the date the affidavit is filed. This subsection does not apply to a person to whom the affidavit was not sent as required by this section.

(e) Repealed by Acts 1999, 76th Leg., ch. 889, Sec. 12, eff. Sept. 1, 1999.

Added by Acts 1989, 71st Leg., ch. 1138, Sec. 18, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 14, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 12, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 5, eff. September 1, 2011.

Sec. 53.107. NOTICE RELATING TO TERMINATION OF WORK OR ABANDONMENT OF PERFORMANCE BY ORIGINAL CONTRACTOR OR OWNER. (a) Not later than the 10th day after the date an original contract is terminated or the original contractor abandons performance under the original contract, the owner shall give notice to each subcontractor who, before the date of termination or abandonment, has:

(1) given notice to the owner as provided by Section 53.056, 53.057, or 53.058; or

(2) sent to the owner by certified or registered mail a written request for notice of termination or abandonment.

(b) The notice must contain:

(1) the name and address of the owner;

(2) the name and address of the original contractor;

(3) a description, legally sufficient for identification, of the real property on which the improvements are located;

(4) a general description of the improvements agreed to be furnished under the original contract;

(5) a statement that the original contract has been terminated or that performance under the contract has been abandoned;

(6) the date of the termination or abandonment; and

(7) a conspicuous statement that a claimant may not have a lien on the retained funds unless the claimant files an affidavit claiming a lien not later than the 40th day after the date of the termination or abandonment.

(c) A notice sent in compliance with this section on or before the 10th day after the date of termination or abandonment is prima facie evidence of the date the original contract was terminated or work was abandoned for purposes of this subchapter.

(d) If an owner is required to send a notice to a subcontractor under this section and fails to send the notice, the subcontractor is not required to comply with Section 53.057 to claim retainage and may claim a lien by filing a lien affidavit as prescribed by Section 53.052.

(e) This section does not apply to a residential construction project.

Added by Acts 2005, 79th Leg., Ch. 1003 (H.B. 629), Sec. 2, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 6, eff. September 1, 2011.

SUBCHAPTER F. PRIORITIES AND PREFERENCES

Sec. 53.121. PREFERENCE OVER OTHER CREDITORS. All subcontractors, laborers, and materialmen who have a mechanic's lien have preference over other creditors of the original contractor.

Acts 1983, 68th Leg., p. 3546, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.122. EQUALITY OF MECHANIC'S LIENS. (a) Except as provided by Subchapter E and Section 53.124(e), perfected mechanic's

liens are on equal footing without reference to the date of filing the affidavit claiming the lien.

(b) If the proceeds of a foreclosure sale of property are insufficient to discharge all mechanic's liens against the property, the proceeds shall be paid pro rata on the perfected mechanic's liens on which suit is brought.

(c) This chapter does not affect the contract between the owner and the original contractor as to the amount, manner, or time of payment of the contract price.

Acts 1983, 68th Leg., p. 3546, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 851, Sec. 4, eff. Sept. 1, 1995.

Sec. 53.123. PRIORITY OF MECHANIC'S LIEN OVER OTHER LIENS. (a) Except as provided by this section, a mechanic's lien attaches to the house, building, improvements, or railroad property in preference to any prior lien, encumbrance, or mortgage on the land on which it is located, and the person enforcing the lien may have the house, building, improvement, or any piece of the railroad property sold separately.

(b) The mechanic's lien does not affect any lien, encumbrance, or mortgage on the land or improvement at the time of the inception of the mechanic's lien, and the holder of the lien, encumbrance, or mortgage need not be made a party to a suit to foreclose the mechanic's lien.

Acts 1983, 68th Leg., p. 3547, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.124. INCEPTION OF MECHANIC'S LIEN. (a) Except as provided by Subsection (e), for purposes of Section 53.123, the time of inception of a mechanic's lien is the commencement of construction of improvements or delivery of materials to the land on which the improvements are to be located and on which the materials are to be used.

(b) The construction or materials under Subsection (a) must be visible from inspection of the land on which the improvements are being made.

(c) An owner and original contractor may jointly file an affidavit of commencement with the county clerk of the county in

which the land is located not later than the 30th day after the date of actual commencement of construction of the improvements or delivery of materials to the land. The affidavit must contain:

(1) the name and address of the owner;

(2) the name and address of each original contractor, known at the time to the owner, that is furnishing labor, service, or materials for the construction of the improvements;

(3) a description, legally sufficient for identification, of the property being improved;

(4) the date the work actually commenced; and

(5) a general description of the improvement.

(d) An affidavit filed in compliance with this section is prima facie evidence of the date of the commencement of the improvement described in the affidavit. The time of inception of a mechanic's lien arising from work described in an affidavit of commencement is the date of commencement of the work stated in the affidavit.

(e) The time of inception of a lien that is created under Section 53.021(c), (d), or (e) is the date of recording of an affidavit of lien under Section 53.052. The priority of a lien claimed by a person entitled to a lien under Section 53.021(c), (d), or (e) with respect to other mechanic's liens is determined by the date of recording. A lien created under Section 53.021(c), (d), or (e) is not valid or enforceable against a grantee or purchaser who acquires an interest in the real property before the time of inception of the lien.

Acts 1983, 68th Leg., p. 3547, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 19, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 851, Sec. 5, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 896, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 410, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER G. RELEASE AND FORECLOSURE; ACTION ON CLAIM

Sec. 53.151. ENFORCEMENT OF REMEDIES AGAINST MONEY DUE ORIGINAL CONTRACTOR OR SUBCONTRACTOR. (a) A creditor of an original contractor may not collect, enforce a security interest against, garnish, or levy execution on the money due the original contractor or the contractor's surety from the owner, and a creditor of a subcontractor may not collect, enforce a security interest against,

garnish, or levy execution on the money due the subcontractor, to the prejudice of the subcontractors, mechanics, laborers, materialmen, or their sureties.

(b) A surety issuing a payment bond or performance bond in connection with the improvements has a priority claim over other creditors of its principal to contract funds to the extent of any loss it suffers or incurs. That priority does not excuse the surety from paying any obligations that it may have under its payment bonds.

Acts 1983, 68th Leg., p. 3548, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 20, eff. Sept. 1, 1989.

Sec. 53.152. RELEASE OF CLAIM OR LIEN. (a) When a debt for labor or materials is satisfied or paid by collected funds, the person who furnished the labor or materials shall, not later than the 10th day after the date of receipt of a written request, furnish to the requesting person a release of the indebtedness and any lien claimed, to the extent of the indebtedness paid. An owner, the original contractor, or any person making the payment may request the release.

(b) A release of lien must be in a form that would permit it to be filed of record.

Acts 1983, 68th Leg., p. 3548, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 21, eff. Sept. 1, 1989.

Sec. 53.153. DEFENSE OF ACTIONS. (a) If an affidavit claiming a mechanic's lien is filed by a person other than the original contractor, the original contractor shall defend at his own expense a suit brought on the claim.

(b) If the suit results in judgment on the lien against the owner or the owner's property, the owner is entitled to deduct the amount of the judgment and costs from any amount due the original contractor. If the owner has settled with the original contractor in full, the owner is entitled to recover from the original contractor any amount paid for which the original contractor was originally liable.

Acts 1983, 68th Leg., p. 3548, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.154. FORECLOSURE. A mechanic's lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

Acts 1983, 68th Leg., p. 3549, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.155. TRANSFER OF PROPERTY SOLD. If the house, building, improvement, or any piece of railroad property is sold separately, the officer making the sale shall place the purchaser in possession. The purchaser is entitled to a reasonable time after the date of purchase within which to remove the purchased property.

Acts 1983, 68th Leg., p. 3549, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.156. COSTS AND ATTORNEY'S FEES. In any proceeding to foreclose a lien or to enforce a claim against a bond issued under Subchapter H, I, or J or in any proceeding to declare that any lien or claim is invalid or unenforceable in whole or in part, the court shall award costs and reasonable attorney's fees as are equitable and just. With respect to a lien or claim arising out of a residential construction contract, the court is not required to order the property owner to pay costs and attorney's fees under this section.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 4(a), eff. Oct. 2, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 22, eff. Sept. 1, 1989.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 51 (S.B. 539), Sec. 1, eff. September 1, 2011.

Sec. 53.157. DISCHARGE OF LIEN. A mechanic's lien or affidavit claiming a mechanic's lien filed under Section 53.052 may be discharged of record by:

(1) recording a lien release signed by the claimant under Section 53.152;

(2) failing to institute suit to foreclose the lien in the county in which the property is located within the period prescribed by Section 53.158, 53.175, or 53.208;

(3) recording the original or certified copy of a final judgment or decree of a court of competent jurisdiction providing for the discharge;

(4) filing the bond and notice in compliance with Subchapter H;

(5) filing the bond in compliance with Subchapter I; or

(6) recording a certified copy of the order removing the lien under Section 53.160 and a certificate from the clerk of the court that states that no bond or deposit as described by Section 53.161 was filed by the claimant within 30 days after the date the order was entered.

Added by Acts 1989, 71st Leg., ch. 1138, Sec. 23, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 15, eff. Sept. 1, 1997.

Sec. 53.158. PERIOD FOR BRINGING SUIT TO FORECLOSE LIEN. (a) Except as provided by Subsection (b), suit must be brought to foreclose the lien within two years after the last day a claimant may file the lien affidavit under Section 53.052 or within one year after completion, termination, or abandonment of the work under the original contract under which the lien is claimed, whichever is later.

(b) For a claim arising from a residential construction project, suit must be brought to foreclose the lien within one year after the last day a claimant may file a lien affidavit under Section 53.052 or within one year after completion, termination, or abandonment of the work under the original contract under which the lien is claimed, whichever is later.

Added by Acts 1989, 71st Leg., ch. 1138, Sec. 23, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 4, eff. Sept. 1, 1999.

Sec. 53.159. OBLIGATION TO FURNISH INFORMATION. (a) An owner, on written request, shall furnish the following information within a

reasonable time, but not later than the 10th day after the date the request is received, to any person furnishing labor or materials for the project:

(1) a description of the real property being improved legally sufficient to identify it;

(2) whether there is a surety bond and if so, the name and last known address of the surety and a copy of the bond;

(3) whether there are any prior recorded liens or security interests on the real property being improved and if so, the name and address of the person having the lien or security interest; and

(4) the date on which the original contract for the project was executed.

(b) An original contractor, on written request by a person who furnished work under the original contract, shall furnish to the person the following information within a reasonable time, but not later than the 10th day after the date the request is received:

(1) the name and last known address of the person to whom the original contractor furnished labor or materials for the construction project;

(2) whether the original contractor has furnished or has been furnished a payment bond for any of the work on the construction project and if so, the name and last known address of the surety and a copy of the bond; and

(3) the date on which the original contract for the project was executed.

(c) A subcontractor, on written request by an owner of the property being improved, the original contractor, a surety on a bond covering the original contract, or any person furnishing work under the subcontract, shall furnish to the person the following information within a reasonable time, but not later than the 10th day after the date the request is received:

(1) the name and last known address of each person from whom the subcontractor purchased labor or materials for the construction project, other than those materials that were furnished to the project from the subcontractor's inventory;

(2) the name and last known address of each person to whom the subcontractor furnished labor or materials for the construction project; and

(3) whether the subcontractor has furnished or has been furnished a payment bond for any of the work on the construction

project and if so, the name and last known address of the surety and a copy of the bond.

(d) Not later than the 30th day after the date a written request is received from the owner, the contractor under whom a claim of lien or under whom a bond is made, or a surety on a bond on which a claim is made, a claimant for a lien or under a bond shall furnish to the requesting person a copy of any applicable written agreement, purchase order, or contract and any billing, statement, or payment request of the claimant reflecting the amount claimed and the work performed by the claimant for which the claim is made. If requested, the claimant shall provide the estimated amount due for each calendar month in which the claimant has performed labor or furnished materials.

(e) If a person from whom information is requested does not have a direct contractual relationship on the project with the person requesting the information, the person from whom information is requested, other than a claimant requested to furnish information under Subsection (d), may require payment of the actual costs, not to exceed $25, in furnishing the requested information.

(f) A person, other than a claimant requested to furnish information under Subsection (d), who fails to furnish information as required by this section is liable to the requesting person for that person's reasonable and necessary costs incurred in procuring the requested information.

Added by Acts 1989, 71st Leg., ch. 1138, Sec. 23, eff. Sept. 1, 1989. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 7, eff. September 1, 2011.

Sec. 53.160. SUMMARY MOTION TO REMOVE INVALID OR UNENFORCEABLE LIEN. (a) In a suit brought to foreclose a lien or to declare a claim or lien invalid or unenforceable, a party objecting to the validity or enforceability of the claim or lien may file a motion to remove the claim or lien. The motion must be verified and state the legal and factual basis for objecting to the validity or enforceability of the claim or lien. The motion may be accompanied by supporting affidavits.

(b) The grounds for objecting to the validity or enforceability

of the claim or lien for purposes of the motion are limited to the following:

(1) notice of claim was not furnished to the owner or original contractor as required by Section 53.056, 53.057, 53.058, 53.252, or 53.253;

(2) an affidavit claiming a lien failed to comply with Section 53.054 or was not filed as required by Section 53.052;

(3) notice of the filed affidavit was not furnished to the owner or original contractor as required by Section 53.055;

(4) the deadlines for perfecting a lien claim for retainage under this chapter have expired and the owner complied with the requirements of Section 53.101 and paid the retainage and all other funds owed to the original contractor before:

(A) the claimant perfected the lien claim; and

(B) the owner received a notice of the claim as required by this chapter;

(5) all funds subject to the notice of a claim to the owner and a notice regarding the retainage have been deposited in the registry of the court and the owner has no additional liability to the claimant;

(6) when the lien affidavit was filed on homestead property:

(A) no contract was executed or filed as required by Section 53.254;

(B) the affidavit claiming a lien failed to contain the notice as required by Section 53.254; or

(C) the notice of the claim failed to include the statement required by Section 53.254; and

(7) the claimant executed a valid and enforceable waiver or release of the claim or lien claimed in the affidavit.

(c) The claimant is not required to file a response. The claimant and any other party that has appeared in the proceeding must be notified by at least 21 days before the date of the hearing on the motion. A motion may not be heard before the 21st day after the date the claimant answers or appears in the proceeding.

(d) At the hearing on the motion, the burden is on:

(1) the claimant to prove that the notice of claim and affidavit of lien were furnished to the owner and original contractor as required by this chapter; and

(2) the movant to establish that the lien should be removed

for any other ground authorized by this section.

(e) The court shall promptly determine a motion to remove a claim or lien under this section. If the court determines that the movant is not entitled to remove the lien, the court shall enter an order denying the motion. If the court determines that the movant is entitled to remove the lien, the court shall enter an order removing the lien claimed in the lien affidavit. A party to the proceeding may not file an interlocutory appeal from the court's order.

(f) Any admissible evidence offered at the hearing may be admitted in the trial of the case. The court's order under Subsection (e) is not admissible as evidence in determining the validity and enforceability of the claim or lien.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 17, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 8, eff. September 1, 2011.

Sec. 53.161. BOND REQUIREMENTS AFTER ORDER TO REMOVE. (a) In the order removing a lien, the court shall set the amount of security that the claimant may provide in order to stay the removal of the claim or lien. The sum must be an amount that the court determines is a reasonable estimate of the costs and attorney's fees the movant is likely to incur in the proceeding to determine the validity or enforceability of the lien. The sum may not exceed the amount of the lien claim.

(b) The court shall stay the order removing the lien if the claimant files a bond or a deposit in lieu of a bond in the amount set in the order with the clerk of the court not later than the 30th day after the date the order is entered by the court unless, for good cause, the court orders a later date for filing the bond or the deposit in lieu of a bond. If the court fails to set the amount of the security required, the amount required is the amount of the lien claim.

(c) The bond must be:

(1) executed by a corporate surety authorized to do business in this state and licensed by this state to execute bonds as surety; and

(2) conditioned on the claimant's payment of any final

judgment rendered against the claimant in the proceeding for attorney's fees and costs to the movant under Section 53.156.

(d) In lieu of filing a bond, the claimant may deposit in the amount set by the court for the surety bond:

(1) cash;

(2) a negotiable obligation of the federal government or a federal agency; or

(3) a negotiable obligation of a financial institution chartered by the federal or state government that is insured by the federal government or a federal agency.

(e) A deposit made under Subsection (d) must be conditioned in the same manner as a surety bond. Any interest accrued on the deposit amount is a part of the deposit.

(f) If the claimant fails to file the bond or the deposit in lieu of the bond in compliance with this section, the owner may file:

(1) a certified copy of the order; and

(2) a certificate from the clerk of the court stating that:

(A) no bond or deposit in lieu of the bond was filed within 30 days after the date the order was entered by the court; and

(B) no order staying the order to remove the lien was entered by the court.

(g) The claim or lien is removed and extinguished as to a creditor or subsequent purchaser for valuable consideration who obtains an interest in the property after the certified copy of the order and certificate of the clerk of the court are filed with the county clerk. The removal of the lien does not constitute a release of the liability of the owner, if any, to the claimant.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 17, eff. Sept. 1, 1997.

Sec. 53.162. REVIVAL OF REMOVED LIEN. (a) If an order removing the lien is not stayed as provided by Section 53.161 and the claimant later obtains a final judgment in the suit establishing the validity and ordering the foreclosure of the lien, the claimant may file a certified copy of the final judgment with the county clerk.

(b) The filed judgment revives the lien, and the claimant may foreclose the lien.

(c) A lien revived under this section is void as to a creditor

or subsequent purchaser for valuable consideration who obtained an interest in the property:

(1) after the order removing the lien and the certificate from the clerk of the court was filed with the county clerk; and

(2) before the final judgment reviving the lien was filed with the county clerk.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 17, eff. Sept. 1, 1997.

SUBCHAPTER H. BOND TO INDEMNIFY AGAINST LIEN

Sec. 53.171. BOND. (a) If a lien, other than a lien granted by the owner in a written contract, is fixed or is attempted to be fixed by a recorded instrument under this chapter, any person may file a bond to indemnify against the lien.

(b) The bond shall be filed with the county clerk of the county in which the property subject to the lien is located.

(c) A mechanic's lien claim against an owner's property is discharged after:

(1) a bond that complies with Section 53.172 is filed;

(2) the notice of the bond is issued as provided by Section 53.173; and

(3) the bond and notice are recorded as provided by Section 53.174.

Acts 1983, 68th Leg., p. 3549, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 24, 39(1), eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 18, eff. Sept. 1, 1997.

Sec. 53.172. BOND REQUIREMENTS. The bond must:

(1) describe the property on which the liens are claimed;

(2) refer to each lien claimed in a manner sufficient to identify it;

(3) be in an amount that is double the amount of the liens referred to in the bond unless the total amount claimed in the liens exceeds $40,000, in which case the bond must be in an amount that is the greater of 1-1/2 times the amount of the liens or the sum of $40,000 and the amount of the liens;

(4) be payable to the parties claiming the liens;

(5) be executed by:

(A) the party filing the bond as principal; and

(B) a corporate surety authorized and admitted to do business under the law in this state and licensed by this state to execute the bond as surety, subject to Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code); and

(6) be conditioned substantially that the principal and sureties will pay to the named obligees or to their assignees the amount that the named obligees would have been entitled to recover if their claims had been proved to be valid and enforceable liens on the property.

Acts 1983, 68th Leg., p. 3549, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 25, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1132, Sec. 2, eff. Sept. 1, 1997.

Sec. 53.173. NOTICE OF BOND. (a) After the bond is filed, the county clerk shall issue notice of the bond to all named obligees.

(b) A copy of the bond must be attached to the notice.

(c) The notice must be served on each obligee by mailing a copy of the notice and the bond to the obligee by certified United States mail, return receipt requested, addressed to the claimant at the address stated in the lien affidavit for the obligee.

(d) If the claimant's lien affidavit does not state the claimant's address, the notice is not required to be mailed to the claimant.

Acts 1983, 68th Leg., p. 3550, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 26, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 19, eff. Sept. 1, 1997.

Sec. 53.174. RECORDING OF BOND AND NOTICE. (a) The county clerk shall record the bond, the notice, and a certificate of mailing in the real property records.

(b) In acquiring an interest in or insuring title to real property, a purchaser, insurer of title, or lender may rely on and is absolutely protected by the record of the bond and the notice to the same extent as if the lien claimant had filed a release of lien in the real property records.

Acts 1983, 68th Leg., p. 3550, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 27, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 20, eff. Sept. 1, 1997.

Sec. 53.175. ACTION ON BOND. (a) A party making or holding a lien claim may not sue on the bond later than one year after the date on which the notice is served or after the date on which the underlying lien claim becomes unenforceable under Section 53.158.

(b) The bond is not exhausted by one action against it. Each named obligee or assignee of an obligee may maintain a separate suit on the bond in any court of jurisdiction in the county in which the real property is located.

Acts 1983, 68th Leg., p. 3550, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 28, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 21, eff. Sept. 1, 1997.

SUBCHAPTER I. BOND TO PAY LIENS OR CLAIMS

Sec. 53.201. BOND. (a) An original contractor who has a written contract with the owner may furnish at any time a bond for the benefit of claimants.

(b) If a valid bond is filed, a claimant may not file suit against the owner or the owner's property and the owner is relieved of obligations under Subchapter D or E.

Acts 1983, 68th Leg., p. 3551, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 22, eff. Sept. 1, 1997.

Sec. 53.202. BOND REQUIREMENTS. The bond must:

(1) be in a penal sum at least equal to the total of the original contract amount;

(2) be in favor of the owner;

(3) have the written approval of the owner endorsed on it;

(4) be executed by:

(A) the original contractor as principal; and

(B) a corporate surety authorized and admitted to do business in this state and licensed by this state to execute bonds as

surety, subject to Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code);

(5) be conditioned on prompt payment for all labor, subcontracts, materials, specially fabricated materials, and normal and usual extras not exceeding 15 percent of the contract price; and

(6) clearly and prominently display on the bond or on an attachment to the bond:

(A) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or

(B) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

Acts 1983, 68th Leg., p. 3551, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 29, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1132, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 380, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.158, eff. September 1, 2005.

Sec. 53.203. RECORDING OF BOND AND CONTRACT. (a) The bond and the contract between the original contractor and the owner shall be filed with the county clerk of the county in which is located all or part of the owner's property on which the construction or repair is being performed or is to be performed. A memorandum of the contract or a copy of the contract may be substituted for the original.

(b) The plans, specifications, and general conditions of the contract are not required to be filed.

(c) The county clerk shall record the bond and place the contract on file in the clerk's office and shall index and cross-index both in the names of the original contractor and the owner in records kept for that purpose.

(d) On request and payment of a reasonable fee, the county

clerk shall furnish a copy of the bond and contract to any person.

(e) In any court of this state or in the United States, a copy of the bond and contract certified by the county clerk constitutes prima facie evidence of the contents, execution, delivery, and filing of the originals.

Acts 1983, 68th Leg., p. 3551, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 683, Sec. 1, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 1138, Sec. 30, eff. Sept. 1, 1989.

Sec. 53.204. RELIANCE ON RECORD. A purchaser, lender, or other person acquiring an interest in the owner's property or an insurer of title is entitled to rely on the record of the bond and contract as constituting payment of all claims and liens for labor, subcontracts, materials, or specially fabricated materials incurred by the original contractor as if the purchaser, lender, or other person acquiring an interest in the owner's property or an insurer of title were the owner who approved, accepted, and endorsed the bond and as if each person furnishing labor or materials for the work performed under the original contract, other than the original contractor, had filed a complete release and relinquishment of lien of record.

Acts 1983, 68th Leg., p. 3552, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 31, eff. Sept. 1, 1989.

Sec. 53.205. ENFORCEABLE CLAIMS. (a) The bond protects all persons with a claim that is:

(1) perfected in the manner prescribed for fixing a lien under Subchapter C or, if the claim relates to a residential construction project, under Subchapter K; or

(2) perfected in the manner prescribed by Section 53.206.

(b) A claim or the rights to a claim under the bond may be assigned.

Acts 1983, 68th Leg., p. 3552, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1999, 76th Leg., ch. 889, Sec. 5, eff. Sept. 1, 1999.

Sec. 53.206. PERFECTION OF CLAIM. (a) To perfect a claim against a bond in a manner other than that prescribed by Subchapter C or K for fixing a lien, a person must:

(1) give to the original contractor all applicable notices under the appropriate subchapter; and

(2) give to the surety on the bond, instead of the owner, all notices under the appropriate subchapter required to be given to the owner.

(b) To perfect a claim under this section, a person is not required to:

(1) give notice to the surety under Section 53.057, unless the claimant has a direct contractual relationship with the original contractor and the agreed retainage is in excess of 10 percent of the contract;

(2) give notice to the surety under Section 53.058(b) or, if the claim relates to a residential construction project, under Section 53.253(c); or

(3) file any affidavit with the county clerk.

(c) For the claim to be valid, a person must give notice in the time and manner required by this section, but the content of the notices need only provide fair notice of the amount and the nature of the claim asserted.

(d) A person satisfies the requirements of this section relating to providing notice to the surety if the person mails the notice by certified or registered mail to the surety:

(1) at the address stated on the bond or on an attachment to the bond;

(2) at the address on file with the Texas Department of Insurance; or

(3) at any other address allowed by law.

Acts 1983, 68th Leg., p. 3552, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 32, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 889, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 380, Sec. 6, eff. Sept. 1, 2001.

Sec. 53.207. OWNER'S NOTICE OF CLAIM TO SURETY. (a) If the owner receives any of the notices or a lien is fixed under Subchapter C or K , the owner shall mail to the surety on the bond a copy of

all notices received.

(b) Failure of the owner to send copies of notices to the surety does not relieve the surety of any liability under the bond if the claimant has complied with the requirements of this subchapter, nor does that failure impose any liability on the owner.

Acts 1983, 68th Leg., p. 3553, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1999, 76th Leg., ch. 889, Sec. 7, eff. Sept. 1, 1999.

Sec. 53.208. ACTION ON BOND. (a) A claimant may sue the principal and surety on the bond either jointly or severally, if his claim remains unpaid for 60 days after the claimant perfects the claim.

(b) The claimant may sue for the amount of the claim and court costs.

(c) The suit must be brought in the county in which the property being improved is located.

(d) If the bond is recorded at the time the lien is filed, the claimant must sue on the bond within one year following perfection of his claim. If the bond is not recorded at the time the lien is filed, the claimant must sue on the bond within two years following perfection of his claim.

Acts 1983, 68th Leg., p. 3553, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 33, eff. Sept. 1, 1989.

Sec. 53.210. CLAIMS IN EXCESS OF BOND AMOUNT. If valid claims against the bond exceed the penal sum of the bond, each claimant is entitled to a pro rata share of the penal sum.

Acts 1983, 68th Leg., p. 3553, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.211. ATTEMPTED COMPLIANCE. (a) A bond shall be construed to comply with this subchapter, and the rights and remedies on the bond are enforceable in the same manner as on other bonds under this subchapter, if the bond:

(1) is furnished and filed in attempted compliance with

this subchapter; or

(2) evidences by its terms intent to comply with this subchapter.

(b) Any provision in any payment bond furnished or filed in attempted compliance with this subchapter that expands or restricts the rights or liabilities provided under this chapter shall be disregarded and the provisions of this subchapter shall be read into that bond.

Acts 1983, 68th Leg., p. 3554, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 34, eff. Sept. 1, 1989.

SUBCHAPTER J. LIEN ON MONEY DUE PUBLIC WORKS CONTRACTOR

Sec. 53.231. LIEN. (a) A person who furnishes material or labor to a contractor under a prime contract with a governmental entity other than a municipality or a joint board created under Subchapter D, Chapter 22, Transportation Code, that does not exceed $25,000 and that is for public improvements in this state and who gives notice required by this subchapter has a lien on the money, bonds, or warrants due the contractor for the improvements.

(b) A person who furnishes material or labor to a contractor under a prime contract with a municipality or a joint board created under Subchapter D, Chapter 22, Transportation Code, that does not exceed $50,000 and that is for public improvements in this state and who gives notice required by this subchapter has a lien on the money, bonds, or warrants due the contractor for the improvements.

Acts 1983, 68th Leg., p. 3554, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1304 (H.B. 2515), Sec. 2, eff. September 1, 2009.

Sec. 53.232. TO WHOM NOTICE GIVEN; MANNER. The lien claimant must send written notice of his claim by registered or certified mail to:

(1) the officials of the state, county, town, or municipality whose duty it is to pay the contractor; and

(2) the contractor at the contractor's last known business

or residence address.

Acts 1983, 68th Leg., p. 3554, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.233. CONTENTS OF NOTICE. (a) Whether based on written or oral agreement, the notice must contain:

(1) the amount claimed;

(2) the name of the party to whom the materials were delivered or for whom the labor was performed;

(3) the dates and place of delivery or performance;

(4) a description reasonably sufficient to identify the materials delivered or labor performed and the amount due;

(5) a description reasonably sufficient to identify the project for which the material was delivered or the labor performed; and

(6) the claimant's business address.

(b) The notice must be accompanied by a statement under oath that the amount claimed is just and correct and that all payments, lawful offsets, and credits known to the affiant have been allowed.

Acts 1983, 68th Leg., p. 3554, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 35, eff. Sept. 1, 1989.

Sec. 53.234. TIME FOR NOTICE. The lien claimant must give notice not later than the 15th day of the second month following the month in which the labor was performed or the material furnished.

Acts 1983, 68th Leg., p. 3555, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 36, eff. Sept. 1, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1304 (H.B. 2515), Sec. 3, eff. September 1, 2009.

Sec. 53.235. OFFICIAL TO RETAIN FUNDS. A public official who receives the notice may not pay all of the money, bonds, or warrants due the contractor, but shall retain enough to pay the claim for

which notice is given.

Acts 1983, 68th Leg., p. 3555, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.236. BOND FOR RELEASE OF LIEN. (a) If a claim is filed attempting to fix a lien under this subchapter, the contractor against whom the claim is made may file a bond with the officials of the state, county, town, or municipality whose duty it is to pay the money, bonds, or warrants to the contractor.

(b) If the bond is approved by the proper official, its filing releases and discharges all liens fixed or attempted to be fixed by the filing of a claim, and the appropriate officials shall pay the money, bonds, or warrants to the contractor or the contractor's assignee.

Acts 1983, 68th Leg., p. 3555, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.237. BOND REQUIREMENTS. The bond must be:

(1) in an amount double the amount of the claims filed;

(2) payable to the claimants;

(3) executed by:

(A) the party filing the bond as principal; and

(B) a corporate surety authorized, admitted to do business, and licensed by the law of this state to execute the bond as surety; and

(4) conditioned that:

(A) the principal and surety will pay to the obligees named or to their assignees the amount of the claims or the portions of the claims proved to be liens under this subchapter; and

(B) the principal and surety will pay all court costs adjudged against the principal in actions brought by a claimant on the bond.

Acts 1983, 68th Leg., p. 3555, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 37, eff. Sept. 1, 1989.

Sec. 53.238. NOTICE OF BOND. The official with whom the bond

is filed shall send an exact copy of the bond by registered mail or certified mail, return receipt requested, to all claimants.

Acts 1983, 68th Leg., p. 3556, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.239. ACTION ON BOND. (a) A claimant must sue on the bond within six months after the bond is filed.

(b) The bond is not exhausted by one action on it. Each obligee or his assignee may maintain a separate suit on the bond in any court of jurisdiction.

Acts 1983, 68th Leg., p. 3556, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER K. RESIDENTIAL CONSTRUCTION PROJECTS

Sec. 53.251. PROCEDURES FOR RESIDENTIAL CONSTRUCTION PROJECTS. (a) This subchapter applies only to residential construction projects.

(b) A person must comply with this subchapter in addition to the other applicable provisions of this chapter to perfect a lien that arises from a claim resulting from a residential construction project.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.

Sec. 53.252. DERIVATIVE CLAIMANT: NOTICE TO OWNER OR ORIGINAL CONTRACTOR. (a) A claimant other than an original contractor must give the notice prescribed by this section for the lien to be valid. If the property that is the subject of the lien is a homestead, the notice must also comply with Section 53.254.

(b) The claimant must give to the owner or reputed owner and the original contractor written notice of the unpaid balance. The claimant must give the notice not later than the 15th day of the second month following each month in which all or part of the claimant's labor was performed or material or specially fabricated material was delivered.

(c) To authorize the owner to withhold funds under Subchapter D, the notice to the owner must state that if the claim remains unpaid, the owner may be personally liable and the owner's property

may be subjected to a lien unless:

(1) the owner withholds payments from the contractor for payment of the claim; or

(2) the claim is otherwise paid or settled.

(d) The notice must be sent by registered or certified mail and must be addressed to the owner or reputed owner and the original contractor, as applicable, at the person's last known business or residence address.

(e) A copy of the statement or billing in the usual and customary form is sufficient as notice under this section.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.

Sec. 53.253. DERIVATIVE CLAIMANT: NOTICE FOR SPECIALLY FABRICATED ITEMS. (a) If specially fabricated materials have not been delivered to the property or incorporated in the residential construction project, the claimant who specially fabricates material for incorporation in the residential construction project must give notice under this section for the lien to be valid.

(b) Once the specially fabricated materials have been delivered, the claimant must give notice under Section 53.252.

(c) The claimant must give the owner or reputed owner notice not later than the 15th day of the second month after the month in which the claimant receives and accepts the order for the material. If the indebtedness is incurred by a person other than the original contractor, the claimant must also give notice within that time to the original contractor.

(d) The notice must contain:

(1) a statement that the order has been received and accepted; and

(2) the price of the order.

(e) The notice must be sent by registered or certified mail to the last known business or residence address of the owner or the reputed owner or the original contractor, as applicable.

(f) The lien of a claimant who accepts an order but fails to give notice under this section is valid as to delivered items if the claimant has given notice under Section 53.252.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.

Sec. 53.254. HOMESTEAD. (a) To fix a lien on a homestead, the person who is to furnish material or perform labor and the owner must execute a written contract setting forth the terms of the agreement.

(b) The contract must be executed before the material is furnished or the labor is performed.

(c) If the owner is married, the contract must be signed by both spouses.

(d) If the contract is made by an original contractor, the contract inures to the benefit of all persons who labor or furnish material for the original contractor.

(e) The contract must be filed with the county clerk of the county in which the homestead is located. The county clerk shall record the contract in records kept for that purpose.

(f) An affidavit for lien filed under this subchapter that relates to a homestead must contain the following notice conspicuously printed, stamped, or typed in a size equal to at least 10-point boldface or the computer equivalent, at the top of the page:

"NOTICE: THIS IS NOT A LIEN. THIS IS ONLY AN AFFIDAVIT CLAIMING A LIEN."

(g) For the lien on a homestead to be valid, the notice required to be given to the owner under Section 53.252 must include or have attached the following statement:

"If a subcontractor or supplier who furnishes materials or performs labor for construction of improvements on your property is not paid, your property may be subject to a lien for the unpaid amount if:

(1) after receiving notice of the unpaid claim from the claimant, you fail to withhold payment to your contractor that is sufficient to cover the unpaid claim until the dispute is resolved; or

(2) during construction and for 30 days after completion of construction, you fail to retain 10 percent of the contract price or 10 percent of the value of the work performed by your contractor.

"If you have complied with the law regarding the 10 percent retainage and you have withheld payment to the contractor sufficient to cover any written notice of claim and have paid that amount, if any, to the claimant, any lien claim filed on your property by a subcontractor or supplier, other than a person who contracted directly with you, will not be a valid lien on your property. In addition, except for the required 10 percent retainage, you are not

liable to a subcontractor or supplier for any amount paid to your contractor before you received written notice of the claim."

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.

Sec. 53.255. DISCLOSURE STATEMENT REQUIRED FOR RESIDENTIAL CONSTRUCTION CONTRACT. (a) Before a residential construction contract is executed by the owner, the original contractor shall deliver to the owner a disclosure statement described by this section.

(b) The disclosure statement must read substantially similar to the following:

"KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW. You are about to enter into a transaction to build a new home or remodel existing residential property. Texas law requires your contractor to provide you with this brief overview of some of your rights, responsibilities, and risks in this transaction.

"CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may not require you to convey your real property to your contractor as a condition to the agreement for the construction of improvements on your property.

"KNOW YOUR CONTRACTOR. Before you enter into your agreement for the construction of improvements to your real property, make sure that you have investigated your contractor. Obtain and verify references from other people who have used the contractor for the type and size of construction project on your property.

"GET IT IN WRITING. Make sure that you have a written agreement with your contractor that includes: (1) a description of the work the contractor is to perform; (2) the required or estimated time for completion of the work; (3) the cost of the work or how the cost will be determined; and (4) the procedure and method of payment, including provisions for statutory retainage and conditions for final payment. If your contractor made a promise, warranty, or representation to you concerning the work the contractor is to perform, make sure that promise, warranty, or representation is specified in the written agreement. An oral promise that is not included in the written agreement may not be enforceable under Texas law.

"READ BEFORE YOU SIGN. Do not sign any document before you have

read and understood it. NEVER SIGN A DOCUMENT THAT INCLUDES AN UNTRUE STATEMENT. Take your time in reviewing documents. If you borrow money from a lender to pay for the improvements, you are entitled to have the loan closing documents furnished to you for review at least one business day before the closing. Do not waive this requirement unless a bona fide emergency or another good cause exists, and make sure you understand the documents before you sign them. If you fail to comply with the terms of the documents, you could lose your property. You are entitled to have your own attorney review any documents. If you have any question about the meaning of a document, consult an attorney.

"GET A LIST OF SUBCONTRACTORS AND SUPPLIERS. Before construction commences, your contractor is required to provide you with a list of the subcontractors and suppliers the contractor intends to use on your project. Your contractor is required to supply updated information on any subcontractors and suppliers added after the list is provided. Your contractor is not required to supply this information if you sign a written waiver of your rights to receive this information.

"MONITOR THE WORK. Lenders and governmental authorities may inspect the work in progress from time to time for their own purposes. These inspections are not intended as quality control inspections. Quality control is a matter for you and your contractor. To ensure that your home is being constructed in accordance with your wishes and specifications, you should inspect the work yourself or have your own independent inspector review the work in progress.

"MONITOR PAYMENTS. If you use a lender, your lender is required to provide you with a periodic statement showing the money disbursed by the lender from the proceeds of your loan. Each time your contractor requests payment from you or your lender for work performed, your contractor is also required to furnish you with a disbursement statement that lists the name and address of each subcontractor or supplier that the contractor intends to pay from the requested funds. Review these statements and make sure that the money is being properly disbursed.

"CLAIMS BY SUBCONTRACTORS AND SUPPLIERS. Under Texas law, if a subcontractor or supplier who furnishes labor or materials for the construction of improvements on your property is not paid, you may become liable and your property may be subject to a lien for the

unpaid amount, even if you have not contracted directly with the subcontractor or supplier. To avoid liability, you should take the following actions:

(1) If you receive a written notice from a subcontractor or supplier, you should withhold payment from your contractor for the amount of the claim stated in the notice until the dispute between your contractor and the subcontractor or supplier is resolved. If your lender is disbursing money directly to your contractor, you should immediately provide a copy of the notice to your lender and instruct the lender to withhold payment in the amount of the claim stated in the notice. If you continue to pay the contractor after receiving the written notice without withholding the amount of the claim, you may be liable and your property may be subject to a lien for the amount you failed to withhold.

(2) During construction and for 30 days after final completion, termination, or abandonment of the contract by the contractor, you should withhold or cause your lender to withhold 10 percent of the amount of payments made for the work performed by your contractor. This is sometimes referred to as "statutory retainage.' If you choose not to withhold the 10 percent for at least 30 days after final completion, termination, or abandonment of the contract by the contractor and if a valid claim is timely made by a claimant and your contractor fails to pay the claim, you may be personally liable and your property may be subject to a lien up to the amount that you failed to withhold.

"If a claim is not paid within a certain time period, the claimant is required to file a mechanic's lien affidavit in the real property records in the county where the property is located. A mechanic's lien affidavit is not a lien on your property, but the filing of the affidavit could result in a court imposing a lien on your property if the claimant is successful in litigation to enforce the lien claim.

"SOME CLAIMS MAY NOT BE VALID. When you receive a written notice of a claim or when a mechanic's lien affidavit is filed on your property, you should know your legal rights and responsibilities regarding the claim. Not all claims are valid. A notice of a claim by a subcontractor or supplier is required to be sent, and the mechanic's lien affidavit is required to be filed, within strict time periods. The notice and the affidavit must contain certain information. All claimants may not fully comply with the legal

requirements to collect on a claim. If you have paid the contractor in full before receiving a notice of a claim and have fully complied with the law regarding statutory retainage, you may not be liable for that claim. Accordingly, you should consult your attorney when you receive a written notice of a claim to determine the true extent of your liability or potential liability for that claim.

"OBTAIN A LIEN RELEASE AND A BILLS-PAID AFFIDAVIT. When you receive a notice of claim, do not release withheld funds without obtaining a signed and notarized release of lien and claim from the claimant. You can also reduce the risk of having a claim filed by a subcontractor or supplier by requiring as a condition of each payment made by you or your lender that your contractor furnish you with an affidavit stating that all bills have been paid. Under Texas law, on final completion of the work and before final payment, the contractor is required to furnish you with an affidavit stating that all bills have been paid. If the contractor discloses any unpaid bill in the affidavit, you should withhold payment in the amount of the unpaid bill until you receive a waiver of lien or release from that subcontractor or supplier.

"OBTAIN TITLE INSURANCE PROTECTION. You may be able to obtain a title insurance policy to insure that the title to your property and the existing improvements on your property are free from liens claimed by subcontractors and suppliers. If your policy is issued before the improvements are completed and covers the value of the improvements to be completed, you should obtain, on the completion of the improvements and as a condition of your final payment, a 'completion of improvements' policy endorsement. This endorsement will protect your property from liens claimed by subcontractors and suppliers that may arise from the date the original title policy is issued to the date of the endorsement."

(c) The failure of a contractor to comply with this section does not invalidate a lien under this chapter, a contract lien, or a deed of trust.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 889, Sec. 8, eff. Sept. 1, 1999.

Sec. 53.256. LIST OF SUBCONTRACTORS AND SUPPLIERS. (a) Except as provided by Subsection (d), for the construction of improvements

under a residential construction contract, the original contractor shall:

(1) furnish to the owner before the commencement of construction a written list that identifies by name, address, and telephone number each subcontractor and supplier the contractor intends to use in the work to be performed; and

(2) provide the owner with an updated list of subcontractors and suppliers not later than the 15th day after the date a subcontractor or supplier is added or deleted.

(b) The list must contain the following notice conspicuously printed, stamped, or typed in a size equal to at least 10-point boldface or the computer equivalent:

"NOTICE: THIS LIST OF SUBCONTRACTORS AND SUPPLIERS MAY NOT BE A FINAL LISTING. UNLESS YOU SIGN A WAIVER OF YOUR RIGHT TO RECEIVE UPDATED INFORMATION, THE CONTRACTOR IS REQUIRED BY LAW TO SUPPLY UPDATED INFORMATION, AS THE INFORMATION BECOMES AVAILABLE, FOR EACH SUBCONTRACTOR OR SUPPLIER USED IN THE WORK PERFORMED ON YOUR RESIDENCE."

(c) The failure of a contractor to comply with this section does not invalidate a lien under this chapter, a contract lien, or a deed of trust.

(d) An owner may waive the right to receive the list of subcontractors and suppliers or any updated information required by this section only as provided by this subsection. The waiver must be in writing and may be included in the residential construction contract. If the waiver is not included as a provision of the residential construction contract, the separate waiver statement must be signed by the owner. The waiver must be conspicuously printed in at least 10-point bold-faced type and read substantially similar to the following:

"WAIVER OF THE LIST OF SUBCONTRACTORS AND SUPPLIERS. AN OWNER IS NOT REQUIRED TO WAIVE THE RIGHT GRANTED BY SECTION 53.256, PROPERTY CODE, TO RECEIVE FROM THE CONTRACTOR AN ORIGINAL OR UPDATED LIST OF SUBCONTRACTORS AND SUPPLIERS.

"BY SIGNING THIS DOCUMENT, I AGREE TO WAIVE MY RIGHT TO RECEIVE FROM THE CONTRACTOR AN ORIGINAL OR UPDATED LIST OF SUBCONTRACTORS AND SUPPLIERS.

"I UNDERSTAND AND ACKNOWLEDGE THAT, AFTER SIGNING THIS DOCUMENT, THIS WAIVER MAY NOT BE CANCELED AT A LATER DATE.

"I HAVE VOLUNTARILY CONSENTED TO THIS WAIVER."

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 889, Sec. 9, eff. Sept. 1, 1999.

Sec. 53.257. PROVISIONS RELATED TO CLOSING OF LOAN FOR CONSTRUCTION OF IMPROVEMENTS. (a) If the owner is obtaining third-party financing for the construction of improvements under a residential construction contract, the lender shall deliver to the owner all documentation relating to the closing of the loan not later than one business day before the date of the closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing.

(b) The lender shall provide to the owner the disclosure statement described by Section 53.255(b). The disclosure statement must be provided to the owner before the date of closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the disclosure statement at the closing. The lender shall retain a signed and dated copy of the disclosure statement with the closing documents.

(c) The failure of a lender to comply with this section does not invalidate a lien under this chapter, a contract lien, or a deed of trust.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.

Sec. 53.258. DISBURSEMENTS OF FUNDS. (a) At the time the original contractor requests payment from the owner or the owner's lender for the construction of improvements under a residential construction contract, the original contractor shall provide to the owner a disbursement statement. The statement may include any information agreed to by the owner and the original contractor and must include at least the name and address of each person who subcontracted directly with the original contractor and who the original contractor intends to pay from the requested funds. The original contractor shall provide the disbursement statement:

(1) in the manner agreed to in writing by the owner and

original contractor; or

(2) if no agreement exists, by depositing the statement in the United States mail, first class, postage paid, and properly addressed to the owner or by hand delivering the statement to the owner before the original contractor receives the requested funds.

(b) If the owner finances the construction of improvements through a third party that advances loan proceeds directly to the original contractor, the lender shall:

(1) obtain from the original contractor the signed disbursement statement required by Subsection (a) that covers the funds for which the original contractor is requesting payment; and

(2) provide to the owner a statement of funds disbursed by the lender since the last statement was provided to the owner.

(c) The lender shall provide to the owner the lender's disbursement statement and the disbursement statement the lender obtained from the contractor before the lender disburses the funds to the original contractor. The disbursement statements may be provided in any manner agreed to by the lender and the owner.

(d) The lender is not responsible for the accuracy of the information contained in the disbursement statement obtained from the original contractor.

(e) The failure of a lender or an original contractor to comply with this section does not invalidate a lien under this chapter, a contract lien, or a deed of trust.

(f) A person commits an offense if the person intentionally, knowingly, or recklessly provides false or misleading information in a disbursement statement required under this section. An offense under this section is a misdemeanor. A person adjudged guilty of an offense under this section shall be punished by a fine not to exceed $4,000 or confinement in jail for a term not to exceed one year or both a fine and confinement. A person may not receive community supervision for the offense.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 889, Sec. 10, eff. Sept. 1, 1999.

Sec. 53.259. FINAL BILLS-PAID AFFIDAVIT REQUIRED. (a) As a condition of final payment under a residential construction contract,

the original contractor shall, at the time the final payment is tendered, execute and deliver to the owner, or the owner's agent, an affidavit stating that the original contractor has paid each person in full for all labor and materials used in the construction of improvements on the real property. If the original contractor has not paid each person in full, the original contractor shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each person to whom a payment is owed.

(b) The seller of any real property on which a structure of not more than four units is constructed and that is intended as the principal place of residence for the purchaser shall, at the closing of the purchase of the real property, execute and deliver to the purchaser, or the purchaser's agent, an affidavit stating that the seller has paid each person in full for all labor and materials used in the construction of improvements on the real property and that the seller is not indebted to any person by reason of any construction. In the event that the seller has not paid each person in full, the seller shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each person to whom a payment is owed.

(c) A person commits an offense if the person intentionally, knowingly, or recklessly makes a false or misleading statement in an affidavit under this section. An offense under this section is a misdemeanor. A person adjudged guilty of an offense under this section shall be punished by a fine not to exceed $4,000 or confinement in jail for a term not to exceed one year or both a fine and confinement. A person may not receive community supervision for the offense.

(d) A person signing an affidavit under this section is personally liable for any loss or damage resulting from any false or incorrect information in the affidavit.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.

Sec. 53.260. CONVEYANCE TO CONTRACTOR NOT REQUIRED. An original contractor may not require an owner of real property to convey the real property to the original contractor or an entity controlled by the original contractor as a condition to the performance of the residential construction contract for improvements

to the real property.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 889, Sec. 11, eff. Sept. 1, 1999.

SUBCHAPTER L. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM

Sec. 53.281. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM. (a) Any waiver and release of a lien or payment bond claim under this chapter is unenforceable unless a waiver and release is executed and delivered in accordance with this subchapter.

(b) A waiver and release is effective to release the owner, the owner's property, the contractor, and the surety on a payment bond from claims and liens only if:

(1) the waiver and release substantially complies with one of the forms prescribed by Section 53.284;

(2) the waiver and release is signed by the claimant or the claimant's authorized agent and notarized; and

(3) in the case of a conditional release, evidence of payment to the claimant exists.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

Sec. 53.282. CONDITIONS FOR WAIVER, RELEASE, OR IMPAIRMENT OF LIEN OR PAYMENT BOND CLAIM. (a) A statement purporting to waive, release, or otherwise adversely affect a lien or payment bond claim is not enforceable and does not create an estoppel or impairment of a lien or payment bond claim unless:

(1) the statement is in writing and substantially complies with a form prescribed by Section 53.284;

(2) the claimant has actually received payment in good and sufficient funds in full for the lien or payment bond claim; or

(3) the statement is:

(A) in a written original contract or subcontract for the construction, remodel, or repair of a single-family house, townhouse, or duplex or for land development related to a single-family house, townhouse, or duplex; and

(B) made before labor or materials are provided under

the original contract or subcontract.

(b) The filing of a lien rendered unenforceable by a lien waiver under Subsection (a)(3) does not violate Section 12.002, Civil Practice and Remedies Code, unless:

(1) an owner or original contractor sends a written explanation of the basis for nonpayment, evidence of the contractual waiver of lien rights, and a notice of request for release of the lien to the claimant at the claimant's address stated in the lien affidavit; and

(2) the lien claimant does not release the filed lien affidavit on or before the 14th day after the date the owner or the original contractor sends the items required by Subdivision (1).

(c) Subsection (a)(3) does not apply to a person who supplies only material, and not labor, for the construction, remodel, or repair of a single-family house, townhouse, or duplex or for land development related to a single-family house, townhouse, or duplex.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

Sec. 53.283. UNCONDITIONAL WAIVER AND RELEASE: PAYMENT REQUIRED. A person may not require a claimant or potential claimant to execute an unconditional waiver and release for a progress payment or final payment amount unless the claimant or potential claimant received payment in that amount in good and sufficient funds.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

Sec. 53.284. FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM. (a) A waiver and release given by a claimant or potential claimant is unenforceable unless it substantially complies with the applicable form described by Subsections (b)-(e).

(b) If a claimant or potential claimant is required to execute a waiver and release in exchange for or to induce the payment of a progress payment and is not paid in exchange for the waiver and release or if a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must read:

"CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

"Project _____

"Job No. _____

"On receipt by the signer of this document of a check from _____ (maker of check) in the sum of $_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

"This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

"Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

"The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

"Date _____

"_____ (Company name)

"By _____ (Signature)

"_____ (Title)"

(c) If a claimant or potential claimant is required to execute an unconditional waiver and release to prove the receipt of good and sufficient funds for a progress payment and the claimant or potential claimant asserts in the waiver and release that the claimant or potential claimant has been paid the progress payment, the waiver and release must:

(1) contain a notice at the top of the document, printed in bold type at least as large as the largest type used in the document, but not smaller than 10-point type, that reads:

"NOTICE:

"This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form."; and

(2) below the notice, read:

"UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

"Project _____

"Job No. _____

"The signer of this document has been paid and has received a progress payment in the sum of $_____ for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

"This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

"The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

"Date _____

"_____ (Company name)

"By _____ (Signature)
"_____ (Title)"

(d) If a claimant or potential claimant is required to execute a waiver and release in exchange for or to induce the payment of a final payment and is not paid in good and sufficient funds in exchange for the waiver and release or if a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must read:

"CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

"Project _____
"Job No. _____

"On receipt by the signer of this document of a check from _____ (maker of check) in the sum of $_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

"This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted).

"Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

"The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

"Date _____
"_____ (Company name)
"By _____ (Signature)
"_____ (Title)"

(e) If a claimant or potential claimant is required to execute

an unconditional waiver and release to prove the receipt of good and sufficient funds for a final payment and the claimant or potential claimant asserts in the waiver and release that the claimant or potential claimant has been paid the final payment, the waiver and release must:

(1) contain a notice at the top of the document, printed in bold type at least as large as the largest type used in the document, but not smaller than 10-point type, that reads:

"NOTICE:

"This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form."; and

(2) below the notice, read:

"UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

"Project _____

"Job No. _____

"The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

"The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

"Date _____

"_____ (Company name)

"By _____ (Signature)

"_____ (Title)"

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

Sec. 53.286. PUBLIC POLICY. Notwithstanding any other law and except as provided by Section 53.282, any contract, agreement, or understanding purporting to waive the right to file or enforce any lien or claim created under this chapter is void as against public policy.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

Sec. 53.287. CERTAIN AGREEMENTS EXEMPT. This subchapter does not apply to a written agreement to subordinate, release, waive, or satisfy all or part of a lien or bond claim in:

(1) an accord and satisfaction of an identified dispute;

(2) an agreement concerning an action pending in any court or arbitration proceeding; or

(3) an agreement that is executed after an affidavit claiming the lien has been filed or the bond claim has been made.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

CHAPTER 54. LANDLORD'S LIENS

SUBCHAPTER A. AGRICULTURAL LANDLORD'S LIEN

Sec. 54.001. LIEN. A person who leases land or tenements at will or for a term of years has a preference lien for rent that becomes due and for the money and the value of property that the landlord furnishes or causes to be furnished to the tenant to grow a crop on the leased premises and to gather, store, and prepare the crop for marketing.

Acts 1983, 68th Leg., p. 3557, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.002. PROPERTY TO WHICH LIEN ATTACHES. (a) Except as provided by Subsections (b) and (c), the lien attaches to:

(1) the property on the leased premises that the landlord furnishes or causes to be furnished to the tenant to grow a crop on the leased premises; and

(2) the crop grown on the leased premises in the year that the rent accrues or the property is furnished.

(b) If the landlord provides everything except labor, the lien attaches only to the crop grown in the year that the property is furnished.

(c) The lien does not attach to the goods of a merchant, trader, or mechanic if the tenant sells and delivers the goods in good faith in the regular course of business.

(d) A law exempting property from forced sale does not apply to a lien under this subchapter on agricultural products, animals, or tools.

Acts 1983, 68th Leg., p. 3557, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.003. EXCEPTIONS. The lien does not arise if:

(1) a tenant provides everything necessary to cultivate the leased premises and the landlord charges rent of more than one-third of the value of the grain and one-fourth of the value of the cotton grown on the premises; or

(2) a landlord provides everything except the labor and directly or indirectly charges rent of more than one-half of the value of the grain and cotton grown on the premises.

Acts 1983, 68th Leg., p. 3558, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.004. DURATION OF LIEN. The lien exists while the property to which it is attached remains on the leased premises and until one month after the day that the property is removed from the premises. If agricultural products to which the lien is attached are placed in a public or bonded warehouse regulated by state law before the 31st day after the day that they are removed from the leased premises, the lien exists while they remain in the warehouse.

Acts 1983, 68th Leg., p. 3558, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.005. REMOVAL OF PROPERTY. (a) If an advance or rent is unpaid, a tenant may not without the landlord's consent remove or permit the removal of agricultural products or other property to which the lien is attached from the leased premises.

(b) If agricultural products subject to the lien are removed with the landlord's consent from the leased premises for preparation for market, the lien continues to exist as if the products had not been removed.

Acts 1983, 68th Leg., p. 3558, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.006. DISTRESS WARRANT. (a) The person to whom rent or an advance is payable under the lease or the person's agent, attorney, assign, or other legal representative may apply to an appropriate justice of the peace for a distress warrant if the tenant:

(1) owes any rent or an advance;

(2) is about to abandon the premises; or

(3) is about to remove the tenant's property from the premises.

(b) The application for a warrant must be filed with a justice of the peace:

(1) in the precinct in which the leasehold is located or in which the property subject to the landlord's lien is located; or

(2) who has jurisdiction of the cause of action.

Acts 1983, 68th Leg., p. 3558, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 9, eff. Sept. 1, 1993.

Sec. 54.007. JUDGMENT ON REPLEVIN BOND. If a final judgment is rendered against a defendant who has replevied property seized under a distress warrant, the sureties on the defendant's replevy bond are also liable under the judgment, according to the terms of the bond.

Acts 1983, 68th Leg., p. 3559, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. BUILDING LANDLORD'S LIEN

Sec. 54.021. LIEN. A person who leases or rents all or part of

a building for nonresidential use has a preference lien on the property of the tenant or subtenant in the building for rent that is due and for rent that is to become due during the current 12-month period succeeding the date of the beginning of the rental agreement or an anniversary of that date.

Acts 1983, 68th Leg., p. 3559, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 200, Sec. 2, eff. Aug. 26, 1985.

Sec. 54.022. COMMERCIAL BUILDING. (a) The lien is unenforceable for rent on a commercial building that is more than six months past due unless the landlord files a lien statement with the county clerk of the county in which the building is located.

(b) The lien statement must be verified by the landlord or the landlord's agent or attorney and must contain:

(1) an account, itemized by month, of the rent for which the lien is claimed;

(2) the name and address of the tenant or subtenant, if any;

(3) a description of the leased premises; and

(4) the beginning and termination dates of the lease.

(c) Each county clerk shall index alphabetically and record the rental lien statements filed in the clerk's office.

Acts 1983, 68th Leg., p. 3559, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.023. EXEMPTIONS. This subchapter does not affect a statute exempting property from forced sale.

Acts 1983, 68th Leg., p. 3560, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.024. DURATION OF LIEN. The lien exists while the tenant occupies the building and until one month after the day that the tenant abandons the building.

Acts 1983, 68th Leg., p. 3560, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.025. DISTRESS WARRANT. The person to whom rent is payable under a building lease or the person's agent, attorney, assign, or other legal representative may apply to the justice of the peace in the precinct in which the building is located for a distress warrant if the tenant:

(1) owes rent;

(2) is about to abandon the building; or

(3) is about to remove the tenant's property from the building.

Acts 1983, 68th Leg., p. 3560, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 10, eff. Sept. 1, 1993.

SUBCHAPTER C. RESIDENTIAL LANDLORD'S LIEN

Sec. 54.041. LIEN. A landlord of a single or multifamily residence has a lien for unpaid rent that is due. The lien attaches to nonexempt property that is in the residence or that the tenant has stored in a storage room.

Acts 1983, 68th Leg., p. 3560, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.042. EXEMPTIONS. A lien under this subchapter does not attach to:

(1) wearing apparel;

(2) tools, apparatus, and books of a trade or profession;

(3) schoolbooks;

(4) a family library;

(5) family portraits and pictures;

(6) one couch, two living room chairs, and a dining table and chairs;

(7) beds and bedding;

(8) kitchen furniture and utensils;

(9) food and foodstuffs;

(10) medicine and medical supplies;

(11) one automobile and one truck;

(12) agricultural implements;

(13) children's toys not commonly used by adults;

(14) goods that the landlord or the landlord's agent knows are owned by a person other than the tenant or an occupant of the

residence; and

(15) goods that the landlord or the landlord's agent knows are subject to a recorded chattel mortgage or financing agreement.

Acts 1983, 68th Leg., p. 3560, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 305, Sec. 1, eff. Aug. 26, 1985.

Sec. 54.043. ENFORCEABILITY OF CONTRACTUAL PROVISIONS. (a) A contractual landlord's lien is not enforceable unless it is underlined or printed in conspicuous bold print in the lease agreement.

(b) A provision of a lease that purports to waive or diminish a right, liability, or exemption of this subchapter is void to the extent limited by this subchapter.

Acts 1983, 68th Leg., p. 3561, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.044. SEIZURE OF PROPERTY. (a) The landlord or the landlord's agent may not seize exempt property and may seize nonexempt property only if it is authorized by a written lease and can be accomplished without a breach of the peace.

(b) Immediately after seizing property under Subsection (a) of this section, the landlord or the landlord's agent shall leave written notice of entry and an itemized list of the items removed. The notice and list shall be left in a conspicuous place within the dwelling. The notice must state the amount of delinquent rent and the name, address, and telephone number of the person the tenant may contact regarding the amount owed. The notice must also state that the property will be promptly returned on full payment of the delinquent rent.

(c) Unless authorized in a written lease, the landlord is not entitled to collect a charge for packing, removing, or storing property seized under this section.

(d) If the tenant has abandoned the premises, the landlord or the landlord's agent may remove its contents.

Acts 1983, 68th Leg., p. 3561, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 305, Sec. 1, eff. Aug. 26, 1985.

Sec. 54.045. SALE OF PROPERTY. (a) Property seized under Section 54.044 may not be sold or otherwise disposed of unless the sale or disposition is authorized in a written lease.

(b) Before selling seized property, the landlord or the landlord's agent must give notice to the tenant not later than the 30th day before the date of the sale. The notice must be sent to the tenant by both first class mail and certified mail, return receipt requested, at the tenant's last known address. The notice must contain:

(1) the date, time, and place of the sale;

(2) an itemized account of the amount owed by the tenant to the landlord; and

(3) the name, address, and telephone number of the person the tenant may contact regarding the sale, the amount owed, and the right of the tenant to redeem the property under Subsection (e) of this section.

(c) A sale under this section is subject to a recorded chattel mortgage or financing statement. The property shall be sold to the highest cash bidder. Proceeds from the sale shall be applied first to delinquent rents and, if authorized by the written lease, reasonable packing, moving, storage, and sale costs.

(d) Any sale proceeds remaining after payment of the amounts authorized in Subsection (c) of this section shall be mailed to the tenant at the tenant's last known address not later than the 30th day after the date of the sale. The landlord shall provide the tenant with an accounting of all proceeds of the sale not later than the 30th day after the date on which the tenant makes a written request for the accounting.

(e) The tenant may redeem the property at any time before the property is sold by paying to the landlord or the landlord's agent all delinquent rents and, if authorized in the written lease, all reasonable packing, moving, storage, and sale costs.

Added by Acts 1985, 69th Leg., ch. 305, Sec. 1, eff. Aug. 26, 1985.

Sec. 54.046. VIOLATION BY LANDLORD. If a landlord or the landlord's agent wilfully violates this subchapter, the tenant is entitled to:

(1) actual damages, return of any property seized that has

not been sold, return of the proceeds of any sale of seized property, and the sum of one month's rent and $1,000, less any amount for which the tenant is liable; and

(2) reasonable attorney's fees.

Acts 1983, 68th Leg., p. 356, ch. 5761, Sec. 1, eff. Jan. 1, 1984. Renumbered and amended by Acts 1985, 69th Leg., ch. 305, Sec. 1, eff. Aug. 26, 1985.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1198 (S.B. 1367), Sec. 2, eff. January 1, 2016.

Sec. 54.047. OTHER RIGHTS NOT AFFECTED. This subchapter does not affect or diminish any other rights or obligations arising under common law or any statute.

Added by Acts 1985, 69th Leg., ch. 305, Sec. 1, eff. Aug. 26, 1985.

Sec. 54.048. TENANT MAY REPLEVY. At any time before judgment in a suit for unpaid rent, the tenant may replevy any of the property that has been seized, if the property has not been claimed or sold, by posting a bond in an amount approved by the court, payable to the landlord, and conditioned that if the landlord prevails in the suit, the amount of the judgment rendered and any costs assessed against the tenant shall be first satisfied, to the extent possible, out of the bond.

Added by Acts 1987, 70th Leg., ch. 266, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 55. HOSPITAL AND EMERGENCY MEDICAL SERVICES LIENS

Sec. 55.001. DEFINITIONS. In this chapter:

(1) "Emergency medical services" has the meaning assigned by Section 773.003, Health and Safety Code.

(2) "Emergency medical services provider" has the meaning assigned by Section 773.003, Health and Safety Code.

(3) "Hospital" means a person or institution maintaining a facility that provides hospital services in this state.

(4) "Person" does not include a county, common, or

independent school district.

Acts 1983, 68th Leg., p. 3562, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003.

Sec. 55.002. LIEN. (a) A hospital has a lien on a cause of action or claim of an individual who receives hospital services for injuries caused by an accident that is attributed to the negligence of another person. For the lien to attach, the individual must be admitted to a hospital not later than 72 hours after the accident.

(b) The lien extends to both the admitting hospital and a hospital to which the individual is transferred for treatment of the same injury.

(c) An emergency medical services provider has a lien on a cause of action or claim of an individual who receives emergency medical services in a county with a population of 800,000 or less for injuries caused by an accident that is attributed to the negligence of another person. For the lien to attach, the individual must receive the emergency medical services not later than 72 hours after the accident.

Acts 1983, 68th Leg., p. 3562, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 576 (H.B. 3337), Sec. 1, eff. September 1, 2011.

Sec. 55.003. PROPERTY TO WHICH LIEN ATTACHES. (a) A lien under this chapter attaches to:

(1) a cause of action for damages arising from an injury for which the injured individual is admitted to the hospital or receives emergency medical services;

(2) a judgment of a court in this state or the decision of a public agency in a proceeding brought by the injured individual or by another person entitled to bring the suit in case of the death of the individual to recover damages arising from an injury for which the injured individual is admitted to the hospital or receives emergency medical services; and

(3) the proceeds of a settlement of a cause of action or a

claim by the injured individual or another person entitled to make the claim, arising from an injury for which the injured individual is admitted to the hospital or receives emergency medical services.

(b) The lien does not attach to:

(1) a claim under the workers' compensation law of this state, the Federal Employees Liability Act, or the Federal Longshore and Harbor Workers' Compensation Act; or

(2) the proceeds of an insurance policy in favor of the injured individual or the injured individual's beneficiary or legal representative, except public liability insurance carried by the insured that protects the insured against loss caused by an accident or collision.

(c) A hospital lien described by Section 55.002(a) does not attach to a claim against the owner or operator of a railroad company that maintains or whose employees maintain a hospital in which the injured individual is receiving hospital services.

Acts 1983, 68th Leg., p. 3562, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003.

Sec. 55.004. AMOUNT OF LIEN. (a) In this section, "emergency hospital care" means health care services provided in a hospital to evaluate, stabilize, and treat a serious medical problem of recent onset or severity, including severe pain that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that the condition, illness, or injury is of such a nature that failure to obtain immediate medical care would in all reasonable probability:

(1) seriously jeopardize the patient's health;

(2) seriously impair one or more bodily functions;

(3) seriously harm an organ or other part of the body;

(4) cause serious disfigurement; or

(5) in the case of a pregnant woman, seriously jeopardize the health of the fetus.

(b) A hospital lien described by Section 55.002(a) is for the amount of the hospital's charges for services provided to the injured individual during the first 100 days of the injured individual's hospitalization.

(c) A hospital lien described by Section 55.002(a) may also

include the amount of a physician's reasonable and necessary charges for emergency hospital care services provided to the injured individual during the first seven days of the injured individual's hospitalization. At the request of the physician, the hospital may act on the physician's behalf in securing and discharging the lien.

(d) A hospital lien described by Section 55.002(a) does not cover:

(1) charges for other services that exceed a reasonable and regular rate for the services;

(2) charges by the physician related to any services provided under Subsection (c) for which the physician has accepted insurance benefits or payment under a private medical indemnity plan or program, regardless of whether the benefits or payment equals the full amount of the physician's charges for those services;

(3) charges by the physician for services provided under Subsection (c) if the injured individual has coverage under a private medical indemnity plan or program from which the physician is entitled to recover payment for the physician's services under an assignment of benefits or similar rights; or

(4) charges by the physician related to any services provided under Subsection (c) if the physician is a member of the legislature.

(e) A hospital lien described by Section 55.002(a) is not affected by a hospital's use of a method of classifying patients according to their ability to pay that is solely intended to obtain a lien for services provided to an indigent injured individual.

(f) An emergency medical services lien described by Section 55.002(c) is for the amount charged by the emergency medical services provider, not to exceed $1,000, for emergency medical services provided to the injured individual during the 72 hours following the accident that caused the individual's injuries.

(g) An emergency medical services lien described by Section 55.002(c) does not cover:

(1) charges for services that exceed a reasonable and regular rate for the services;

(2) charges by the emergency medical services provider related to any services for which the emergency medical services provider has accepted insurance benefits or payment under a private medical indemnity plan or program, regardless of whether the benefits or payments equal the full amount of the charges for those services;

or

(3) charges by the emergency medical services provider for services provided if the injured individual has coverage under a private medical indemnity plan or program from which the provider is entitled to recover payment for the provider's services under an assignment of benefits or similar right.

(h) If the physician is employed in that capacity by an institution of higher education, as defined by Section 61.003, Education Code, and the lien does not include the amount of the physician's reasonable and necessary charges described by Subsection (c), the physician has a lien on the cause of action in the same manner as a hospital under this chapter. The lien is subject to provisions of this chapter applicable to a hospital lien, and the physician or the physician's employing institution may secure and enforce the lien in the manner provided by this chapter.

Acts 1983, 68th Leg., p. 3563, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 2001, 77th Leg., ch. 930, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1266, Sec. 1.16, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(79), eff. September 1, 2005.

Sec. 55.005. SECURING LIEN. (a) To secure the lien, a hospital or emergency medical services provider must:

(1) provide notice to the injured individual in accordance with Subsection (d); and

(2) file written notice of the lien with the county clerk of the county in which the services were provided before money is paid to an entitled person because of the injury.

(b) The notice must contain:

(1) the injured individual's name and address;

(2) the date of the accident;

(3) the name and location of the hospital or emergency medical services provider claiming the lien; and

(4) the name of the person alleged to be liable for damages arising from the injury, if known.

(c) The county clerk shall record the name of the injured

individual, the date of the accident, and the name and address of the hospital or emergency medical services provider and shall index the record in the name of the injured individual.

(d) Except as provided by Subsection (e), not later than the fifth business day after the date a hospital or emergency medical services provider receives notice from the county clerk that a notice of lien filed under Subsection (a)(2) has been recorded in the county records, the hospital or emergency medical services provider must send a written notice to the injured individual or the injured individual's legal representative, by regular mail, to the individual's last known address, informing the individual that:

(1) the lien will attach to any cause of action or claim the individual may have against another person for the individual's injuries; and

(2) the lien does not attach to real property owned by the individual.

(e) An emergency medical services provider is not required to provide notice by mail if the emergency medical services provider provides the notice required by Subsection (d) to the injured individual or the injured individual's representative at the time emergency medical services are provided and if:

(1) the required notice is included on the emergency medical services authorization form in a paper or electronic version in a separate paragraph that is bolded and in at least 14-point type; and

(2) except as provided by Subsection (f), the notice is signed by the injured individual or the injured individual's representative.

(f) For the purposes of Subsection (e), if consent for emergency care of an individual is not required under Section 773.008, Health and Safety Code, notice provided on an emergency medical services authorization form to the injured individual is not required to be signed.

(g) The failure of an individual to receive a notice mailed in accordance with Subsection (d) does not affect the validity of a lien under this chapter.

Acts 1983, 68th Leg., p. 3563, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 1031, Sec. 1, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 169 (S.B. 328), Sec. 1, eff. September 1, 2011.

Sec. 55.006. DISCHARGE OF LIEN. (a) To discharge a lien under this chapter, the authorities of the hospital or emergency medical services provider claiming the lien or the person in charge of the finances of the hospital or emergency medical services provider must execute and file with the county clerk of the county in which the lien notice was filed a certificate stating that the debt covered by the lien has been paid or released and authorizing the clerk to discharge the lien.

(b) The county clerk shall record a memorandum of the certificate and the date it was filed.

(c) The filing of the certificate and recording of the memorandum discharge the lien.

Acts 1983, 68th Leg., p. 3564, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003.

Sec. 55.007. VALIDITY OF RELEASE. (a) A release of a cause of action or judgment to which a lien under this chapter may attach is not valid unless:

(1) the charges of the hospital or emergency medical services provider claiming the lien were paid in full before the execution and delivery of the release;

(2) the charges of the hospital or emergency medical services provider claiming the lien were paid before the execution and delivery of the release to the extent of any full and true consideration paid to the injured individual by or on behalf of the other parties to the release; or

(3) the hospital or emergency medical services provider claiming the lien is a party to the release.

(b) A judgment to which a lien under this chapter has attached remains in effect until the charges of the hospital or emergency medical services provider claiming the lien are paid in full or to the extent set out in the judgment.

Acts 1983, 68th Leg., p. 3564, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003.

Sec. 55.008. RECORDS. (a) On request by an attorney for a party by, for, or against whom a claim is asserted for damages arising from an injury, a hospital or emergency medical services provider shall as promptly as possible make available for the attorney's examination its records concerning the services provided to the injured individual.

(b) The hospital or emergency medical services provider may issue reasonable rules for granting access to its records under this section, but it may not deny access because a record is incomplete.

(c) The records are admissible, subject to applicable rules of evidence, in a civil suit arising from the injury.

Acts 1983, 68th Leg., p. 3564, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003.

CHAPTER 56. LIENS AGAINST MINERAL PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 56.001. DEFINITIONS. In this chapter:

(1) "Mineral activities" means digging, drilling, torpedoing, operating, completing, maintaining, or repairing an oil, gas, or water well, an oil or gas pipeline, or a mine or quarry.

(2) "Mineral contractor" means a person who performs labor or furnishes or hauls material, machinery, or supplies used in mineral activities under an express or implied contract with a mineral property owner or with a trustee, agent, or receiver of a mineral property owner.

(3) "Mineral property owner" means an owner of land, an oil, gas, or other mineral leasehold, an oil or gas pipeline, or an oil or gas pipeline right-of-way.

(4) "Mineral subcontractor" means a person who:

(A) furnishes or hauls material, machinery, or supplies used in mineral activities under contract with a mineral contractor or with a subcontractor;

(B) performs labor used in mineral activities under contract with a mineral contractor; or

(C) performs labor used in mineral activities as an

artisan or day laborer employed by a subcontractor.

Acts 1983, 68th Leg., p. 3565, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.002. LIEN. A mineral contractor or subcontractor has a lien to secure payment for labor or services related to the mineral activities.

Acts 1983, 68th Leg., p. 3566, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.003. PROPERTY SUBJECT TO LIEN. (a) The following property is subject to the lien:

(1) the material, machinery, and supplies furnished or hauled by the lien claimant;

(2) the land, leasehold, oil or gas well, water well, oil or gas pipeline and its right-of-way, and lease for oil and gas purposes for which the labor was performed or material, machinery, or supplies were furnished or hauled, and the buildings and appurtenances on this property;

(3) other material, machinery, and supplies used for mineral activities and owned by the owner of the property listed in Subdivision (2); and

(4) other wells and pipelines used in operations related to oil, gas, and minerals and located on property listed in Subdivision (2).

(b) A lien created by performing labor or furnishing or hauling material, machinery, or supplies for a leaseholder does not attach to the fee title to the property.

Acts 1983, 68th Leg., p. 3566, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.004. PRIORITY. (a) The lien does not affect an encumbrance that attached to land or a leasehold before the lien's inception.

(b) The lien on material, machinery, supplies, or a specific improvement takes priority over an earlier encumbrance on the land or leasehold on which the material, machinery, supplies, or improvement is placed or located.

Acts 1983, 68th Leg., p. 3567, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.005. ACCRUAL OF INDEBTEDNESS. (a) The indebtedness for labor performed by the day or week accrues at the end of each week during which the labor is performed.

(b) The indebtedness for material or services accrues on the date the material or services were last furnished. All material or services that a person furnishes for the same land, leasehold interest, oil or gas pipeline, or oil or gas pipeline right-of-way are considered to be furnished under a single contract unless more than six months elapse between the dates the material or services are furnished.

Acts 1983, 68th Leg., p. 3567, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.006. LIABILITY OF OWNER. An owner of land or a leasehold may not be subjected to liability under this chapter greater than the amount agreed to be paid in the contract for furnishing material or performing labor.

Acts 1983, 68th Leg., p. 3567, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. SECURING LIEN

Sec. 56.021. SECURING LIEN. (a) Not later than six months after the day the indebtedness accrues, a person claiming the lien must file an affidavit with the county clerk of the county in which the property is located.

(b) Not later than the 10th day before the day the affidavit is filed, a mineral subcontractor claiming the lien must serve on the property owner written notice that the lien is claimed.

Acts 1983, 68th Leg., p. 3567, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.022. CONTENTS OF AFFIDAVIT. (a) A lien claimant's affidavit must include:

(1) the name of the mineral property owner involved, if known;

(2) the name and mailing address of the claimant;

(3) the dates of performance or furnishing;

(4) a description of the land, leasehold interest, pipeline, or pipeline right-of-way involved; and

(5) an itemized list of amounts claimed.

(b) A mineral subcontractor's affidavit must in addition include:

(1) the name of the person for whom labor was performed or material was furnished or hauled; and

(2) a statement that the subcontractor timely served written notice that the lien is claimed on the property owner or the owner's agent, representative, or receiver.

Acts 1983, 68th Leg., p. 3568, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.023. CONTENTS OF MINERAL SUBCONTRACTOR'S NOTICE. A mineral subcontractor's notice to the property owner must include the amount of the lien, the name of the person indebted to the subcontractor, and a description of the land, leasehold interest, pipeline, or pipeline right-of-way involved.

Acts 1983, 68th Leg., p. 3568, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.024. FILING IN NEW COUNTY. (a) Not later than the 90th day after the day that property to which the lien has attached is removed from a county in which the lien affidavit covering the property has been filed, the lienholder may file with the clerk of the county to which the property has been moved an itemized inventory of the property showing the unpaid amount due.

(b) The lien attaches to all property subject to the lien located in a county in which an inventory is filed under this section.

(c) An inventory filed under this section is notice of the lien's existence.

Acts 1983, 68th Leg., p. 3568, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. ENFORCEMENT

Sec. 56.041. ENFORCEMENT. (a) A claimant must enforce the lien within the same time and in the same manner as a mechanic's, contractor's, or materialman's lien under Chapter 53.

(b) A holder of a prior encumbrance on land or a leasehold is not a necessary party to a suit to foreclose the lien.

Acts 1983, 68th Leg., p. 3569, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.042. SALE OR REMOVAL OF PROPERTY. (a) A mineral property owner, contractor, subcontractor, or purchaser or an agent, trustee, or receiver of one of those persons may not sell property to which the lien has attached or remove it from the land on which it was to be used, unless the lienholder consents in writing.

(b) On a violation of this section, a lienholder is entitled to possession of the property regardless of where it is found, and the lienholder may have the property sold to satisfy the debt on which the lien is based regardless of whether the debt is due.

Acts 1983, 68th Leg., p. 3569, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.043. RETENTION OF PAYMENT. A property owner who is served with a mineral subcontractor's notice may withhold payment to the contractor in the amount claimed until the debt on which the lien is based is settled or determined to be not owed. The owner is not liable to the subcontractor for more than the amount that the owner owes the original contractor when the notice is received.

Acts 1983, 68th Leg., p. 3569, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.044. FORFEITURE OF LEASEHOLD. Forfeiture of a leasehold does not impair a lien on material, machinery, supplies, or an improvement located on the leasehold if:

(1) the lien attached to the property before the leasehold was forfeited;

(2) the property is not permanently attached to the land; and

(3) the lienholder pays the owner of the land the damages caused to the land by removal of the property.

Acts 1983, 68th Leg., p. 3569, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.045. EQUITABLE OR CONTINGENT INTEREST. Failure of an equitable interest to become legal title or nonfulfillment of a condition subsequent on which a legal interest is contingent does not impair a lien on material, machinery, supplies, or an improvement located on the land covered by the equitable interest if the lien attached to the material, machinery, supplies, or improvement before the failure.

Acts 1983, 68th Leg., p. 3570, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 57. RAILROAD LABORER'S LIEN

Sec. 57.001. RAILROAD LABORER'S LIEN. A mechanic, laborer, or other person who works or uses tools or a team in the construction, operation, or repair of a railroad or railroad equipment has a lien on the railroad and equipment for the amount owed for the labor or the use of the tools or team.

Acts 1983, 68th Leg., p. 3570, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 57.002. PRIORITY. A lien under this chapter takes priority over all other liens on the same property.

Acts 1983, 68th Leg., p. 3570, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 57.003. DURATION OF LIEN. A lien under this chapter ceases to exist 12 months after the day that it is created, unless the lien claimant has sued to foreclose the lien.

Acts 1983, 68th Leg., p. 3570, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 57.004. ENFORCEMENT. A court in a suit to foreclose the lien shall render judgment for the amount due and order to be sold as much of the railroad right-of-way and equipment as is necessary to satisfy the judgment only if:

(1) the work was performed at the instance of the railroad company or the company's agent, contractor, or subcontractor; and

(2) the amount claimed is due.

Acts 1983, 68th Leg., p. 3571, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 57.005. VENUE. A suit to foreclose a lien under this chapter may be brought in a county in which:

(1) the work was performed or any part of the cause of action accrued; or

(2) the principal office of the railroad company is located.

Acts 1983, 68th Leg., p. 3571, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 57.006. PARTIES. Holders of other liens on the same property are not necessary parties to a suit to foreclose a lien under this chapter but may intervene in the suit.

Acts 1983, 68th Leg., p. 3571, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 58. FARM, FACTORY, AND STORE WORKER'S LIENS

Sec. 58.001. DEFINITIONS. In this chapter:

(1) "Employer" means a person with whom a worker contracts, directly or through an agent, receiver, or trustee of the person, for the performance of labor or a service by the worker. The contract may be oral or in writing.

(2) "Worker" means a clerk, accountant, bookkeeper, waiter, waitress, cook, maid, porter, servant, employee, artisan, craftsman, factory operator, mill operator, mechanic, quarry worker, common laborer, or farmhand.

Acts 1983, 68th Leg., p. 3571, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.002. LIEN. (a) A worker has a lien as provided by this chapter if, under the contract with the employer, the worker:

(1) labors or performs a service in an office, store,

hotel, rooming house or boardinghouse, restaurant, shop, factory, mine, quarry, or mill or on a farm; or

(2) performs a service:

(A) in cutting, preparing, hauling, or transporting logs or timber to a place of disposition;

(B) on a means of transportation of logs or timber; or

(C) in constructing or maintaining a tram or railroad constructed or used for transporting logs or timber to their owner or a point of disposition.

(b) The amount of the lien is the amount owed under the contract.

Acts 1983, 68th Leg., p. 3572, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.003. PROPERTY SUBJECT TO LIEN. Each thing of value owned by or in the possession or control of the employer or the employer's agent, receiver, or trustee is subject to the lien if:

(1) created in whole or part by the lien claimant's work;

(2) used by or useful to the lien claimant in the performance of the work; or

(3) necessarily connected with the performance of the work.

Acts 1983, 68th Leg., p. 3572, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.004. SECURING LIEN. (a) Not later than the 30th day after the day that the indebtedness accrues, a worker who has not received payment for work performed and who wishes to claim the lien must:

(1) serve a copy of an account of the services, stating the amount due, on the employer or the employer's agent, receiver, or trustee; and

(2) file a copy of the account with the county clerk of the county in which the services were performed.

(b) The party making an account must execute an affidavit verifying the contents of the account.

(c) Substantial compliance with this section secures the lien.

Acts 1983, 68th Leg., p. 3572, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.005. PRIORITY. (a) A lien under this chapter is a first lien, except that a farmhand's lien is subordinate to a landlord's lien provided by law.

(b) Liens under this chapter take priority in the order that the accounts are filed with the county clerk.

Acts 1983, 68th Leg., p. 3573, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.006. DURATION OF LIEN. The lien ceases to exist six months after the day that it is secured unless the lien claimant has sued to foreclose the lien.

Acts 1983, 68th Leg., p. 3573, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.007. PURCHASE OF PROPERTY TO WHICH LIEN HAS ATTACHED. (a) A person who purchases from its owner property to which the lien has attached and who has no actual or constructive notice of the lien takes the property free from the lien.

(b) An account filed with the county clerk under this chapter or a suit to foreclose a lien is constructive notice of the lien's existence.

Acts 1983, 68th Leg., p. 3573, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.008. ASSIGNMENT OF LIEN. The lien may be assigned. An assignee receives the rights and privileges held by the assignor under the lien.

Acts 1983, 68th Leg., p. 3573, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.009. PAYMENT OF WAGES. For purposes of this chapter, wages are due weekly for work performed by the day or week and monthly for work performed by the month, and an employer shall pay wages in United States legal tender.

Acts 1983, 68th Leg., p. 3573, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 59. SELF-SERVICE STORAGE FACILITY LIENS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.001. DEFINITIONS. In this chapter:

(1) "Lessor" means an owner, lessor, sublessor, or managing agent of a self-service storage facility.

(1-a) "Military service" means:

(A) military service as defined by Section 101, Servicemembers Civil Relief Act (50 U.S.C. App. Section 511); and

(B) active duty service for a period of more than 30 consecutive days as a member of the Texas State Guard or Texas National Guard under the call of the governor.

(2) "Rental agreement" means a written or oral agreement that establishes or modifies the terms of use of a self-service storage facility.

(3) "Self-service storage facility" means real property that is rented to be used exclusively for storage of property and is cared for and controlled by the tenant.

(4) "Tenant" means a person entitled under a rental agreement to the exclusive use of storage space at a self-service storage facility.

(5) "Verified mail" means any method of mailing that provides evidence of mailing.

Acts 1983, 68th Leg., p. 3574, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 1, eff. January 1, 2012.

Sec. 59.002. APPLICABILITY. This chapter applies to a self-service storage facility rental agreement that is entered into, extended, or renewed after September 1, 1981.

Acts 1983, 68th Leg., p. 3574, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.003. APPLICABILITY OF OTHER STATUTES. (a) The following provisions do not apply to a self-service storage facility:

(1) Subchapter B, Chapter 54;

(2) Chapter 70; and

(3) Chapter 181, Health and Safety Code.

(b) Unless a lessor issues a warehouse receipt, bill of lading, or other document of title relating to property stored at the facility, the following statutes do not apply to a self-service storage facility:

(1) Chapter 7, Business & Commerce Code, as amended; and

(2) Chapter 14, Agriculture Code.

Acts 1983, 68th Leg., p. 3575, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 2001, 77th Leg., ch. 1124, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 2, eff. January 1, 2012.

Sec. 59.004. VARIATION BY AGREEMENT AND WAIVER. Except as expressly provided by this chapter, a lessor or tenant may not vary the provisions of this chapter by agreement or waive rights conferred by this chapter.

Acts 1983, 68th Leg., p. 3575, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.005. DAMAGES FOR VIOLATION. A person injured by a violation of this chapter may sue for damages under the Deceptive Trade Practices--Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

Acts 1983, 68th Leg., p. 3575, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.006. ATTACHMENT AND PRIORITY OF LIEN. A lien under this chapter attaches on the date the tenant places the property at the self-service storage facility. The lien takes priority over all other liens on the same property.

Acts 1983, 68th Leg., p. 3575, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.007. PURCHASE OF PROPERTY. A good faith purchaser of property sold to satisfy a lien under this chapter takes the property

free of a claim by a person against whom the lien was valid, regardless of whether the lessor has complied with this chapter.

Acts 1983, 68th Leg., p. 3575, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.008. REDEMPTION. A tenant may redeem property seized under a judicial order or a contractual landlord's lien prior to its sale or other disposition by paying the lessor the amount of the lien and the lessor's reasonable expenses incurred under this chapter.

Acts 1983, 68th Leg., p. 3575, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.009. RESIDENTIAL USE. A tenant may not use or allow the use of a self-service storage facility as a residence.

Acts 1983, 68th Leg., p. 3576, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.010. RIGHTS OF CERTAIN MILITARY MEMBERS. (a) In this section, "servicemember" has the meaning assigned by Section 101, Servicemembers Civil Relief Act (50 U.S.C. App. Section 511).

(b) A member of the Texas State Guard or Texas National Guard who is in military service is entitled to the same protections and rights relating to the enforcement of storage liens under the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et seq.) to which a servicemember is entitled.

Added by Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 3, eff. January 1, 2012.

SUBCHAPTER B. LIEN

Sec. 59.021. LIEN; PROPERTY ATTACHED. A lessor has a lien on all property in a self-service storage facility for the payment of charges that are due and unpaid by the tenant.

Acts 1983, 68th Leg., p. 3576, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 117, Sec. 12(a), eff. Sept. 1, 1985.

SUBCHAPTER C. ENFORCEMENT OF LIEN

Sec. 59.041. ENFORCEMENT OF LIEN. (a) Except as provided by Subsection (b) of this section, a lessor may enforce a lien under this chapter only under a judgment by a court of competent jurisdiction that forecloses the lien and orders the sale of the property to which it is attached.

(b) A lessor may enforce a lien under this chapter by seizing and selling the property to which the lien is attached if:

(1) the seizure and sale are made under the terms of a contractual landlord's lien as underlined or printed in conspicuous bold print in a written rental agreement between the lessor and tenant; and

(2) the seizure and sale are made in accordance with this chapter.

Acts 1983, 68th Leg., p. 3576, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 117, Sec. 12(c), eff. Sept. 1, 1985.

Sec. 59.042. PROCEDURE FOR SEIZURE AND SALE. (a) A lessor who wishes to enforce a contractual landlord's lien by seizing and selling or otherwise disposing of the property to which it is attached must deliver written notice of the claim to the tenant.

(b) If the tenant fails to satisfy the claim on or before the 14th day after the date the notice is delivered, the lessor must publish or post notices advertising the sale as provided by this subchapter.

(c) If notice is by publication, the lessor may not sell the property until the 15th day after the date the notice is first published. If notice is by posting, the lessor may sell the property after the 10th day after the date the notices are posted.

Acts 1983, 68th Leg., p. 3576, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 5, eff. Oct. 2, 1984; Acts 1985, 69th Leg., ch. 117, Sec. 12(d), eff. Sept. 1, 1985.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 4, eff.

January 1, 2012.

Sec. 59.043. CONTENTS AND DELIVERY OF NOTICE OF CLAIM; INFORMATION REGARDING TENANT'S MILITARY SERVICE. (a) The lessor's notice to the tenant of the claim must contain:

(1) an itemized account of the claim;

(2) the name, address, and telephone number of the lessor or the lessor's agent;

(3) a statement that the contents of the self-service storage facility have been seized under the contractual landlord's lien;

(4) a statement that if the tenant fails to satisfy the claim on or before the 14th day after the date the notice is delivered, the property may be sold at public auction; and

(5) a statement underlined or printed in conspicuous bold print requesting a tenant who is in military service to notify the lessor of the status of the tenant's current military service immediately.

(b) A lessor may require written proof of a tenant's military service in the form of documentation from the United States Department of Defense or other documentation reasonably acceptable to the lessor.

(c) Subject to Subsection (d), the lessor must deliver the notice in person or by e-mail or verified mail to the tenant's last known e-mail or postal address as stated in the rental agreement or in a written notice from the tenant to the lessor furnished after the execution of the rental agreement. Notice by verified mail is considered delivered when the notice, properly addressed with postage prepaid, is deposited with the United States Postal Service or a common carrier. Notice by e-mail is considered delivered when sent to the last known e-mail address of the tenant.

(d) The notice may not be sent by e-mail unless a written rental agreement between the lessor and the tenant contains language underlined or in conspicuous bold print that notice may be given by e-mail if the tenant elects to provide an e-mail address.

Acts 1983, 68th Leg., p. 3577, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 5, eff.

January 1, 2012.

Sec. 59.044. NOTICE OF SALE. (a) The notice advertising the sale must contain:

(1) a general description of the property;

(2) a statement that the property is being sold to satisfy a landlord's lien;

(3) the tenant's name;

(4) the address of the self-service storage facility; and

(5) the time, place, and terms of the sale.

(b) The lessor must publish the notice once in each of two consecutive weeks in a newspaper of general circulation in the county in which the self-service storage facility is located. If there is not a newspaper of general circulation in the county, the lessor may instead post a copy of the notice at the self-service storage facility and at least five other conspicuous locations near the facility.

Acts 1983, 68th Leg., p. 3577, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.0445. NOTICE TO OWNER AND LIENHOLDERS. (a) This section applies to the enforcement of a lien under this chapter on:

(1) a motor vehicle subject to Chapter 501, Transportation Code;

(2) a motorboat, vessel, or outboard motor for which a certificate of title is required under Subchapter B, Chapter 31, Parks and Wildlife Code; or

(3) a motor vehicle, motorboat, vessel, or outboard motor registered or titled outside this state.

(b) In addition to the notices required by Sections 59.042 and 59.044, not later than the 30th day after the date the lessor takes possession of the motor vehicle, motorboat, vessel, or outboard motor to enforce a lien under this chapter, the lessor shall give written notice of sale to the last known owner and each holder of a lien recorded on the registration or certificate of title of the motor vehicle, motorboat, vessel, or outboard motor or, if the registration or title is outside this state, the owner and each lienholder of record in the location in which the motor vehicle, motorboat, vessel,

or outboard motor is registered or titled.

(c) Except as provided by Subsection (d), the notice required by this section must be sent by verified mail. Notice by verified mail is considered mailed when the notice, properly addressed with postage prepaid, is deposited with the United States Postal Service or a common carrier. The notice must include:

(1) the amount of the charges secured by the lien;

(2) a request for payment; and

(3) a statement that if the charges are not paid in full before the 31st day after the date the notice is mailed or published, as applicable, the property may be sold at public auction.

(d) The notice required by this section may be given by publishing the notice once in a print or electronic version of a newspaper of general circulation in the county in which the motor vehicle, motorboat, vessel, or outboard motor is stored if:

(1) the lessor submits a written request by verified mail to the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered or titled requesting information relating to the identity of the last known owner of record and any lienholder of record;

(2) the lessor:

(A) is advised in writing by the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered or titled that the entity is unwilling or unable to provide information on the last known owner of record or any lienholder of record; or

(B) does not receive a response from the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered or titled on or before the 21st day after the date the lessor submits the request;

(3) the identity of the last known owner of record cannot be determined;

(4) the registration or title does not contain an address for the last known owner of record; and

(5) the lessor cannot determine the identities and addresses of the lienholders of record.

(e) The lessor is not required to publish notice under Subsection (d) if a correctly addressed notice is sent with sufficient postage in accordance with Subsections (b) and (c) and is returned as unclaimed or refused or with a notation that the

addressee is unknown or has moved without leaving a forwarding address or the forwarding order has expired.

(f) After notice is given under this section to the owner of or the holder of a lien on the motor vehicle, motorboat, vessel, or outboard motor, the owner or lienholder may take possession of the motor vehicle, motorboat, vessel, or outboard motor by paying all charges due to the lessor before the 31st day after the date the notice is mailed or published as provided by this section.

(g) If the charges are not paid before the 31st day after the date the notice is mailed or published, as applicable, the lessor may sell the motor vehicle, motorboat, vessel, or outboard motor at a public sale and apply the proceeds to the charges.

(h) A person commits an offense if the person knowingly provides false or misleading information in a notice required by this section. An offense under this subsection is a Class B misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 6, eff. January 1, 2012.

Sec. 59.045. CONDUCT OF SALE. A sale under this subchapter must be a public sale at the self-service storage facility or a reasonably near public place. The lessor must conduct the sale according to the terms specified in the notice advertising the sale and sell the property to the highest bidder.

Acts 1983, 68th Leg., p. 3578, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.046. EXCESS PROCEEDS OF SALE. If the proceeds of a sale under this subchapter are greater than the amount of the lien and the reasonable expenses of the sale, the lessor shall deliver written notice of the excess to the tenant's last known address as stated in the rental agreement or in a written notice from the tenant to the lessor furnished after the execution of the rental agreement. The lessor shall retain the excess and deliver it to the tenant if the tenant requests it before two years after the date of the sale. If the tenant does not request the excess before two years after the date of the sale, the lessor owns the excess.

Acts 1983, 68th Leg., p. 3578, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 60. NEWSPAPER EMPLOYEE'S LIEN

Sec. 60.001. LIEN. A worker in the editorial, reportorial, advertising, or business department of a newspaper, periodical, or other publication who labors or performs a service for the publication under a written or an oral contract with any person has a first lien under this chapter for the amount due under the contract.

Acts 1983, 68th Leg., p. 3578, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 60.002. PROPERTY SUBJECT TO LIEN. The lien attaches to all products, papers, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, subscription contracts, chattels, or other things of value that are created wholly or partly by the labor of the workers or that are necessarily connected with the performance of their labor or service and that are owned by or in possession of the person with whom the workers contracted.

Acts 1983, 68th Leg., p. 3578, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 61. MOTOR VEHICLE MORTGAGEE'S LIEN

Sec. 61.001. DEFINITIONS. In this chapter:

(1) "Motor vehicle" means any motor-driven or propelled vehicle required to be registered or licensed under the laws of this state.

(2) "Mortgagee" means a secured party, as defined by Section 9.102, Business & Commerce Code, holding a lien on a motor vehicle that has been perfected pursuant to Subchapter F, Chapter 501, Transportation Code.

(3) "Mortgagor" means a debtor, as defined by Section 9.102, Business & Commerce Code, giving a lien or agreeing that a lien may be retained on a motor vehicle.

Added by Acts 1989, 71st Leg., ch. 171, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.246, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 414, Sec. 2.37, eff. July 1, 2001.

Sec. 61.002. LIEN. A mortgagee has a lien on a cause of action or other claim of a mortgagor in connection with an accident that involves a motor vehicle on which the mortgagee has perfected a lien and that is attributable to the negligence of another person.

Added by Acts 1989, 71st Leg., ch. 171, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.003. PROPERTY TO WHICH LIEN ATTACHES. The lien attaches to:

(1) a cause of action for damages arising from property damage to a motor vehicle on which the mortgagee has perfected a lien caused by an accident that is attributable to the negligence of another person;

(2) a judgment of a court in favor of a mortgagor arising from property damage to a motor vehicle on which the mortgagee has perfected a lien caused by an accident that is attributable to the negligence of another person;

(3) the proceeds of a settlement of a cause of action or a claim by the mortgagor for property damage to a motor vehicle on which the mortgagee has perfected a lien caused by an accident that is attributable to the negligence of another person; and

(4) the proceeds of a property damage liability insurance policy carried by another person that protects the other person against property damage loss caused by accident or collision.

Added by Acts 1989, 71st Leg., ch. 171, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.004. AMOUNT OF LIEN. The amount of the lien is the lesser of:

(1) the fair market value of the motor vehicle before the accident;

(2) the reasonable cost of repair to the motor vehicle; or

(3) the balance owed to the mortgagee by the mortgagor.

Added by Acts 1989, 71st Leg., ch. 171, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 11, eff. Sept. 1, 1993.

Sec. 61.005. DISCHARGE OF LIEN. If the property to which a

lien created under this chapter attaches is paid jointly to the mortgagee and the mortgagor, the lien is discharged.

Added by Acts 1989, 71st Leg., ch. 171, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 62. BROKER'S AND APPRAISER'S LIEN ON COMMERCIAL REAL ESTATE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. SHORT TITLE. This chapter may be cited as the Broker's and Appraiser's Lien on Commercial Real Estate Act.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.002. APPLICABILITY. (a) This chapter applies only to real estate that is commercial real estate on the date the notice of lien is filed under this chapter.

(b) This chapter does not apply to:

(1) a transaction involving a claim for a commission of $2,500 or less in the aggregate; or

(2) a transaction for the sale of commercial real estate involving a claim for a commission of $5,000 or less in the aggregate if the commercial real estate:

(A) is the principal place of business of the record title owner;

(B) is occupied by more than one and fewer than five tenants; and

(C) is improved with 7,500 square feet or less of total gross building area.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.003. DEFINITIONS. In this chapter:

(1) "Broker" means a person who:

(A) is licensed as a broker under Chapter 1101, Occupations Code, and is not acting as a residential rental locator as defined by Section 1101.002, Occupations Code; or

(B) is licensed or certified as a real estate appraiser under Chapter 1103, Occupations Code.

(2) "Commercial real estate" means all real estate except:

(A) real estate improved with one to four residential units;

(B) a single-family residential unit, including a condominium, townhouse, or home in a subdivision, if the unit is sold, leased, or otherwise conveyed on a unit-by-unit basis and regardless of whether the unit is part of a larger building or located on real estate containing more than four residential units;

(C) real estate that is or includes on the real estate a person's homestead;

(D) real estate that is not improved with a structure and is:

(i) zoned for single-family residential use; or

(ii) restricted for single-family use under restrictive covenants that will remain in effect for at least the next two years; or

(E) real estate that:

(i) is primarily used for farming and ranching purposes;

(ii) will continue to be used primarily for farming and ranching purposes; and

(iii) is located more than three miles from the corporate boundaries of any municipality.

(3) "Commission" includes a fee or other valuable consideration.

(4) "Commission agreement" means a written instrument that:

(A) entitles a broker to a commission;

(B) is signed by the person obligated to pay the commission or that person's authorized agent;

(C) references the commission amount or describes the formula used to determine the commission amount; and

(D) contains a description legally sufficient for identification of the real estate interest that is the subject of the agreement if the person obligated to pay the commission is a seller or lessor.

(5) "Deferred commission" means a commission that is earned and is not yet payable.

(6) "Real estate" has the meaning assigned by Section 1101.002, Occupations Code.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.803, eff. Sept. 1, 2003.

Sec. 62.004. PAYABLE COMMISSION AND EARNED COMMISSION. (a) A commission is payable at the time provided in the commission agreement. If payment of the commission is conditioned on the occurrence of an event and that event does not occur, the person obligated to pay the commission is not required to pay the commission.

(b) Except as provided by Subsection (c), a commission is earned on the earlier of the date that:

(1) an event occurs that, under the commission agreement, defines when the commission is earned; or

(2) the person obligated to pay the commission enters into a purchase contract or a lease during the period prescribed by the commission agreement for all or part of the commercial real estate if the purchase contract or lease is contemplated by the commission agreement and if the parties to the purchase contract or lease are contemplated by the commission agreement.

(c) If a broker has earned a commission under a commission agreement relating to a lease transaction and the commission agreement provides that the broker may receive an additional commission when the lease is modified to expand the lease space or renewed, the additional commission is earned when:

(1) the broker performs all the additional services relating to the lease modification or renewal expressly prescribed by the commission agreement; or

(2) the broker first earned a commission under the commission agreement if the commission agreement does not expressly require the broker to perform additional services relating to a lease modification or renewal.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.005. BROKER'S ADDRESS FOR RECEIPT OF NOTICE. A seller, lessor, buyer, or tenant shall send any notice required to be sent to the broker under this chapter to the broker:

(1) at the broker's address as reflected in the records of

the Texas Real Estate Commission; and

(2) at the broker's last address that the broker furnished the seller, lessor, buyer, or tenant by certified mail, return receipt requested, if the broker's license is expired.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER B. BROKER'S LIEN

Sec. 62.021. PERSON ENTITLED TO LIEN. (a) A broker has a lien on a seller's or lessor's commercial real estate interest in the amount specified by the commission agreement if:

(1) the broker has earned a commission under a commission agreement signed by the seller or lessor of the commercial real estate interest or the seller's or lessor's authorized agent; and

(2) a notice of lien is recorded and indexed as provided by Section 62.024.

(b) A broker has a lien on the commercial real estate interest purchased by a prospective buyer in the amount specified by the commission agreement if:

(1) the broker has earned a commission under a commission agreement signed by the prospective buyer of the commercial real estate interest or the prospective buyer's authorized agent; and

(2) a notice of lien is recorded and indexed as provided by Section 62.024.

(c) A broker has a lien on the leasehold interest in the commercial real estate that a prospective tenant leases in the amount specified by the commission agreement if:

(1) the broker has earned a commission under a commission agreement signed by the prospective tenant of the commercial real estate interest or the prospective tenant's authorized agent; and

(2) a notice of lien is recorded and indexed as provided by Section 62.024.

(d) A lien described by this section is available only to the broker named in the commission agreement. The lien is not available to an employee or independent contractor of the broker.

(e) The broker's right to claim a lien based on the commission agreement must be disclosed in the commission agreement.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.022. WAIVER, RELEASE, OR DISCHARGE OF LIEN; ASSUMPTION OF COMMISSION OBLIGATION. (a) Except as provided by Subsection (b), the waiver of a broker's right to a lien under this chapter, or a release given for the purpose of releasing the broker's lien before the commission is satisfied or forgiven, is void.

(b) A broker's entitlement to a lien on the interest of an owner or tenant in commercial real estate shall be automatically waived if:

(1) the commission is earned and payable for services provided relating to a lease transaction; and

(2) the commission agreement is included as a provision of the lease agreement.

(c) A lien under this chapter is discharged by:

(1) a court order discharging the lien;

(2) paying the commission to the broker named in the commission agreement; or

(3) establishing an escrow account described by Subchapter F.

(d) A person who assumes an owner's or tenant's commercial real estate interest is bound by a commission agreement included in a lease agreement unless an escrow account is established under Subchapter F or a bond is provided under Subchapter G.

(e) This section does not affect the rights of a mortgagee who forecloses on commercial real estate and does not assume the lease on which a commission agreement is based.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.023. AFFIDAVIT IDENTIFYING BROKER. If requested by the buyer, the buyer's authorized agent, or the escrow agent for the commercial real estate transaction, the seller of commercial real estate and the broker representing the seller shall provide to the requesting party before the closing of the transaction a written affidavit identifying each broker with whom the affiant knows or believes the seller or the seller's authorized agent has signed a commission agreement under which a commission is claimed or earned and has not been paid.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.024. FILING OF NOTICE OF LIEN. (a) A broker claiming a lien under this chapter may not file a notice of lien unless the commission on which the lien is based is earned.

(b) A broker claiming a lien under this chapter must file a notice of lien as provided by Subchapter C with the county clerk of the county in which the commercial real estate is located.

(c) The county clerk shall record the notice of lien in records kept for that purpose and shall index and cross-index the notice of lien in the names of the broker, each person obligated to pay the commission under the commission agreement, and each person who owns an interest in the commercial real estate if the broker claims a lien on that interest.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.025. CONTENTS OF NOTICE OF LIEN. The notice of lien must be signed by the broker or by a person authorized to sign on behalf of the broker and must contain the following:

(1) a sworn statement of the nature and amount of the claim, including:

(A) the commission amount or the formula used to determine the commission;

(B) the type of commission at issue, including a deferred commission; and

(C) the month and year in which the commission was earned;

(2) the name of the broker and the real estate license number of the broker;

(3) the name as reflected in the broker's records of any person who the broker believes is obligated to pay the commission under the commission agreement;

(4) the name as reflected in the broker's records of any person the broker believes to be an owner of the commercial real estate interest on which the lien is claimed;

(5) a description legally sufficient for identification of the commercial real estate interest sought to be charged with the lien;

(6) the name of any cooperating broker or principal in the transaction with whom the broker intends to share the commission and

the dollar or percentage amount to be shared; and

(7) a copy of the commission agreement on which the lien is based.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.026. NOTICE OF FILING. (a) In this section, "business day" means a day other than a Saturday, Sunday, or holiday recognized by this state.

(b) Not later than one business day after the date the broker files a notice of lien, the broker shall mail a copy of the notice of lien by certified mail, return receipt requested, or registered mail to:

(1) the owner of record of the commercial real estate interest on which the lien is claimed or the owner's authorized agent; and

(2) the prospective buyer or tenant and any escrow agent named in a contract for the sale or lease of the commercial real estate interest on which the lien is claimed if:

(A) a binding written contract for the sale or lease of the commercial real estate interest is in effect between the owner and the prospective buyer or tenant in a transaction that is the basis for the commission; and

(B) the binding written contract was executed by the owner and the prospective buyer or tenant before the date the notice of lien is filed.

(c) Service of the notice under Subsection (b) is complete when the notice is deposited in the United States mail, postage prepaid, and addressed to the persons entitled to receive the notice under this section.

(d) If the broker has actual knowledge of the identity of the escrow agent named in the contract for the sale or lease of the commercial real estate interest on which the broker claims a lien or of the escrow agent otherwise closing the sale or lease of the commercial real estate interest, the broker, before the first business day before the date that the sale or lease is closed on commercial real estate for which a notice of lien is filed, shall deliver a file-stamped copy or transmit a facsimile of a file-stamped copy of the notice of lien to each escrow agent at the office in

which the closing of the sale or lease will occur for use during the closing of the sale or lease. The broker shall deliver the copy or transmit the facsimile directly to the individual escrow agent responsible for closing the sale or lease if the broker knows that person's name.

(e) If the escrow agent receives the notice of lien, the escrow agent and other parties to the sale or lease may not close the transaction unless the lien is released, the prospective buyer or tenant purchases or leases the property subject to the lien, the funds are held in escrow as provided by Subchapter F, or a bond is filed as provided by Subchapter G.

(f) If the broker fails to comply with this section, the notice of lien is void.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.027. INCEPTION OF BROKER'S LIEN. (a) A broker's lien attaches to the commercial real estate interest owned by the person obligated to pay the commission on the date the notice of lien is recorded as provided by this chapter. The lien does not relate back to the date of the commission agreement.

(b) A notice of lien for amounts earned by the broker under an installment contract or under a commission agreement for a deferred commission is enforceable only to the extent that the installment or commission has become payable.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.028. PRIORITY. (a) A recorded lien, mortgage, or other encumbrance on commercial real estate, including a recorded lien securing revolving credit and future advances for a loan, recorded before the date a broker's lien is recorded has priority over the broker's lien.

(b) A broker's lien on the commercial real estate interest of a person obligated to pay a commission is not valid or enforceable against a grantee, buyer, lessee, or transferee of the interest of the person obligated to pay the commission if the deed, lease, or instrument transferring the interest is recorded before the notice of the broker's lien is recorded.

(c) A purchase-money mortgage lien executed by the buyer of the commercial real estate interest has priority over a broker's lien claimed for the commission owed by the buyer against the commercial real estate interest purchased by the buyer.

(d) A mechanic's lien that is recorded after a broker's lien and that relates back to a date before the date the broker's lien is recorded has priority over the broker's lien.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.029. SUBORDINATION. (a) If the person obligated to pay the commission sells that person's commercial real estate interest, the broker's lien is subordinate to a recorded purchase-money first lien authorized by the buyer if the buyer:

(1) executes and files with the county clerk of the county in which the broker's lien is filed a memorandum that evidences the buyer's acknowledgment of the existence of the broker's lien; and

(2) sends the broker, by certified mail, return receipt requested, or registered mail, a copy of the recorded memorandum required by this subsection.

(b) If the person obligated to pay the commission refinances a recorded first lien secured by that person's commercial real estate interest, the broker's lien is subordinate to the recorded refinanced first lien, regardless of the amount of the first lien after refinancing, if the person obligated to pay the commission:

(1) executes and files with the county clerk of the county in which the broker's lien is filed a memorandum that evidences the person's acknowledgment of the existence of the broker's lien; and

(2) sends the broker, by certified mail, return receipt requested, or registered mail, a copy of the recorded memorandum required by this subsection.

(c) If the person obligated to pay the commission obtains an extension of credit secured by that person's commercial real estate interest, the broker's lien is subordinate to the lien securing the extension of credit if, according to the loan documents, the extension of credit is made only for the purpose of:

(1) repairing or renovating the commercial real estate; or

(2) completing construction or providing additional improvements on the commercial real estate.

(d) If the person obligated to pay the commission furnishes a subordination agreement as provided by this section to be executed by the broker, the broker must:

(1) execute and acknowledge the subordination agreement before a notary public; and

(2) return the subordination agreement to the person not later than the seventh day after the date the broker receives the subordination agreement and other documents the broker reasonably requests in order to determine that the subordination agreement complies with this section.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.030. MIXED-USE REAL ESTATE. If real estate is zoned or restricted for more than one use, the broker's lien attaches only to the portions of the real estate that constitute commercial real estate.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.031. CHANGE IN USE OF REAL ESTATE. (a) Except as provided by Subsection (b), any change in the use of the real estate does not affect a broker's lien if the notice of the lien was filed when the real estate was commercial real estate.

(b) The broker's lien is extinguished if:

(1) not later than the 360th day after the date on which the broker's commission is payable, the commercial real estate interest on which a broker claims a lien is zoned for single-family use or restricted for single-family use under recorded restrictive covenants; and

(2) the zoning ordinances or restrictive covenants for single-family use are in effect until at least the second anniversary of the date the commission is payable.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER C. TIME FOR FILING NOTICE OF LIEN

Sec. 62.041. TIME TO FILE. (a) If a broker has earned a

commission under a commission agreement signed by a seller or the seller's authorized agent, a broker must record a notice of lien:

(1) after the commission is earned; and

(2) before the conveyance of the commercial real estate interest on which the broker is claiming a lien.

(b) If a broker has earned a commission under a commission agreement signed by a prospective buyer or a prospective buyer's authorized agent, the broker must record a notice of lien:

(1) after the buyer acquires legal title to the commercial real estate interest on which the broker is claiming a lien; and

(2) before the buyer conveys the buyer's commercial real estate interest on which the broker is claiming a lien.

(c) If the lien is based on a lease transaction, the broker must record a notice of lien after the commission is earned and before the earlier of:

(1) the 91st day after the date the event for which the commission becomes payable occurs; or

(2) the date the person obligated to pay the commission records a subsequent conveyance of that person's commercial real estate interest after executing the lease agreement relating to the lease transaction for which the lien is claimed.

(d) If a notice of lien is not filed within the time required by this section, the lien is void.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER D. ENFORCEMENT OF LIEN

Sec. 62.061. SUIT TO FORECLOSE LIEN. (a) A broker may not bring a suit to foreclose a lien under this chapter unless the commission is earned and payable. A broker may bring a suit to foreclose a lien in any district court for the county in which the commercial real estate is located by filing a sworn complaint stating that the notice of lien has been recorded.

(b) A complaint in a suit filed under this section must contain:

(1) a brief description of the commission agreement that is the basis for the lien, including:

(A) a description of the disclosure of the broker's right to the lien contained in the commission agreement;

(B) the date on which the commission agreement was executed;

(C) the event for which a commission is considered to be earned; and

(D) the event for which a commission is considered to be payable;

(2) a description of the services performed by the broker;

(3) the amount of the payable commission that is unpaid;

(4) a description of the commercial real estate to which the lien attaches; and

(5) other facts necessary for a full understanding of the rights of the parties.

(c) The broker must include as a defendant in a suit brought under this subchapter each person the broker believes to have an interest in the commercial real estate that is subordinate to or encumbered by the broker's lien.

(d) If the broker and a person against whom the broker claims a commission use alternative dispute resolution procedures to resolve a dispute concerning entitlement to the broker's commission, the broker's lien remains valid, and any suit to foreclose the lien is stayed until the alternative dispute resolution process is completed.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.062. STATUTE OF LIMITATIONS. (a) Except as provided by this section, a broker claiming a lien under this chapter must bring a suit to foreclose the lien on or before the second anniversary of the date the notice of lien is recorded.

(b) A broker claiming a lien to collect a deferred commission must bring a suit to foreclose the lien on or before the earlier of:

(1) the second anniversary of the date on which the commission is payable; or

(2) the 10th anniversary of the date the lien is recorded or the 10th anniversary of the date the broker records a subsequent notice of the lien as a renewal of the broker's right to the lien, whichever date is later.

(c) A renewal of a notice of lien must state that it is a renewal of the broker's lien and must be recorded after the ninth anniversary after the date the original notice of lien or last

renewal notice is recorded and on or before the 10th anniversary of the date the original notice of lien or last renewal notice is recorded.

(d) A broker claiming a lien for a commission that is payable must bring a suit to foreclose the lien not later than the 30th day after the date the broker receives a written demand to bring a suit to foreclose the lien from the owner of the commercial real estate interest on which the lien is claimed.

(e) If a suit to foreclose the lien is not brought within the period prescribed by this section, the lien is void.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.063. ASSESSMENT OF COSTS, FEES, AND INTEREST. The prevailing party in a suit brought under this subchapter is entitled to court costs, reasonable attorney's fees, and prejudgment interest from the date the commission becomes payable or the date the damage accrues.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER E. RELEASE OF LIEN

Sec. 62.081. RELEASE OF LIEN. (a) Not later than the fifth day after the date a broker receives a written request from the owner of a commercial real estate interest on which a lien is claimed, the broker shall furnish to the owner a release of indebtedness and any lien claimed if:

(1) the debt that is the basis for the lien is satisfied; or

(2) the lien is discharged under Section 62.022, rendered void under Section 62.026 or 62.062, or extinguished under Section 62.031.

(b) When a condition occurs that would preclude the broker from receiving a commission under the terms of the commission agreement that is the basis for the lien, the broker shall, not later than the 10th day after the date the broker receives a written request from the owner of the commercial real estate interest on which the lien is claimed, furnish to the owner a release of indebtedness and any lien claimed.

(c) Not later than the 10th day after the date a broker receives a written request for the release of the broker's lien from the escrow agent responsible for closing the purchase and sale of a commercial real estate interest on which the lien is claimed, the broker shall furnish to the escrow agent a release of indebtedness and any lien claimed if:

(1) the commercial real estate interest to which the lien attaches is subject to a contract for purchase and sale;

(2) the release of indebtedness and any lien claimed is conditioned on the closing of the transaction; and

(3) the broker would otherwise be obligated to release the indebtedness and any lien claimed under Subsection (a) or (b) on the closing of the transaction.

(d) A release of lien must be in a form that permits the instrument to be filed of record.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER F. ESCROW OF DISPUTED AMOUNTS

Sec. 62.101. ESCROW ACCOUNT. If a claim for a lien under a recorded notice of lien is not paid or assumed at the closing of a sale, lease, or mortgage of the commercial real estate interest subject to the lien and would prevent the closing of the transaction or conveyance or if a claim for a lien under a recorded notice of lien does not survive the closing, any person named in the notice of lien as obligated to pay the commission shall, on the date of the closing:

(1) establish an escrow account from any net proceeds of the transaction or conveyance in an amount equal to the amount sufficient to satisfy the lien plus 15 percent of that amount; or

(2) file a bond to indemnify against the lien as provided by Subchapter G.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.102. NAMED ESCROW AGENT. If an escrow agent is named in the contract on which the transaction or conveyance is based, the escrow account shall be established with the named escrow agent.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.103. COSTS OF INTERPLEADER. Related costs for any interpleader action may be deducted from the escrow account by the person maintaining the escrow account.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.104. REFUSAL TO ESTABLISH ESCROW ACCOUNT OR BOND. (a) A party may not refuse to close a transaction because of the requirement to establish an escrow account or bond as provided by Section 62.101 if:

(1) the broker provides a copy of the notice of lien that complies with Sections 62.025 and 62.026;

(2) sufficient proceeds will result from the proposed transaction for the payment of the commission and costs of the interpleader; and

(3) the broker executes and delivers a full release of the broker's lien in a recordable form.

(b) A prospective buyer of a commercial real estate interest may not refuse to close the purchase solely because a broker's lien is filed after the date a title commitment or abstract of title relating to the interest is issued if an escrow account is established as provided by this subchapter or a bond is filed as provided by Subchapter G.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.105. TERM OF ESCROW ACCOUNT. The amount held in escrow shall be held in escrow until:

(1) the rights of the parties claiming the amount in escrow are determined by a written agreement of the parties, a court order, or an alternative dispute resolution process agreed to by the parties;

(2) the broker's lien is no longer enforceable; or

(3) the funds are interpled into a district court for the county in which the commercial real estate is located.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.106. EXTINGUISHMENT OF LIEN UPON ESCROW. When the escrow account is established under this subchapter, the broker's lien against the commercial real estate is extinguished and becomes a lien on the proceeds in the escrow account.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER G. BOND TO INDEMNIFY AGAINST LIEN

Sec. 62.121. BOND. (a) If a lien is fixed or is attempted to be fixed by a recorded instrument under this chapter, any person may file a bond to indemnify against the lien.

(b) The bond shall be filed with the county clerk of the county in which the commercial real estate subject to the lien is located.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.122. BOND REQUIREMENTS. The bond must:

(1) describe the commercial real estate on which the lien is claimed;

(2) refer to the lien claimed in a manner sufficient to identify it;

(3) be in an amount that is double the amount of the lien referred to in the bond as of the date of execution of the bond by the surety, unless the total amount claimed in the lien exceeds $40,000, in which case the bond must be in an amount that is 1-1/2 times the amount of the lien;

(4) be payable to the party claiming the lien;

(5) be executed by:

(A) the party filing the bond as principal; and

(B) a corporate surety licensed by this state to execute the bond as surety;

(6) be conditioned substantially that the principal and sureties will pay the named obligees or their assignees the amount that the named obligees would have been entitled to recover if their claim had been proved to be valid and enforceable liens on the commercial real estate; and

(7) identify the last known mailing address of the person claiming the lien.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.123. NOTICE OF BOND. (a) After the bond is filed, the county clerk shall issue notice of the bond to all named obligees.

(b) A copy of the bond must be attached to the notice.

(c) The notice must be served on each obligee by mailing a copy of the notice and the bond to the obligee by certified mail, return receipt requested, addressed to the claimant at the address stated in the bond for the obligee.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.124. RECORDING OF BOND AND NOTICE. (a) The county clerk shall record the bond, the notice, and a certificate of mailing in the real property records.

(b) In acquiring an interest in or insuring title to the commercial real estate, a buyer, insurer of title, or lender may rely on and is absolutely protected by the record of the bond and the notice to the same extent as if the lien claimant had filed a release of lien in the real property records.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.125. ACTION ON BOND. (a) A party making or holding a lien claim may not sue on the bond later than the last date on which a person may bring a suit to foreclose the lien under Section 62.062.

(b) The bond is not exhausted by one action against it. Each named obligee or assignee of an obligee may maintain a separate suit on the bond in any district court for the county in which the commercial real estate is located.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER H. REMEDIES

Sec. 62.141. OWNER'S OR TENANT'S REMEDIES. (a) An owner or tenant may file suit against a broker under this chapter.

(b) In an action filed under this section, the court shall discharge a broker's lien if the broker:

(1) failed to mail a copy of the notice of lien within the period prescribed by Section 62.026;

(2) failed to execute, acknowledge, and return a subordination agreement within the period prescribed by Section 62.029(d);

(3) failed to record the notice of lien within the period prescribed by Section 62.041; or

(4) failed to release a lien within the period prescribed by Section 62.081.

(c) A broker is liable to an owner or tenant for damages as provided by Subsection (d) if:

(1) the broker recorded a lien on the commercial real estate interest of the owner or tenant;

(2) the broker failed to:

(A) execute, acknowledge, and return a subordination agreement within the period prescribed by Section 62.029(d); or

(B) release a lien within the period prescribed by Section 62.081;

(3) the owner, tenant, or escrow agent mailed to the broker by certified mail, return receipt requested, a copy of this section and a notice requesting the broker to execute, acknowledge, and return the subordination agreement or release the lien not later than the 10th day after the date the broker receives the notice; and

(4) the broker failed to comply with the owner's, tenant's, or escrow agent's written notice within the prescribed period.

(d) If the court finds that a broker is liable to an owner or tenant under Subsection (c), the court may award the owner or tenant:

(1) actual damages, including attorney's fees and court costs, incurred by the owner or tenant that are proximately caused by the broker's failure to execute, acknowledge, and return the subordination agreement or release the lien; and

(2) a civil penalty in an amount not to exceed three times the amount of the claimed commission if the court finds that the broker acted with gross negligence or acted in bad faith in violation of Chapter 1101, Occupations Code.

(e) This section does not prevent:

(1) a person from filing a complaint with the Texas Real Estate Commission against a broker who fails to comply with this chapter; or

(2) the Texas Real Estate Commission at any time from investigating or initiating a disciplinary proceeding against a broker who fails to comply with this chapter.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.804, eff. Sept. 1, 2003.

Sec. 62.142. BROKER'S REMEDIES. (a) A broker may file suit against an owner or tenant to enforce a commission agreement.

(b) If the court finds that the broker waived the right to file a lien under Section 62.022 and that the owner or tenant violated the commission agreement, the court may award to the broker:

(1) actual damages, including attorney's fees and court costs, that are proximately caused by the owner's or tenant's failure to comply with the commission agreement; and

(2) a civil penalty in an amount not to exceed three times the amount of the claimed commission if the court finds that the owner or tenant acted with gross negligence or in bad faith.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

CHAPTER 63. MANUFACTURED HOME LIEN

Sec. 63.001. MANUFACTURED HOMES. In this chapter, "manufactured home" has the meaning assigned by Chapter 1201, Occupations Code.

Added by Acts 1999, 76th Leg., ch. 742, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 62.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(96), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.805, eff. Sept. 1, 2003.

Sec. 63.002. APPLICABILITY. This chapter applies only to a lien on a manufactured home if the loan or credit advance documents state or indicate that the lien:

(1) is or is in the nature of a vendor's lien;
(2) is or is in the nature of a purchase money lien; or
(3) is or is in the nature of a retail installment lien.

Added by Acts 1999, 76th Leg., ch. 742, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 62.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(96), eff. Sept. 1, 2001.

Sec. 63.003. CONVERSION OF LIEN FROM PERSONAL PROPERTY LIEN TO REAL PROPERTY LIEN. When the manufactured home converts to real property as provided by Section 2.001(b), the lien on the property:

(1) is converted to a purchase money lien on real property by operation of law; and

(2) exists independently of any existing lien on the real property to which the home is permanently attached.

Added by Acts 1999, 76th Leg., ch. 742, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 62.003 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(96), eff. Sept. 1, 2001.

Sec. 63.004. REFINANCING OF LIEN. (a) A person who provides funds to refinance a lien secured by a manufactured home is subrogated to the lien position of the previous lienholder.

(b) If the holder of a lien secured by a manufactured home transfers loan or credit advance documents to a lender refinancing the lien, that lender and a title insurance company, title insurance agent or direct operation, or attorney to whom the loan or credit advance documents are delivered holds the loan or credit advance documents in trust for that lienholder. In this subsection, "direct operation" has the meaning assigned by Section 2501.003, Insurance Code.

(c) A lien that is converted to a purchase money lien on real property under Section 63.003, or a lien for the debt for new improvements thereon under Section 63.005, may be refinanced with another lien on the real property to which the manufactured home is permanently attached as provided by Section 2.001.

Added by Acts 1999, 76th Leg., ch. 742, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 62.004 and amended by Acts 2001, 77th Leg., ch.

1420, Sec. 21.001(96) and Sec. 21.002(16), eff. Sept. 1, 2001. Amended by Acts 2001, 77th Leg., ch. 1055, Sec. 6, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 1275, Sec. 3(38), eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.159, eff. September 1, 2005.

Sec. 63.005. CONVERSION OF LIEN FROM A PERSONAL PROPERTY LIEN TO A REAL PROPERTY LIEN FOR THE DEBT FOR THE NEW IMPROVEMENTS THEREON. (a) A manufactured home becomes a new improvement to the homestead of a family or of a single adult person upon the filing of the certificate of attachment as provided in Chapter 1201, Occupations Code. As such, if the debt for the manufactured home was contracted for in writing, that debt is considered to be for work and materials used in constructing new improvements thereon and thus constitutes a valid lien on the homestead when the certificate of attachment is filed in the Official Public Records of Real Property in the county in which the land is located.

(b) When the manufactured home converts to real property as provided by Section 2.001 of this code, the lien on the property exists independently of any existing lien on the real property to which the home is permanently attached.

Added by Acts 2001, 77th Leg., ch. 1055, Sec. 7, eff. Jan. 1, 2002. Renumbered from Property Code Sec. 62.005 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(118), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.806, eff. Sept. 1, 2003.

CHAPTER 64. ASSIGNMENT OF RENTS TO LIENHOLDER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 64.001. DEFINITIONS. In this chapter:

(1) "Assignee" means a person entitled to enforce a security instrument.

(2) "Assignment of rents" means a transfer of an interest in rents in connection with an obligation secured by real property from which the rents arise. The term does not include a contract for a charge authorized by Section 306.101, Finance Code, or a true sale of rents.

(3) "Assignor" means a person who makes a security instrument that creates an assignment of rents arising from real property or that person's successor in interest with respect to the real property.

(4) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(5) "Day" means a calendar day.

(6) "Deposit account" means a demand, time, savings, passbook, escrow, or similar account maintained with a bank, savings bank, savings and loan association, credit union, trust company, or other person.

(7) "Document" means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

(8) "Proceeds" means personal property that is received, collected, or distributed on account of an obligation to pay rents.

(9) "Rents" means consideration payable for the right to possess or occupy, or for possessing or occupying, real property, consideration payable to an assignor under a policy of rental interruption insurance covering real property, claims arising out of a default in the payment of consideration payable for the right to possess or occupy real property, consideration payable to terminate an agreement to possess or occupy real property, consideration payable to an assignor for payment or reimbursement of expenses incurred in owning, operating, and maintaining, or constructing or installing improvements on, real property, or any other consideration payable under an agreement relating to the real property that constitutes rents under a law of this state other than this chapter. The term does not include consideration payable under an oil and gas lease, mineral lease, or other conveyance of a mineral estate.

(10) "Secured obligation" means an obligation secured by an assignment of rents.

(11) "Security instrument" means:

(A) a security instrument, as that term is defined by Section 51.0001; or

(B) an agreement containing an assignment of rents.

(12) "Security interest" means an interest in property that arises by agreement and secures an obligation.

(13) "Sign" includes to sign by an electronic signature, as defined by Section 15.002.

(14) "Tenant" means a person who has an obligation to pay for the right to possess or occupy, or for possessing or occupying, real property.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 1, eff. June 14, 2013.

Sec. 64.002. MANNER OF GIVING NOTICE. (a) A person may give notice under this chapter:

(1) by transmitting the notice in the manner described by Section 51.002(e);

(2) by depositing the notice with the United States Postal Service or a commercially reasonable delivery service, properly addressed to the intended recipient's address in accordance with this section, with first class postage or other cost of delivery paid; or

(3) by transmitting the notice to the intended recipient by any means agreed to by the intended recipient.

(b) The following rules determine the address for notices under Subsection (a):

(1) the address for notices to an assignee is the address of the assignee agreed in the security instrument or other document between the parties as the address for notices to the assignee, unless a more recent address for notices has been given by the assignee to the person giving the notice in accordance with Subsection (a) or as agreed in a security instrument or other document signed by the assignee;

(2) the address for notices to an assignor is the address of the assignor agreed in the security instrument or other document between the parties as the address for notices to the assignor or as provided in Section 51.002, unless a more recent address for notices has been given by the assignor to the person giving the notice in accordance with Subsection (a) or as agreed in a security instrument or other document signed by the assignor; and

(3) for notices to a tenant:

(A) if there is an address for notices to the tenant in a signed document between the tenant and the person giving the

notice, the person giving the notice shall use that address unless a more recent address for notices has been given by the tenant in accordance with that document;

(B) if an address for notices described by Paragraph (A) does not exist, but the tenant's agreement with the assignor has an address for notices to the tenant and the person giving the notice has received a copy of that document or has actual knowledge of the address for notices specified in that document, the person giving the notice shall use that address; or

(C) if an address for notices described by Paragraphs (A) and (B) does not exist, the person giving the notice shall use the tenant's address at the real property covered by the security instrument.

(c) Notice given in accordance with this chapter is deemed received on the earliest of:

(1) the date the notice is received by the person to whom the notice is given;

(2) the fifth day after the date the notice is given in accordance with Subsection (a)(2); or

(3) the date on which notice is deemed received in accordance with an agreement made by the person to whom the notice is given.

(d) A notice under this chapter must be a document.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 2, eff. June 14, 2013.

SUBCHAPTER B. ASSIGNMENT OF RENTS

Sec. 64.051. SECURITY INSTRUMENT CREATES ASSIGNMENT OF RENTS; ASSIGNMENT OF RENTS CREATES SECURITY INTEREST. (a) An enforceable security instrument creates an assignment of rents arising from real property described in that security instrument, unless the security instrument provides otherwise or the security instrument is governed by Section 50(a)(6), (7), or (8), Article XVI, Texas Constitution.

(b) An assignment of rents creates a presently effective security interest in all accrued and unaccrued rents arising from the

real property described in the security instrument creating the assignment, regardless of whether the security instrument is in the form of an absolute assignment, an absolute assignment conditioned on default or other event, an assignment as additional security, or any other form. The security interest in rents is separate and distinct from any security interest held by the assignee in the real property from which the rents arise.

(c) An assignment of rents does not reduce the secured obligation except to the extent the assignee collects rents and applies, or is obligated to apply, the collected rents to payment of the secured obligation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 3, eff. June 14, 2013.

Sec. 64.052. RECORDATION AND PERFECTION OF SECURITY INTEREST IN RENTS; PRIORITY OF INTERESTS IN RENTS. (a) A security instrument creating an assignment of rents may be recorded in the county in which any part of the real property is located in accordance with this code.

(b) On recordation of a security instrument creating an assignment of rents, the security interest in the rents is perfected. This subsection prevails over a conflicting provision in the security instrument creating the assignment of rents or a law of this state other than this chapter that prohibits or defers enforcement of the security interest until the occurrence of a subsequent event, including a subsequent default of the assignor, the assignee's obtaining possession of the real property, or the appointment of a receiver.

(c) Except as provided by Subsection (d), a perfected security interest in rents has priority over the rights of a person who, after the security interest is perfected, acquires:

(1) a lien on or other security interest in the rents or the real property from which the rents arise; or

(2) an interest in the rents or the real property from which the rents arise.

(d) An assignee with a perfected security interest in rents has the same priority over the rights of a person described by Subsection (c) with respect to future advances as the assignee has with respect to the assignee's security interest in the real property from which the rents arise.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 4, eff. June 14, 2013.

Sec. 64.053. ENFORCEMENT OF SECURITY INTEREST IN RENTS GENERALLY. (a) An assignee may enforce an assignment of rents using one or more of the methods provided by Section 64.054 or 64.055 or any other method sufficient to enforce an assignment of rents under a law of this state other than this chapter.

(b) On and after the date on which an assignee begins to enforce an assignment of rents, the assignee is entitled to collect all rents that:

(1) have accrued but remain unpaid on that date; and

(2) accrue on or after that date.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 5, eff. June 14, 2013.

Sec. 64.054. ENFORCEMENT BY NOTICE TO ASSIGNOR. (a) After default, or as otherwise agreed by the assignor, the assignee may give the assignor a notice demanding that the assignor pay the assignee the proceeds of any rents that the assignee is entitled to collect under Section 64.053.

(b) For the purposes of Section 64.053, the assignee begins enforcement under this section on the date on which the assignee gives notice to the assignor in accordance with Section 64.002.

(c) An assignee may not enforce an assignment of rents under this section if, on the date the security instrument was signed and

the date of prospective enforcement, the real property constitutes the assignor's homestead on which is located a one-family to four-family dwelling.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 6, eff. June 14, 2013.

Sec. 64.055. ENFORCEMENT BY NOTICE TO TENANT. (a) After default, or as otherwise agreed by the assignor, the assignee may give to a tenant of real property that is subject to an assignment of rents a notice demanding that the tenant pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue. The assignee shall give a copy of the notice to the assignor in accordance with Section 64.002. The notice must substantially comply with the form prescribed by Section 64.056 and be signed by the assignee or the assignee's authorized agent or representative.

(b) For the purposes of Section 64.053(b), the assignee begins enforcement under this section on the date on which the tenant receives a notice complying with Subsection (a).

(c) Subject to Subsection (d) and any other claim or defense that a tenant has under a law of this state other than this chapter, after a tenant receives a notice under Subsection (a):

(1) the tenant is obligated to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue, unless the tenant has previously received a notice under this section from another assignee of rents given by that assignee in accordance with this section and the other assignee has not canceled that notice;

(2) except as otherwise agreed in a document signed by the tenant, the tenant is not obligated to pay to an assignee rent that was prepaid to the assignor before the tenant received the notice under Subsection (a);

(3) unless the tenant occupies the premises as the tenant's primary residence, the tenant is not discharged from the obligation to pay rents to the assignee if the tenant pays rents to the assignor;

(4) the tenant's payment to the assignee of rents then due

satisfies the tenant's obligation under the tenant's agreement with the assignor to the extent of the payment made; and

(5) the tenant's obligation to pay rents to the assignee continues until the earliest date on which the tenant receives:

(A) a court order directing the tenant to pay the rents in a different manner;

(B) a signed notice that a perfected security instrument that has priority over the assignee's security interest has been foreclosed; or

(C) a signed document from the assignee canceling the assignee's notice.

(d) Except as otherwise agreed in a document signed by the tenant, a tenant who has received a notice under Subsection (a) is not in default for nonpayment of rents that accrue during the 30 days after the date the tenant receives the notice until the earlier of:

(1) the 10th day after the date the next regularly scheduled rental payment would be due; or

(2) the 30th day after the date the tenant receives the notice.

(e) On receiving a notice from another assignee who has priority under Section 64.052(c) that the assignee with priority has conducted a foreclosure sale of the real property from which the rents arise or is enforcing the interest in rents of the assignee with priority by notice to the tenant, an assignee that has given a notice to a tenant under Subsection (a) shall immediately give another notice to the tenant canceling the earlier notice.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 7, eff. June 14, 2013.

Sec. 64.056. FORM OF NOTICE TO TENANT. The following form of notice, when properly completed, satisfies the requirements of Section 64.055(a):

NOTICE TO PAY RENTS TO PERSON OTHER THAN LANDLORD

Tenant: [Name of tenant]

Property Occupied by Tenant (the "Premises"): [Address]

Landlord: [Name of landlord]

Assignee: [Name of assignee]

Address of Assignee and Telephone Number of Contact Person: [Address of assignee] [Telephone number of person to contact]

1. Assignee is entitled to collect rents on the Premises under [Name of Document] (the "Assignment of Rents") dated [Date of Assignment of Rents], and recorded at [Recording Data] of [Name of County] County, Texas. You may obtain additional information about the Assignment of Rents and the Assignee's right to enforce it at the address of the Assignee.

2. A default exists under the Assignment of Rents or related documents between the Landlord and the Assignee. The Assignee is entitled to collect rents from the Premises.

3. This notice affects your rights and obligations under the agreement under which you occupy the Premises (your "Lease Agreement"). Unless you have otherwise agreed in a document signed by you, if your next scheduled rental payment is due within 30 days after you receive this notice, you will not be in default under your Lease Agreement for nonpayment of that rental payment until the 10th day after the due date of that payment or the 30th day following the date you receive this notice, whichever occurs first.

4. You may consult a lawyer at your expense concerning your rights and obligations under your Lease Agreement and the effect of this notice.

5. You must pay to the Assignee at the Address of the Assignee all rents under your Lease Agreement that are due and payable on the date you receive this notice and all rents accruing under your Lease Agreement after you receive this notice.

6. If you pay rents to the Assignee after receiving this notice, the payment will satisfy your rental obligation to the extent of that payment.

7. If you pay any rents to the Landlord after receiving this notice, your payment to the Landlord will not discharge your rental obligation, and the Assignee may hold you liable for that rental obligation notwithstanding your payment to the Landlord unless you occupy the Premises as your primary residence.

8. If you have previously received a notice from another person who also holds an assignment of the rents due under your Lease Agreement, you should continue paying your rents to the person that sent that notice until that person cancels that notice. Once that

notice is canceled, you must begin paying rents to the Assignee in accordance with this notice.

Name of assignee: _____

By: [Officer/authorized agent of assignee]

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Sec. 64.057. EFFECT OF ENFORCEMENT. The enforcement of an assignment of rents by a method provided by Section 64.054 or 64.055, the application of proceeds by the assignee under Section 64.059 after enforcement, the payment of expenses under Section 64.058, or an action under Section 64.060 does not:

(1) make the assignee a mortgagee in possession of the real property from which the rents arise;

(2) make the assignee an agent of the assignor;

(3) constitute an election of remedies that precludes a later action to enforce the secured obligation;

(4) make the secured obligation unenforceable;

(5) limit any right available to the assignee with respect to the secured obligation; or

(6) bar a deficiency judgment under any law of this state governing or relating to deficiency judgments following the enforcement of any encumbrance, lien, or security interest.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Sec. 64.058. APPLICATION OF PROCEEDS GENERALLY. Unless otherwise agreed, an assignee who collects rents under this chapter or collects on a judgment in an action under Section 64.060 shall apply the sums collected in the following order to:

(1) reimbursement of the assignee's expenses of enforcing the assignee's assignment of rents, including, to the extent provided for by agreement by the assignor and not prohibited by a law of this state other than this chapter, reasonable attorney's fees and costs incurred by the assignee;

(2) reimbursement of any expenses incurred by the assignee to protect or maintain the real property that is subject to the

assignment of rents;

(3) payment of the secured obligation;

(4) payment of any obligation secured by a subordinate security interest or other lien on the rents if, before distribution of the proceeds, the assignee receives a signed notice from the holder of the interest or lien demanding payment of the proceeds; and

(5) payment of any excess proceeds to the assignor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 8, eff. June 14, 2013.

Sec. 64.059. APPLICATION OF PROCEEDS TO EXPENSES OF PROTECTING REAL PROPERTY; CLAIMS AND DEFENSES OF TENANT. (a) Unless otherwise agreed by the assignee, an assignee that collects rents following enforcement under Section 64.054 or 64.055 is not obligated to apply the collected rents to the payment of expenses of protecting or maintaining the real property subject to an assignment of rents.

(b) Unless otherwise agreed by a tenant, the right of the assignee to collect rents from the tenant is subject to the terms of any agreement between the assignor and tenant or any claim or defense of the tenant arising from the assignor's nonperformance of that agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 9, eff. June 14, 2013.

Sec. 64.060. TURNOVER OF RENTS; LIABILITY OF ASSIGNOR. (a) If an assignor collects rents that the assignee is entitled to collect under this chapter, the assignor shall turn over the proceeds to the assignee not later than the 30th day after the date the assignor receives notice from the assignee under Section 64.054 or within such other period agreed by the assignor and assignee in a security instrument or other document, less any amount representing payment of

expenses agreed in that security instrument or other document.

(b) In addition to any other remedy available to the assignee under a law of this state other than this chapter, if an assignor does not turn over proceeds to the assignee as required by Subsection (a), the assignee may recover from the assignor in a civil action:

(1) the proceeds, or an amount equal to the proceeds, that the assignor was obligated to turn over under Subsection (a); and

(2) reasonable attorney's fees and costs incurred by the assignee to the extent provided for by an agreement between the assignor and assignee and not prohibited by a law of this state other than this chapter.

(c) The assignee may maintain an action under Subsection (b) with or without taking action to foreclose any security interest that the assignee has in the real property.

(d) Unless otherwise agreed, if an assignee who has a security interest in rents that is subordinate to the security interest of another assignee under Section 64.052 enforces the subordinate assignee's interest under Section 64.054 or 64.055 before the assignee with priority enforces the interests in rents of the assignee with priority, the subordinate assignee is not obligated to turn over any proceeds that the subordinate assignee collects before the subordinate assignee receives a signed notice from the assignee with priority informing the subordinate assignee that the assignee with priority is enforcing the interest in rents of the assignee with priority. The subordinate assignee shall turn over to the assignee with priority any proceeds that the subordinate assignee collects after the subordinate assignee receives the notice from the assignee with priority that the assignee with priority is enforcing the interest in rents of the assignee with priority not later than the 30th day after the date the subordinate assignee receives the notice or as otherwise agreed between the assignee with priority and the subordinate assignee. Any proceeds subsequently collected by the subordinate assignee shall be turned over to the assignee with priority not later than the 10th day after the date the proceeds are collected or as otherwise agreed between the assignee with priority and the subordinate assignee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 10, eff. June 14, 2013.

Sec. 64.061. ATTACHMENT, PERFECTION, AND PRIORITY OF ASSIGNEE'S SECURITY INTEREST IN PROCEEDS. (a) An assignee's security interest in rents attaches to identifiable proceeds.

(b) If an assignee's security interest in rents is perfected, the assignee's security interest in identifiable cash proceeds is perfected.

(c) Except as provided by Subsection (b), the provisions of Chapter 9, Business & Commerce Code, or the comparable Uniform Commercial Code provisions of another applicable jurisdiction, determine:

(1) whether an assignee's security interest in proceeds is perfected;

(2) the effect of perfection or nonperfection;

(3) the priority of an interest in proceeds; and

(4) the law governing perfection, the effect of perfection or nonperfection, and the priority of an interest in proceeds.

(d) For purposes of this chapter, cash proceeds are identifiable if they are maintained in a segregated deposit account or, if commingled with other funds, to the extent they can be identified by a method of tracing, including application of equitable principles, that is permitted under a law of this state other than this chapter with respect to commingled funds.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Sec. 64.062. PRIORITY SUBJECT TO SUBORDINATION. This chapter does not preclude subordination by agreement by a person entitled to priority.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

CHAPTER 65. AUTHORITY OF CO-OWNER TO ENCUMBER RESIDENTIAL PROPERTY

Sec. 65.001. APPLICATION OF CHAPTER. This chapter applies only

to residential property:

(1) that has residential improvements primarily designed for not more than four families;

(2) that is not more than 10 acres of land;

(3) that is owned by more than one person; and

(4) for which at least one co-owner has received a residence homestead exemption under Section 11.13, Tax Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 918 (S.B. 1368), Sec. 1, eff. June 17, 2011.
Redesignated from Property Code, Chapter 64 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(39), eff. September 1, 2013.

Sec. 65.0011. APPLICATION TO INSTITUTIONS OF HIGHER EDUCATION. This chapter does not apply to residential property for which an institution of higher education is a co-owner.

Redesignated from Property Code, Chapter 64 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(39), eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1366 (S.B. 1604), Sec. 2, eff. June 14, 2013.

Sec. 65.002. CONDITIONS FOR AUTHORITY TO ACT AS AGENT FOR CO-OWNER. A co-owner of residential property may act in the name of and on behalf of another co-owner, whether known or unknown, as the co-owner's statutory agent and attorney-in-fact for the purposes described by Section 65.004 if:

(1) the co-owner has occupied the property for more than five years;

(2) the co-owner has a residence homestead exemption for the property under Section 11.13, Tax Code;

(3) for the five years preceding the date the documents required by Section 65.003 are filed, the occupying co-owner has paid all assessed ad valorem taxes without delinquency and without contribution from the other co-owner; and

(4) the occupying co-owner files the documents required by Section 65.003.

Added by Acts 2011, 82nd Leg., R.S., Ch. 918 (S.B. 1368), Sec. 1, eff.

June 17, 2011.
Redesignated from Property Code, Chapter 64 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(39), eff. September 1, 2013.
Redesignated and amended from Property Code, Section 64.002 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(29), eff. September 1, 2013.

Sec. 65.003. REQUIRED DOCUMENTATION. The occupying co-owner may establish the authority to act as an agent and attorney-in-fact for another co-owner by filing in the office of the county clerk of the county in which the real property is located:

(1) an affidavit of the occupying co-owner affirming the facts described by Sections 65.002(1)-(3);

(2) the affidavits of two additional affiants personally familiar with the co-owner's occupancy of the real property corroborating the occupancy during the preceding five years; and

(3) a certificate of the tax assessor-collector for the county in which the real property is located affirming that the co-owner has paid all taxes assessed against the real property for the preceding five years without delinquency.

Added by Acts 2011, 82nd Leg., R.S., Ch. 918 (S.B. 1368), Sec. 1, eff. June 17, 2011.
Redesignated from Property Code, Chapter 64 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(39), eff. September 1, 2013.
Redesignated and amended from Property Code, Section 64.003 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(30), eff. September 1, 2013.

Sec. 65.004. SCOPE OF AUTHORITY. (a) The authority of the occupying co-owner to act as an agent and attorney-in-fact is limited to the authority to enter into a contract giving rise to a mechanic's and materialman's lien and to execute a deed of trust for the purpose of preserving or improving the residential property. The occupying co-owner is the sole obligor of the debt incurred under the contract and secured by the deed of trust.

(b) A lien that arises under a contract entered into by an occupying co-owner under this section is not subject to repudiation

or disaffirmance by another co-owner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 918 (S.B. 1368), Sec. 1, eff. June 17, 2011.
Redesignated from Property Code, Chapter 64 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(39), eff. September 1, 2013.

CHAPTER 66. SALE OF PROPERTY SUBJECT TO OIL OR GAS LEASE

Sec. 66.001. SALE OF PROPERTY SUBJECT TO OIL OR GAS LEASE. (a) In this section:

(1) "Mortgagee," "mortgagor," and "security instrument" have the meanings assigned by Section 51.0001.

(2) "Oil or gas lease" means an instrument conveying a fee simple determinable interest in a mineral estate covering oil, gas, or other hydrocarbons or a recorded memorandum of such an instrument.

(3) "Real property" means an estate covering the mineral interest in hydrocarbons or the mineral interest in hydrocarbons together with the surface overlying such mineral interest. The term does not include a surface interest or other interest that excludes a mineral interest in hydrocarbons.

(b) Notwithstanding any other law, an oil or gas lease covering real property subject to a security instrument that has been foreclosed remains in effect after the foreclosure sale if the oil or gas lease has not terminated or expired on its own terms and was executed and recorded in the real property records of the county before the foreclosure sale. An interest of the mortgagor or the mortgagor's assigns in the oil or gas lease, including a right to receive royalties or other payments that become due and payable after the date of the foreclosure, passes to the purchaser of the foreclosed property to the extent that the security instrument under which the real property was foreclosed had priority over the interest in the oil or gas lease of the mortgagor or the mortgagor's assigns.

(c) Notwithstanding Subsection (b), if real property that includes the mineral interest in hydrocarbons together with the surface overlying such mineral interest is subject to both an oil or gas lease and a security instrument and the security interest is foreclosed, the foreclosure sale terminates and extinguishes any right granted under the oil or gas lease for the lessee to use the surface of the real property to the extent that the security

instrument under which the real property was foreclosed had priority over the rights of the lessee under the oil or gas lease.

(d) An agreement, including a subordination agreement, between a lessee of an oil or gas lease and a mortgagee of real property or the lessee of an oil or gas lease and the purchaser of foreclosed real property controls over any conflicting provision of this section. An agreement between a mortgagor and mortgagee may not modify the application of this section unless the affected lessee agrees to the modification.

(e) This section does not apply to a security instrument that does not attach to a mineral interest in hydrocarbons in the mortgaged real property.

Added by Acts 2015, 84th Leg., R.S., Ch. 461 (H.B. 2207), Sec. 1, eff. January 1, 2016.

CHAPTER 70. MISCELLANEOUS LIENS

SUBCHAPTER A. POSSESSORY LIENS

Sec. 70.001. WORKER'S LIEN. (a) A worker in this state who by labor repairs an article, including a vehicle, motorboat, vessel, or outboard motor, may retain possession of the article until:

(1) the amount due under the contract for the repairs is paid; or

(2) if no amount is specified by contract, the reasonable and usual compensation is paid.

(b) If a worker relinquishes possession of a motor vehicle, motorboat, vessel, or outboard motor in return for a check, money order, or a credit card transaction on which payment is stopped, has been dishonored because of insufficient funds, no funds or because the drawer or maker of the order or the credit card holder has no account or the account upon which it was drawn or the credit card account has been closed, the lien provided by this section continues to exist and the worker is entitled to possession of the vehicle, motorboat, vessel, or outboard motor until the amount due is paid, unless the vehicle, motorboat, vessel, or outboard motor is possessed by a person who became a bona fide purchaser of the vehicle after a stop payment order was made. A person entitled to possession of property under this subsection is entitled to take possession thereof in accordance with the provisions of Section 9.609, Business &

Commerce Code.

(b-1) Except as provided by Subsection (b), a lien provided by this section on a motor vehicle, motorboat, vessel, or outboard motor is released when a worker:

(1) receives good and sufficient payment of the amounts due under Subsection (a) and, if applicable, Subsection (d); or

(2) relinquishes possession of the motor vehicle, motorboat, vessel, or outboard motor.

(b-2) A worker's right to possession under this section may not be assigned to a third party in return for payment of any amount due under Subsection (a) or (d).

(c) A worker may take possession of an article under Subsection (b) only if the person obligated under the repair contract has signed a notice stating that the article may be subject to repossession under this section. A notice under this subsection must be:

(1) separate from the written repair contract; or

(2) printed on the written repair contract, credit agreement, or other document in type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous with a separate signature line.

(d) A worker who takes possession of an article under Subsection (b) may require a person obligated under the repair contract to pay the costs of repossession as a condition of reclaiming the article only to the extent of the reasonable fair market value of the services required to take possession of the article. For the purpose of this subsection, charges represent the fair market value of the services required to take possession of an article if the charges represent the actual cost incurred by the worker in taking possession of the article.

(e) A worker may not transfer to a third party, and a person who performs repossession services may not accept, a check, money order, or credit card transaction that is received as payment for repair of an article and that is returned to the worker because of insufficient funds or no funds, because the drawer or maker of the check or money order or the credit card holder has no account, or because the account on which the check or money order is drawn or the credit card account has been closed.

(f) A person commits an offense if the person transfers or accepts a check, money order, or credit card transaction in violation of Subsection (e). An offense under this subsection is a Class B

misdemeanor.

(g) A motor vehicle that is repossessed under this section shall be promptly delivered to the location where the repair was performed or a vehicle storage facility licensed under Chapter 2303, Occupations Code. The motor vehicle must remain at the repair location or a licensed vehicle storage facility at all times until the motor vehicle is lawfully returned to the motor vehicle's owner or a lienholder or is disposed of as provided by this subchapter.

Acts 1983, 68th Leg., p. 3579, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 6(b), eff. Oct. 2, 1984; Acts 1985, 69th Leg., ch. 275, Sec. 1, eff. June 5, 1985; Acts 1993, 73rd Leg., ch. 754, Sec. 1, 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 375, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 414, Sec. 2.38, eff. July 1, 2001; Acts 1999, 76th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.807, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1058 (H.B. 2076), Sec. 1, eff. June 19, 2015.

Sec. 70.002. LIENS ON GARMENTS. A person with whom a garment is left for repair, alteration, dyeing, cleaning, laundering, or pressing may retain possession of the garment until:

(1) the amount due the person under the contract for the work is paid; or

(2) if no amount is specified by contract, the reasonable and usual compensation is paid.

Acts 1983, 68th Leg., p. 3580, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.003. STABLE KEEPER'S, GARAGEMAN'S, PASTURER'S, AND COTTON GINNER'S LIEN'S. (a) A stable keeper with whom an animal is left for care has a lien on the animal for the amount of the charges for the care.

(b) An owner or lessee of a pasture with whom an animal is left for grazing has a lien on the animal for the amount of charges for the grazing.

(c) A garageman with whom a motor vehicle, motorboat, vessel,

or outboard motor is left for care has a lien on the motor vehicle, motorboat, vessel, or outboard motor for the amount of the charges for the care, including reasonable charges for towing the motor vehicle, motorboat, vessel, or outboard motor to the garageman's place of business and excluding charges for repairs.

(d)(1) A cotton ginner to whom a cotton crop has been delivered for processing or who, under an agreement, is to be paid for harvesting a cotton crop has a lien on the cotton processed or harvested for the amount of the charges for the processing or harvesting. The lienholder is entitled to retain possession of the cotton until the amount of the charge due under an agreement is paid or, if an amount is not specified by agreement, the reasonable and usual compensation is paid. If the cotton owner's address is known and the amount of the charge is not paid before the 31st day after the date the cotton ginner's work is completed or the date payment is due under a written agreement, whichever is later, the lienholder shall request the owner to pay the unpaid charge due and shall notify the owner and any other person having a lien on the cotton which is properly recorded under applicable law with the secretary of state of the fact that unless payment is made not later than the 15th day after the date the notice is received, the lienholder is entitled to sell the cotton under any procedure authorized by Section 9.610, Business & Commerce Code. If the cotton owner's address is not known and the amount of the charge is not paid before the 61st day after the date the cotton ginner's work is completed or the date payment is due under a written agreement, whichever is later, the lienholder is entitled to sell the cotton without notice at a commercially reasonable sale. The proceeds of a sale under this subsection shall be applied first to charges due under this subsection, and any remainder shall be paid in appropriate proportion to:

(A) any other person having a lien on the cotton which is properly recorded under applicable law with the secretary of state; and

(B) the cotton owner.

(2) Nothing in this subsection shall be construed to place an affirmative burden on the cotton ginner to perform any lien searches except as may be appropriate to provide notices required by this section.

Acts 1983, 68th Leg., p. 3580, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 1989, 71st Leg., ch. 629, Sec. 1, eff. June 14, 1989; Acts 1997, 75th Leg., ch. 462, Sec. 1, 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 414, Sec. 2.39, eff. July 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 80 (S.B. 543), Sec. 1, eff. September 1, 2009.

Sec. 70.004. POSSESSION OF MOTOR VEHICLE, MOTORBOAT, VESSEL, OR OUTBOARD MOTOR. (a) A holder of a lien under Section 70.003 on a motor vehicle, motorboat, vessel, or outboard motor who obtains possession of the motor vehicle, motorboat, vessel, or outboard motor under a state law or city ordinance shall give notice for a motor vehicle, motorboat, vessel, or outboard motor registered in this state to the last known registered owner and each lienholder of record not later than the fifth day after the day possession is obtained. If the motor vehicle, motorboat, vessel, or outboard motor is registered outside this state, the notice shall be given to the last known registered owner and each lienholder of record not later than the 14th day after the day possession is obtained.

(b) Except as provided by Subsection (c), the notice must be sent by certified mail with return receipt requested and must contain:

(1) a request to remove the motor vehicle, motorboat, vessel, or outboard motor;

(2) a request for payment;

(3) the location of the motor vehicle, motorboat, vessel, or outboard motor; and

(4) the amount of accrued charges.

(c) The notice may be given by publishing the notice once in a newspaper of general circulation in the county in which the motor vehicle, motorboat, vessel, or outboard motor is stored if:

(1) the motor vehicle, motorboat, vessel, or outboard motor is registered in another state;

(2) the holder of the lien submits a written request by certified mail, return receipt requested, to the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered requesting information relating to the identity of the last known registered owner and any lienholder of record;

(3) the holder of the lien:

(A) is advised in writing by the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered that the entity is unwilling or unable to provide information on the last known registered owner or any lienholder of record; or

(B) does not receive a response from the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered on or before the 21st day after the date the holder of the lien submits a request under Subdivision (2);

(4) the identity of the last known registered owner cannot be determined;

(5) the registration does not contain an address for the last known registered owner; and

(6) the holder of the lien cannot determine the identities and addresses of the lienholders of record.

(d) The holder of the lien is not required to publish notice under Subsection (c) if a correctly addressed notice is sent with sufficient postage under Subsection (b) and is returned as unclaimed or refused or with a notation that the addressee is unknown or has moved without leaving a forwarding address.

(e) A person is entitled to fees for towing, impoundment, preservation, and notification and to reasonable storage fees for up to five days before the day that the notice is mailed or published, as applicable. After the day that the notice is mailed or published, the person is entitled to reasonable storage, impoundment, and preservation fees until the motor vehicle, motorboat, vessel, or outboard motor is removed and accrued charges are paid.

(f) A person charging fees under Subsection (e) commits an offense if the person charges a storage fee for a period of time not authorized by that subsection. An offense under this subsection is punishable by a fine of not less than $200 nor more than $1,000.

Acts 1983, 68th Leg., p. 3580, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 6(c), eff. Oct. 2, 1984; Acts 1985, 69th Leg., ch. 308, Sec. 1, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 629, Sec. 2, eff. June 14, 1989; Acts 1999, 76th Leg., ch. 70, Sec. 2, eff. Sept. 1, 1999.

Sec. 70.005. SALE OF PROPERTY. (a) Except as provided by

Subsection (c), a person holding a lien under this subchapter on property other than a motor vehicle subject to Chapter 501, Transportation Code, or cotton under Section 70.003(d), who retains possession of the property for 60 days after the day that the charges accrue shall request the owner to pay the unpaid charges due if the owner's residence is in this state and known. If the charges are not paid before the 11th day after the day of the request, the lienholder may, after 20 days' notice, sell the property at a public sale, or if the lien is on a garment, at a public or private sale.

(b) Except as provided by Subsection (c), if the residence of the owner of property subject to sale under this section is not in this state or not known, the lienholder may sell the property without notice at a public sale after the 60th day after the day that the unpaid charges accrued.

(c) A person holding a lien under Section 70.003(a) on an animal fed in confinement for slaughter may enforce that lien in any manner authorized by Sections 9.610-9.619, Business & Commerce Code.

(d) The lienholder shall apply the proceeds of a sale under this section to the charges. If the lien is on a garment, the lienholder shall apply the proceeds to the charges and the reasonable costs of holding the sale. The lienholder shall pay excess proceeds to the person entitled to them.

Acts 1983, 68th Leg., p. 3581, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.247, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 249, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 462, Sec. 3, 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 414, Sec. 2.40, eff. July 1, 2001.

Sec. 70.006. SALE OF MOTOR VEHICLE, MOTORBOAT, VESSEL, OR OUTBOARD MOTOR. (a) A holder of a lien under this subchapter on a motor vehicle subject to Chapter 501, Transportation Code, or on a motorboat, vessel, or outboard motor for which a certificate of title is required under Subchapter B, Chapter 31, Parks and Wildlife Code, as amended, who retains possession of the motor vehicle, motorboat, vessel, or outboard motor shall give written notice to the owner and each holder of a lien recorded on the certificate of title. Not later than the 30th day after the date on which the charges accrue, a holder of a possessory lien on a motor vehicle under Section 70.001,

other than a person licensed as a franchised dealer under Chapter 2301, Occupations Code, shall file a copy of the notice and all information required by this section with the county tax assessor-collector's office in the county in which the repairs were made with an administrative fee of $25 payable to the county tax assessor-collector. If the motor vehicle, motorboat, vessel, or outboard motor is registered outside this state, the holder of a lien under this subchapter who retains possession during that period shall give notice to the last known registered owner and each lienholder of record.

(b) Except as provided by Subsection (c), the notice must be sent by certified mail with return receipt requested and must include the amount of the charges and a request for payment.

(b-1) A holder of a possessory lien on a motor vehicle under Section 70.001, other than a person licensed as a franchised dealer under Chapter 2301, Occupations Code, who is required to give notice to a lienholder of record under this section must include in the notice:

(1) the physical address of the real property at which the repairs to the motor vehicle were made;

(2) the legal name of the person that holds the possessory lien for which the notice is required;

(3) the taxpayer identification number or employer identification number, as applicable, of the person that holds the possessory lien for which the notice is required; and

(4) a signed copy of the work order authorizing the repairs on the motor vehicle.

(b-2) If the holder of a possessory lien required to give notice in accordance with Subsection (b-1) does not comply with that subsection, a lien recorded on the certificate of title of the motor vehicle is superior to the possessory lienholder's lien.

(b-3) A person commits an offense if the person knowingly provides false or misleading information in a notice required by this section. An offense under this subsection is a Class B misdemeanor.

(c) The notice may be given by publishing the notice once in a newspaper of general circulation in the county in which the motor vehicle, motorboat, vessel, or outboard motor is stored if:

(1) the holder of the lien submits a written request by certified mail, return receipt requested, to the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is

registered requesting information relating to the identity of the last known registered owner and any lienholder of record;

(2) the holder of the lien:

(A) is advised in writing by the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered that the entity is unwilling or unable to provide information on the last known registered owner or any lienholder of record; or

(B) does not receive a response from the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered on or before the 21st day after the date the holder of the lien submits a request under Subdivision (1);

(3) the identity of the last known registered owner cannot be determined;

(4) the registration does not contain an address for the last known registered owner; and

(5) the holder of the lien cannot determine the identities and addresses of the lienholders of record.

(d) The holder of the lien is not required to publish notice under Subsection (c) if a correctly addressed notice is sent with sufficient postage under Subsection (b) and is returned as unclaimed or refused or with a notation that the addressee is unknown or has moved without leaving a forwarding address.

(e) After notice is given under this section to the owner of or the holder of a lien on the motor vehicle, motorboat, vessel, or outboard motor, the owner or holder of the lien may obtain possession of the motor vehicle, motorboat, vessel, or outboard motor by paying all charges due to the holder of a lien under this subchapter before the 31st day after the date a copy of the notice is filed with the county tax assessor-collector's office.

(f) If the charges are not paid before the 31st day after the date that a copy of the notice required by Subsection (a) is filed with the county tax assessor-collector's office, the lienholder may sell the motor vehicle, motorboat, vessel, or outboard motor at a public sale and apply the proceeds to the charges. The lienholder shall pay excess proceeds to the person entitled to them. The public sale may not take place before the 31st day after the date a copy of the notice is filed with the county tax assessor-collector's office.

(g) After providing notice in accordance with this section, a holder of a possessory lien on a motor vehicle under Section 70.001,

other than a person licensed as a franchised dealer under Chapter 2301, Occupations Code, shall, on request, allow an owner and each lienholder of record to inspect or arrange an inspection of the motor vehicle by a qualified professional to verify that the repairs were made. The inspection must be completed before the date of the public sale authorized by Subsection (f).

(h) Not later than the 15th business day after the date the county tax assessor-collector receives notice under this section, the county tax assessor-collector shall provide a copy of the notice that indicates the date the notice was filed with the county tax assessor-collector to the owner of the motor vehicle and each holder of a lien recorded on the certificate of title of the motor vehicle. Except as provided by this subsection, the county tax assessor-collector shall provide the notice required by this section in the same manner as a holder of a lien is required to provide a notice under this section, except that the county tax assessor-collector is not required to use certified mail. Notice under this section is required regardless of the date on which the charges on which the possessory lien is based accrued.

Acts 1983, 68th Leg., p. 3581, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 6(d), eff. Oct. 2, 1984; Acts 1997, 75th Leg., ch. 165, Sec. 30.248, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 70, Sec. 3, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 80 (S.B. 543), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 7, eff. January 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 1204 (S.B. 266), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1058 (H.B. 2076), Sec. 2, eff. September 1, 2015.

Sec. 70.007. UNCLAIMED EXCESS. (a) If a person entitled to excess proceeds under this subchapter is not known or has moved from this state or the county in which the lien accrued, the person holding the excess shall pay it to the county treasurer of the county in which the lien accrued. The treasurer shall issue the person a

receipt for the payment.

(b) If the person entitled to the excess does not claim it before two years after the day it is paid to the treasurer, the excess becomes a part of the county's general fund.

Acts 1983, 68th Leg., p. 3582, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.008. ATTORNEY'S FEES. The court in a suit concerning possession of a motor vehicle, motorboat, vessel, or outboard motor and a debt due on it may award reasonable attorney's fees to the prevailing party.

Acts 1983, 68th Leg., p. 3582, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 6(e), eff. Oct. 2, 1984.

Sec. 70.009. PLASTIC FABRICATOR LIENS. (a) A plastic fabricator has a lien on any die, mold, form, or pattern in his possession that belongs to a customer for the amount due from the customer for plastic fabrication work performed with the die, mold, form, or pattern. The plastic fabricator may retain possession of the die, mold, form, or pattern until the amount due is paid.

(b) In this section:

(1) "Customer" means a person who contracts with or causes a plastic fabricator to use a die, mold, form, or pattern to manufacture, assemble, or otherwise make a plastic product or products.

(2) "Plastic fabricator" means a person, including a tool or die maker, who manufactures or causes to be manufactured, or who assembles or improves, a die, form, mold, or pattern for a customer, or who uses or contracts to use a die, mold, form, or pattern to manufacture, assemble, or otherwise make a plastic product or products for a customer.

Added by Acts 1985, 69th Leg., ch. 357, Sec. 1, eff. Sept. 1, 1985.

Sec. 70.010. LIENS FOR VETERINARY CARE CHARGES FOR LARGE ANIMALS. (a) In this section, "large animal" means exotic livestock

or a cow, horse, mule, ass, sheep, goat, llama, alpaca, farm elk, or hog. The term does not include a common household pet such as a cat or dog.

(b) A veterinarian licensed under Chapter 801, Occupations Code, has a lien on a large animal and the proceeds from the disposition of the large animal to secure the cost of veterinary care the veterinarian provided to the large animal.

(c) A lien under this section:

(1) attaches on the 20th day after the date the veterinarian first provides care to the large animal;

(2) attaches regardless of whether the veterinarian retains possession of the large animal;

(3) takes priority over all other liens on the large animal for the period during which the veterinarian retains possession of the large animal, regardless of whether the lien under this section was created or perfected after the date on which another lien was created or perfected, if the veterinarian retains possession; and

(4) has the priority with respect to other liens as provided by Subchapter C, Chapter 9, Business & Commerce Code, if the veterinarian does not retain possession.

(d) The veterinarian may retain possession of a large animal under this section and enforce a lien under this section as provided by Section 70.005(c).

(e) A veterinarian who does not retain possession of a large animal under this section may enforce a lien under this section in the same manner as a statutory residential landlord's lien.

Added by Acts 2009, 81st Leg., R.S., Ch. 1387 (S.B. 1806), Sec. 1, eff. September 1, 2009.

SUBCHAPTER B. LIENS ON VESSELS

Sec. 70.101. GENERAL LIEN ON VESSELS. A person who furnishes supplies or materials or who performs repairs or labor for or on account of a domestic vessel that is owned in whole or part in this state has a lien for the person's charges.

Acts 1983, 68th Leg., p. 3582, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.102. LIEN OF NAVIGATION DISTRICT OR PORT. (a) A

navigation district or port within the territorial limits of this state that furnishes supplies or materials, performs repairs or labor, or provides a facility or service for which charges are specified in its official published port tariff for or on account of a domestic vessel that is owned in whole or part in this state has a maritime lien for the amount of its charges.

(b) A lien under this section may be enforced in rem. A plaintiff in an action to enforce the lien need not allege or prove that credit was given to the vessel.

Acts 1983, 68th Leg., p. 3582, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.103. PROPERTY SUBJECT TO LIEN. A lien under this subchapter attaches to the vessel and its tackle, apparel, furniture, and freight money.

Acts 1983, 68th Leg., p. 3583, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.104. PERSONS WHO MAY BIND VESSEL. (a) The following persons are presumed to be authorized by the owner of a vessel to incur charges that give rise to a lien under this subchapter:

(1) the managing owner;

(2) the ship's husband;

(3) the master;

(4) the local agent; and

(5) a person entrusted with management of the vessel at the port of supply.

(b) A person tortiously or unlawfully in possession or charge of a vessel may not bind the vessel.

Acts 1983, 68th Leg., p. 3583, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. STOCK BREEDER'S LIEN

Sec. 70.201. STOCK BREEDER'S LIEN. An owner or keeper of a stallion, jack, bull, or boar confined to be bred for profit has a preference lien on the offspring of the animal for the amount of the charges for the breeding services, unless the owner or keeper misrepresents the animal by false pedigree.

Acts 1983, 68th Leg., p. 3583, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.202. ENFORCEMENT OF LIEN. The lien may be enforced in the same manner as a statutory landlord's lien. The lien remains in force for 10 months from the day that the offspring is born, but the lien may not be enforced until five months after the date of birth of the offspring.

Acts 1983, 68th Leg., p. 3583, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER D. AIRCRAFT REPAIR AND MAINTENANCE LIEN

Sec. 70.301. LIEN. (a) A person who stores, fuels, repairs, or performs maintenance work on an aircraft has a lien on the aircraft for:

(1) the amount due under a contract for the storage, fuel, repairs, or maintenance work; or

(2) if no amount is specified by contract, the reasonable and usual compensation for the storage, fuel, repairs, or maintenance work.

(b) This subchapter applies to a contract for storage only if it is:

(1) written; or

(2) oral and provides for a storage period of at least 30 days.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 946, Sec. 1, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1171, Sec. 1, eff. Sept. 1, 2001.

Sec. 70.302. POSSESSION. (a) A holder of a lien under this subchapter may retain possession of the aircraft subject to the lien until the amount due is paid.

(b) Except as provided by Subsection (c), if the holder of a lien under this subchapter relinquishes possession of the aircraft before the amount due is paid, the person may retake possession of the aircraft as provided by Section 9.609, Business & Commerce Code.

(c) The holder of a lien under this subchapter may not retake possession of the aircraft from a bona fide purchaser for value who

purchases the aircraft without knowledge of the lien before the date the lien is recorded under Section 70.303.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.41, eff. July 1, 2001.

Sec. 70.303. RECORDING OF LIEN: AIRCRAFT REGISTERED IN UNITED STATES. A holder of a lien under this subchapter may record the lien on the aircraft by filing with the Federal Aviation Administration Aircraft Registry not later than the 180th day after the date of the completion of the contractual storage period or the performance of the last repair or maintenance a verified document in the form and manner required by applicable federal laws and regulations that states:

(1) the name, address, and telephone number of the holder of the lien under this subchapter;

(2) the amount due for storage, fuel, repairs, or maintenance;

(3) a complete description of the aircraft; and

(4) the name and address of the owner of the aircraft and the number assigned the aircraft by the Federal Aviation Administration, if known.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 946, Sec. 1, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1171, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 1, eff. June 17, 2005.

Sec. 70.3031. RECORDING OF LIEN: AIRCRAFT NOT REGISTERED IN UNITED STATES. (a) A holder of a lien under this subchapter on an aircraft that is registered in a nation other than the United States or that is not registered in any national jurisdiction may record the lien on the aircraft by filing with the secretary of state not later than the 180th day after the date of the completion of the contractual storage period or the performance of the last repair, fueling, or maintenance an affidavit that states:

(1) the name, address, and telephone number of the holder of the lien under this subchapter;

(2) the amount due for storage, repairs, fuel, or maintenance;

(3) a complete description of the aircraft; and

(4) the name and last known address of the owner of the aircraft and the number assigned the aircraft by the applicable jurisdiction, if known.

(b) An inaccurate address stated under Subsection (a)(4) does not invalidate the affidavit.

(c) The secretary of state shall maintain a record of information filed with the secretary of state under this section and index the records in the name of the owner of the aircraft.

(d) The fee for filing information with the secretary of state under this section is:

(1) $15 if the information is communicated in writing and consists of one or two pages;

(2) $30 if the information is communicated in writing and consists of more than two pages; and

(3) $5 if the information is communicated by another medium authorized by the secretary of state by rule.

Added by Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 2, eff. June 17, 2005.

Sec. 70.304. NOTICE TO OWNER AND LIENHOLDERS. (a) Not later than the 60th day after the date of the completion of the contractual storage period or the performance of the last fueling, repair, or maintenance, a holder of a lien under this subchapter who retains possession of the aircraft shall notify the owner shown on the certificate of registration and each holder of a lien on the aircraft as shown by the records maintained for that purpose by the Federal Aviation Administration Aircraft Registry or the secretary of state. The notice must state:

(1) the name, address, and telephone number of the holder of the lien under this subchapter;

(2) the amount due for storage, fuel, repairs, or maintenance;

(3) a complete description of the aircraft; and

(4) the legal right of the holder of the lien under this subchapter to sell the aircraft at public auction and apply the proceeds to the amount due.

(b) The notice must be delivered by certified or registered mail, return receipt requested.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 538, Sec. 1, eff. June 15, 1991; Acts 1995, 74th Leg., ch. 946, Sec. 1, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1171, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 3, eff. June 17, 2005.

Sec. 70.305. SALE OF AIRCRAFT. If the holder of a lien under this subchapter provides the notice required by Section 70.304 and the amount due remains unpaid after the 90th day after the date of the completion of the contractual storage period or the performance of the last fueling, repair, or maintenance, the holder of the lien may sell the aircraft at a public sale and apply the proceeds to the amount due. The lienholder shall pay any excess proceeds to the person entitled to them.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 946, Sec. 1, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1171, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 4, eff. June 17, 2005.

Sec. 70.306. ATTORNEY'S FEES. The court in a suit brought under this subchapter may award reasonable attorney's fees to the prevailing party.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989.

Sec. 70.307. CRIMINAL OFFENSE: IMPROPERLY OBTAINING POSSESSION OF AIRCRAFT SUBJECT TO LIEN. (a) A person commits an offense if the

person, through surreptitious removal or by trick, fraud, or device perpetrated on the holder of the lien, obtains possession of all or part of an aircraft that is subject to a lien under this subchapter.

(b) An offense under this section is a Class B misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 5, eff. June 17, 2005.

SUBCHAPTER E. AGRICULTURAL LIENS

Sec. 70.401. DEFINITIONS. In this subchapter:

(1) "Agricultural crop" means a plant product that is grown, produced, or harvested as a result of an agricultural producer's farm operation.

(2) "Agricultural producer" means a person who is engaged in the business of growing, producing, or harvesting an agricultural crop.

(3) "Buyer in ordinary course of business" has the meaning assigned by Section 1.201, Business & Commerce Code.

(4) "Contract purchaser" means a person who has agreed under a contract to purchase an agricultural crop or otherwise pay the agricultural producer for growing, producing, or harvesting the agricultural crop. The term does not include a person who, as to the transaction in question, is licensed and bonded under Chapter 14, Agriculture Code, or the United States Warehouse Act (7 U.S.C. Section 241 et seq.).

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 1, eff. September 1, 2015.

Sec. 70.402. LIEN CREATED. (a) An agricultural producer who, under a contract with a contract purchaser, is to receive consideration for selling an agricultural crop grown, produced, or harvested by the producer has a lien for the amount owed under the contract, or for the reasonable value of the crop on the date of

transfer or delivery if there is no agreement concerning the amount owed under the contract.

(b) A lien created under this subchapter is on every agricultural crop, either in raw or processed form, that has been transferred or delivered by the agricultural producer and is in the possession of the contract purchaser, and if the contract purchaser sells all or part of the crop, on the proceeds of the sale. If the agricultural crop is commingled after the crop has been transferred or delivered, a lien created under this subchapter applies only to that portion of the contract purchaser's inventory in an amount that is equal to the amount of the crop transferred or delivered by the agricultural producer.

(c) For purposes of this subchapter, an agricultural crop or processed form of an agricultural crop deposited by a contract purchaser with a warehouse, whether or not a warehouse receipt is given as security, is considered to be in the possession of the contract purchaser and subject to the lien.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 2, eff. September 1, 2015.

Sec. 70.403. WHEN LIEN ATTACHES. A lien created under this subchapter attaches on the date on which physical possession of the agricultural crop is delivered or transferred by the agricultural producer to the contract purchaser or the purchaser's agent, or if there is to be a series of deliveries to the contract purchaser or purchaser's agent, on the date of the first delivery of the agricultural crop to the contract purchaser or purchaser's agent.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 3, eff. September 1, 2015.

Sec. 70.404. APPLICABILITY OF OTHER LAW. Except as provided by Section 70.4045, Chapter 9, Business & Commerce Code, including applicable filing and perfection requirements, applies to a lien

created under this subchapter.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 4, eff. September 1, 2015.

Sec. 70.4045. PERFECTION AND PRIORITY OF AGRICULTURAL LIEN ON CROPS. (a) Notwithstanding Chapter 9, Business & Commerce Code, a lien created under this subchapter is perfected at the time the lien attaches under Section 70.403 and continues to be perfected if a financing statement covering the agricultural crop is filed on or before the 90th day after the date:

(1) the physical possession of the crop is delivered or transferred by the agricultural producer to the contract purchaser or the purchaser's agent, if there is only one delivery under the contract; or

(2) of the last delivery of the crop to the contract purchaser or the purchaser's agent, if there is a series of deliveries under the contract.

(b) If a financing statement covering the agricultural crop is not filed within the time prescribed by Subsection (a)(1) or (2), as applicable, the lien is considered unperfected on the date the lien attached until the date the financing statement is filed or the lien is perfected under Chapter 9, Business & Commerce Code.

(c) Notwithstanding Chapter 9, Business & Commerce Code, a lien created and perfected under this subchapter has priority over a conflicting security interest in or lien on the agricultural crop or the proceeds from the sale of the crop created by the contract purchaser in favor of a third party, other than a cotton ginner's lien created under Section 70.003(d), regardless of the date the security interest or lien created by the contract purchaser attached. This subsection does not affect a security interest or lien created and perfected to secure a loan directly to the agricultural producer.

Added by Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 5, eff. September 1, 2015.

Sec. 70.405. DURATION OF LIEN. A lien created under this

subchapter expires on the first anniversary of the date of attachment.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.

Sec. 70.406. EFFECT OF LIEN; RECOVERY. (a) A buyer in ordinary course of business of an agricultural crop, including a person who buys any portion of an agricultural crop from a contract purchaser, whether or not the agricultural crop has been commingled, takes the agricultural crop free of a lien created under this subchapter, and the lien created by this subchapter does not pass to any subsequent claimant of the agricultural crop.

(b) An unequal pro rata recovery between agricultural producers is not prohibited under this subchapter if the inequality results from a lien on accounts receivable.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.

Sec. 70.407. DISCHARGE OF LIEN. (a) A lien created under this subchapter is discharged when:

(1) the lienholder receives full payment for the agricultural crop; or

(2) payment is tendered by the contract purchaser and the lienholder, without coercion, defers payment.

(b) If payment for the agricultural crop is received in the form of a negotiable instrument, full payment is received when the negotiable instrument clears all financial institutions.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.

Sec. 70.408. JOINDER OF ACTIONS. Persons claiming a lien against the same agricultural crop under this subchapter may join in the same action, and if separate actions are commenced, the court may consolidate them.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.

Sec. 70.409. RECOVERY OF COSTS. An agricultural producer who prevails in an action brought to enforce a lien created under this subchapter is entitled to recover:

(1) reasonable and necessary attorney's fees and court costs; and

(2) interest on funds subject to the lien at the judgment interest rate as provided by Chapter 304, Finance Code.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.

Sec. 70.410. WAIVER OF CERTAIN RIGHTS PROHIBITED. An agricultural producer's agreement with a contract purchaser to waive the producer's right to seek a remedy provided by this subchapter is void.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER F. LIEN RELATED TO DAMAGED FENCE

Sec. 70.501. LANDOWNER'S LIEN. A person who owns real property in this state that is enclosed by a fence or other structure obviously designed to exclude intruders or to contain livestock or other animals may obtain from a court in this state a judgment entitling the person to a lien against the motor vehicle of a person who damages the landowner's fence with the motor vehicle if the person who damages the landowner's fence:

(1) owns the motor vehicle; or

(2) has the consent of the owner of the motor vehicle to drive the vehicle at the time the person damages the landowner's fence.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.502. AMOUNT OF LIEN. The amount of a landowner's lien under this subchapter is equal to the lesser of:

(1) the fair market value of the motor vehicle on the date the landowner's fence is damaged; or

(2) the actual cost incurred by the landowner to:

(A) repair the fence;

(B) recapture any livestock or other animals that escaped as a direct result of the damage to the fence; and

(C) have the vehicle towed from the property and stored.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.503. PROPERTY TO WHICH LIEN ATTACHES. A landowner's lien under this chapter attaches only to a motor vehicle that causes damage to a fence as described by Section 70.501.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.504. PERFECTING LIEN. A landowner may perfect a lien under this subchapter in the manner provided by Subchapter F, Chapter 501, Transportation Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.505. EXPIRATION AND DISCHARGE OF LIEN. A lien under this subchapter does not expire and is discharged only when the landowner receives payment of the lien.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.506. REMOVAL OF VEHICLE FROM LANDOWNER'S PROPERTY. A landowner whose fence is damaged by a motor vehicle that is then abandoned on the owner's property, or the landowner's agent, may:

(1) select a towing service to remove the vehicle from the landowner's property; and

(2) designate the time at which the towing service may enter the property to remove the vehicle.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

TITLE 6. UNCLAIMED PROPERTY
CHAPTER 71. ESCHEAT OF PROPERTY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 71.001. ESCHEAT. (a) If an individual dies intestate and without heirs, the real and personal property of that individual is subject to escheat.

(b) "Escheat" means the vesting of title to property in the state in an escheat proceeding under Subchapter B.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 2, eff. Sept. 1, 1985.

Sec. 71.002. PRESUMPTION OF DEATH. An individual is presumed dead for the purpose of determining if the individual's real or personal property is subject to escheat if the individual:

(1) is absent from the individual's place of residence for seven years or longer; and

(2) is not known to exist.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 3, eff. Sept. 1, 1985.

Sec. 71.003. PRESUMPTION OF INTESTACY. An individual is presumed to have died intestate if, on or before the seventh anniversary of the date of the individual's death, the individual's will has not been recorded or probated in the county where the individual's property is located.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.004. PRESUMPTION OF DEATH WITHOUT HEIRS. An individual is presumed to have died leaving no heirs if for the seven-year period preceding the court's determination:

(1) a lawful claim to the individual's property has not

been asserted; and

(2) a lawful act of ownership of the individual's property has not been exercised.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.005. ACT OF OWNERSHIP. For the purposes of this chapter, an individual exercises a lawful act of ownership in property by, personally or through an agent, paying taxes to this state on the property.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.006. REVIEW OF PROBATE DECREE. (a) If the state claims that an estate that has been administered in probate court in this state is subject to escheat, the state may have the judgment of the probate court reviewed by filing a petition in district court alleging that the administration of the estate was obtained by fraud or mistake of fact.

(b) The case shall be tried in accordance with the law for the revision and correction of a decree of the probate court.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.007. IDENTIFICATION OF REAL PROPERTY SUBJECT TO ESCHEAT. The tax assessor-collector of each county shall:

(1) take all steps necessary to identify real property that may be subject to escheat; and

(2) notify the commissioner of the General Land Office and the attorney general so that they may take appropriate action.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.002(d), eff. Sept. 1, 2003.

SUBCHAPTER B. ESCHEAT PROCEEDINGS

Sec. 71.101. PETITION FOR ESCHEAT. (a) If any person, including the attorney general, the comptroller, or a district

attorney, criminal district attorney, county attorney, county clerk, district clerk, or attorney ad litem is informed or has reason to believe that real or personal property is subject to escheat under this chapter, the person may file a sworn petition requesting the escheat of the property and requesting a writ of possession for the property.

(b) The petition must contain:

(1) a description of the property;

(2) the name of the deceased owner of the property;

(3) the name of the tenants or persons claiming the estate, if known; and

(4) the facts supporting the escheat of the estate.

(c) If the petition is filed by a person other than the attorney general, the person shall send to the attorney general written notice of the filing and a copy of the petition to permit the attorney general to elect to participate on behalf of the state.

(d) An action brought under this section is governed by the procedure relating to class actions provided by the Texas Rules of Civil Procedure.

(e) A petition filed under this section is not subject to an objection relating to misjoinder of parties or causes of action.

Acts 1983, 68th Leg., p. 3586, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 4, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 153, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.01, eff. Sept. 1, 1997.

Sec. 71.102. CITATION. (a) If a petition is filed under this subchapter, the district clerk shall issue citation as in other civil suits to:

(1) each defendant alleged by the petition to possess or claim the property that is the subject of the petition;

(2) any person required by this chapter to be cited; and

(3) persons interested in the estate, including lienholders of record.

(b) The citation required by Subdivision (3) of Subsection (a) must be published as required for other civil suits and must:

(1) briefly state the contents of the petition; and

(2) request all persons interested in the estate to appear and answer at the next term of the court.

Acts 1983, 68th Leg., p. 3587, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 21, eff. Aug. 26, 1985.

Sec. 71.103. PARTY TO PROCEEDING. (a) A person who exercises a lawful act of ownership in property that is the subject of an escheat proceeding must be made a party to the proceeding by:

(1) personal service of citation if the person is a resident of this state and the person's address can be obtained by reasonable diligence; or

(2) service of citation on a person's agent if the person is a nonresident or a resident who cannot be found and the agent can be found by the use of reasonable diligence.

(b) For the purposes of this section, reasonable diligence includes an inquiry and investigation of the records of the office of the tax assessor-collector of the county in which the property sought to be escheated is located.

(c) The comptroller is an indispensable party to any judicial or administrative proceeding concerning the disposition and handling of property that is the subject of an escheat proceeding and must be made a party to the proceeding by personal service of citation.

Acts 1983, 68th Leg., p. 3587, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.02, eff. Sept. 1, 1997.

Sec. 71.104. APPEARANCE OF CLAIMANTS. Any person, whether named in the escheat petition or not, who claims an interest in property that is the subject of an escheat proceeding may appear, enter a pleading, and oppose the facts stated in the petition.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.105. TRIAL. (a) If a person appears and denies the

state's right to the property or opposes a material fact of the petition, the court shall try the issue as any other issue of fact.

(b) The court may order a survey as in other cases in which the title or the boundary of the land is in question.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.106. DEFAULT JUDGMENT. If citation is issued in accordance with Section 71.102 and no person answers within the period provided by the Texas Rules of Civil Procedure, the court shall render a default judgment in favor of the state.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.107. JUDGMENT FOR STATE. (a) If the court renders a judgment for the state finding that an intestate died without heirs, the property escheats to the state and title to the property is considered to pass to the state on the date of death of the owner as established by the escheat proceeding. The court may award court costs to the state.

(b) If the judgment involves real property, the state may sell the property under the general laws governing the sale of Permanent School Fund lands, and, after the second anniversary of the date of the final judgment, the court shall issue a writ of possession for the property.

(c) If the judgment involves personal property, the court shall issue a writ of possession that contains an adequate description of the property as in other cases for recovery of personal property.

(d) When the record of an escheat proceeding reflects that a lienholder or his predecessor received actual or constructive notice of the escheat proceeding, the entry of the judgment in the escheat proceeding will either satisfy or extinguish any lien which the lienholder or his predecessor claimed or could have claimed on the escheated property at the escheat proceeding.

(e) The sheriff, constable, court clerk, or other officer appointed by the judge in an escheat proceeding shall execute a writ of possession by filing the writ with the deed or map records of the county when the escheated property relates to realty and by serving the writ on any holder, tenant, or occupant of any escheated

property. Additionally, the person who executes a writ of possession shall either:

(1) post the writ for at least three consecutive weeks on the door or posting board of the county courthouse in the county where the proceeding was conducted or in the county where the property is located; or

(2) in the case of real property, post the writ for at least two consecutive weeks at a reasonably conspicuous place on the realty; or

(3) publicize the writ in any other fashion ordered by the court.

(f) After validly executing a writ of possession, the sheriff, constable, court clerk, or other appointed officer shall note the method of the execution of the writ on the writ return and shall return the writ to the clerk to be filed in the court records of the escheat proceeding.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 5, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 923, Sec. 22, eff. Aug. 26, 1985.

Sec. 71.108. COSTS PAID BY STATE. If the property does not escheat, the state shall pay court costs. The clerk of the court shall certify the amount of the costs, and when the certificate is filed in the office of the comptroller of public accounts, the comptroller shall issue a warrant for the amount of the costs.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.109. APPEAL; WRIT OF ERROR. A party who appeared at an escheat proceeding may appeal the judgment rendered or may file an application for a writ of error on the judgment. The attorney general or the other person acting on behalf of the state in the escheat proceeding may make an appeal or file the writ.

Acts 1983, 68th Leg., p. 3589, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. DISPOSITION OF ESCHEATED PROPERTY

Sec. 71.201. SEIZURE AND SALE OF PERSONAL PROPERTY. (a) If personal property escheated to the state, the court shall issue to the sheriff a writ that commands the sheriff to seize the escheated property.

(b) The sheriff shall:

(1) dispose of the personal property at public auction in accordance with the law regarding the sale of personal property under execution; and

(2) deposit into the State Treasury the proceeds of the sale, less court costs.

Acts 1983, 68th Leg., p. 3589, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.202. DISPOSITION OF REAL PROPERTY. (a) Real property that escheats to the state under this title before January 1, 1985, becomes a part of the permanent school fund. Real property that escheats to the state on or after January 1, 1985, is held in trust by the Commissioner of the General Land Office for the use and benefit of the foundation school fund. The revenue from all leases, sales, and use of land held for the foundation school fund shall be deposited to the credit of the foundation school fund.

(b) Before the 91st day after the day on which a judgment that provides for the recovery of real property is rendered, the clerk of the district court rendering the judgment shall send to the Commissioner of the General Land Office:

(1) a certified copy of the judgment; and

(2) notice of any appeal of that judgment.

(c) The commissioner shall list real property as escheated foundation school fund land or permanent school land as appropriate when the commissioner receives:

(1) a certified copy of a judgment under which the property escheats to the state and from which appeal is not taken; or

(2) a certified copy of notice of the affirmance on appeal of a judgment under which the property escheats to the state.

Acts 1983, 68th Leg., p. 3589, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 28, art. II, part B, Sec. 13, eff. Sept. 1, 1984.

Sec. 71.203. ACCOUNT OF ESCHEATED PROPERTY. The comptroller shall keep an account of the money paid to and real property vested in this state under this chapter.

Acts 1983, 68th Leg., p. 3590, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER D. RECOVERY OF ESCHEATED PROPERTY

Sec. 71.301. SUIT FOR ESCHEATED PERSONAL PROPERTY. (a) If personal property of a deceased owner escheats to the state under this chapter and is delivered to the state, a person who claims the property as an heir, devisee, or legatee of the deceased may file suit against the state in a district court of Travis County, Texas. The suit must be filed on or before the fourth anniversary of the date of the final judgment of the escheat proceeding.

(b) The petition must state the nature of the claim and request that the money be paid to the claimant.

(c) A copy of the petition shall be served on the comptroller, who shall represent the interests of the state. As the comptroller elects and with the approval of the attorney general, the attorney general, the county attorney or criminal district attorney for the county, or the district attorney for the district shall represent the comptroller.

Acts 1983, 68th Leg., p. 3590, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 3, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 6, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.03, eff. Sept. 1, 1997.

Sec. 71.302. RECOVERY OF PERSONAL PROPERTY. (a) If in a suit filed under Section 71.301 the court finds that a claimant is entitled to recover personal property, the court shall order the comptroller to issue a warrant for payment of the claim without interest or costs.

(b) A copy of the order under seal of the court is sufficient voucher for issuing the warrant.

Acts 1983, 68th Leg., p. 3590, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.303. SUIT FOR ESCHEATED REAL PROPERTY. (a) If real property escheats to the state under this chapter, a person who was not personally served with citation in the escheat proceedings may file suit in the district court of Travis County for all or a part of the property. The suit must be filed not later than the second anniversary of the date of the final judgment in the escheat proceedings.

(b) A copy of the petition must be served on the attorney general, who shall represent the interests of the state.

(c) To the extent the claimant is adjudged to be the owner of all or a part of the property, the state is divested of the property.

Acts 1983, 68th Leg., p. 3590, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 4, eff. Sept. 1, 1991.

Sec. 71.304. STATE AS PARTY IN SUIT FOR ASSETS. (a) A suit brought for the collection of personal property delivered to the comptroller under this chapter must be brought in the name of this state.

(b) A suit brought for the possession of real property held in trust by the Commissioner of the General Land Office under this chapter must be brought in the name of this state.

Acts 1983, 68th Leg., p. 3591, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 4, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.04, eff. Sept. 1, 1997.

CHAPTER 72. ABANDONMENT OF PERSONAL PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 72.001. APPLICATION OF CHAPTER. (a) Tangible or intangible personal property is subject to this chapter if it is covered by Section 72.101 and:

(1) the last known address of the apparent owner, as shown on the records of the holder, is in this state;

(2) the records of the holder do not disclose the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this state;

(3) the records of the holder do not disclose the last known address of the apparent owner, and it is established that:

(A) the last known address of the person entitled to the property is in this state; or

(B) the holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) the last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide by law for the escheat or custodial taking of the property or is in a state in which the state's escheat or unclaimed property law is not applicable to the property, and the holder is a domiciliary or a government or governmental subdivision or agency of this state;

(5) the last known address of the apparent owner, as shown on the records of the holder, is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or

(6) the transaction out of which the property arose occurred in this state and:

(A) the last known address of the apparent owner or other person entitled to the property is:

(i) unknown; or

(ii) in a state that does not provide by law for the escheat or custodial taking of the property or in a state in which the state's escheat or unclaimed property law is not applicable to the property; and

(B) the holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or a state in which the state's escheat or unclaimed property law is not applicable to the property.

(b) This chapter supplements other chapters in this title, and each chapter shall be followed to the extent applicable.

(c) This chapter applies to property held by life insurance companies with the exception of unclaimed proceeds to which Chapter 1109, Insurance Code, applies and that are held by those companies that are subject to Chapter 1109, Insurance Code.

(d) A holder of property presumed abandoned under this chapter is subject to the procedures of Chapter 74.

(e) In this chapter, a holder is a person, wherever organized or domiciled, who is:

(1) in possession of property that belongs to another;

(2) a trustee; or

(3) indebted to another on an obligation.

(f) In this chapter, a corporation shall be deemed to be a domiciliary of the state of its incorporation.

Acts 1983, 68th Leg., p. 3592, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 7, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 426, Sec. 2, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 153, Sec. 5, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1419, Sec. 30, eff. June 1, 2003.

SUBCHAPTER B. PRESUMPTION OF ABANDONMENT

Sec. 72.101. PERSONAL PROPERTY PRESUMED ABANDONED. (a) Except as provided by this section and Sections 72.1015, 72.1016, 72.1017, 72.102, and 72.104, personal property is presumed abandoned if, for longer than three years:

(1) the existence and location of the owner of the property is unknown to the holder of the property; and

(2) according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised.

(b)(1) The three-year period leading to a presumption of abandonment of stock or another intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, commences on the first date that either a sum payable as a result of the ownership interest is unclaimed by the owner or a communication to the owner is returned undelivered by the United States Postal Service.

(2) The running of the three-year period of abandonment ceases immediately on the exercise of an act of ownership interest or sum payable or a communication with the association as evidenced by a memorandum or other record on file with the association or its agents.

(3) At the time an ownership is presumed abandoned under this section, any sum then held for interest or owing to the owner as a result of the interest and not previously presumed abandoned is

presumed abandoned.

(4) Any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the ownership interest is subject to the presumption of abandonment as provided by this section.

(c) Property distributable in the course of a demutualization or related reorganization of an insurance company is presumed abandoned on the first anniversary of the date the property becomes distributable if, at the time of the first distribution, the last known address of the owner according to the records of the holder of the property is known to be incorrect or the distribution or statements related to the distribution are returned by the post office as undeliverable and the owner has not:

(1) communicated in writing with the holder of the property or the holder's agent regarding the interest; or

(2) otherwise communicated with the holder regarding the interest as evidenced by a memorandum or other record on file with the holder or its agents.

(d) Property distributable in the course of a demutualization or related reorganization of an insurance company that is not subject to Subsection (c) is presumed abandoned as otherwise provided by this section.

(e) This section does not apply to money collected as child support that:

(1) is being held for disbursement by the state disbursement unit under Chapter 234, Family Code, or a local registry, as defined by Section 101.018, Family Code, pending identification and location of the person to whom the money is owed; or

(2) has been disbursed by the state disbursement unit under Chapter 234, Family Code, by electronic funds transfer into a child support debit card account established for an individual under Section 234.010, Family Code, but not activated by the individual.

Acts 1983, 68th Leg., p. 3593, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 9, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 426, Sec. 3, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 153, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 36, Sec. 3.01, eff. Sept. 1, 1993; Acts 2003, 78th

Leg., 3rd C.S., ch. 3, Sec. 2.01, 3.01, eff. Jan. 11, 2004.
Amended by:
Acts 2005, 79th Leg., Ch. 81 (S.B. 446), Sec. 2, eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 551 (S.B. 1777), Sec. 2, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 34, eff. June 19, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 1, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 606 (S.B. 569), Sec. 1, eff. September 1, 2015.

Sec. 72.1015. UNCLAIMED WAGES. (a) In this section, "wages" has the meaning assigned by Section 61.001, Labor Code.
(b) An amount of unclaimed wages is presumed abandoned if, for longer than one year:
(1) the existence and location of the person to whom the wages are owed is unknown to the holder of the wages; and
(2) according to the knowledge and records of the holder of the wages, a claim to the wages has not been asserted or an act of ownership of the wages has not been exercised.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 2.02, eff. Jan. 11, 2004.

Sec. 72.1016. STORED VALUE CARD. (a) This section applies to a stored value card, as defined by Section 604.001, Business & Commerce Code, other than a card:
(1) to which Chapter 604, Business & Commerce Code, does not apply by operation of Sections 604.002(1)(A) and (C) and 604.002(2)-(5) of that code; or
(2) that is linked to and draws its value solely from a deposit account subject to Chapter 73.
(b) If the existence and location of the owner of a stored value card is unknown to the holder of the property, the stored value card is presumed abandoned to the extent of its unredeemed and uncharged value on the earlier of:

(1) the card's expiration date;

(2) the third anniversary of the date the card was issued, if the card is not used after it is issued, or the date the card was last used or value was last added to the card; or

(3) the first anniversary of the date the card was issued, if the card is not used after it is issued, or the date the card was last used or value was last added to the card, if the card's value represents wages, as defined by Section 61.001, Labor Code.

(c) If the person who sells or issues a stored value card in this state does not obtain the name and address of the apparent owner of the card and maintain a record of the owner's name and address and the identification number of the card, the address of the apparent owner is considered to be the Austin, Texas, address of the comptroller.

(d) A person may charge a fee against a stored value card as provided by Chapter 604, Business & Commerce Code. A fee may not be charged against a stored value card after the card is presumed abandoned under this section.

(e) The comptroller shall transfer five percent of the money collected from cards presumed to be abandoned for use as grants under Subchapter M, Chapter 56, Education Code.

(f) This section does not create a cause of action against a person who issues or sells a stored value card.

Added by Acts 2005, 79th Leg., Ch. 81 (S.B. 446), Sec. 3, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.33, eff. April 1, 2009.

Sec. 72.1017. UTILITY DEPOSITS. (a) In this section:

(1) "Utility" has the meaning assigned by Section 183.001, Utilities Code.

(2) "Utility deposit" is a refundable money deposit a utility requires a user of the utility service to pay as a condition of initiating the service.

(b) Notwithstanding Section 73.102, a utility deposit is presumed abandoned on the latest of:

(1) the first anniversary of the date a refund check for

the utility deposit was payable to the owner of the deposit;

(2) the first anniversary of the date the utility last received documented communication from the owner of the utility deposit; or

(3) the first anniversary of the date the utility issued a refund check for the deposit payable to the owner of the deposit if, according to the knowledge and records of the utility or payor of the check, during that period, a claim to the check has not been asserted or an act of ownership by the payee has not been exercised.

(c) A utility deposit is not presumed abandoned for two years from the time the depositor provides documentation to the utility of being called to active military service in any branch of the United States armed forces during any part of the period described by Subsection (b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 2, eff. September 1, 2011.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 5.01, eff. September 28, 2011.

Sec. 72.102. TRAVELER'S CHECK AND MONEY ORDER. (a) A traveler's check or money order is not presumed to be abandoned under this chapter unless:

(1) the records of the issuer of the check or money order indicate that it was purchased in this state;

(2) the issuer's principal place of business is in this state and the issuer's records do not indicate the state in which the check or money order was purchased; or

(3) the issuer's principal place of business is in this state, the issuer's records indicate that the check or money order was purchased in another state, and the laws of that state do not provide for the escheat or custodial taking of the check or money order.

(b) A traveler's check to which Subsection (a) applies is presumed to be abandoned on the latest of:

(1) the 15th anniversary of the date on which the check was issued;

(2) the 15th anniversary of the date on which the issuer of

the check last received from the owner of the check communication concerning the check; or

(3) the 15th anniversary of the date of the last writing, on file with the issuer, that indicates the owner's interest in the check.

(c) A money order to which Subsection (a) applies is presumed to be abandoned on the latest of:

(1) the third anniversary of the date on which the money order was issued;

(2) the third anniversary of the date on which the issuer of the money order last received from the owner of the money order communication concerning the money order; or

(3) the third anniversary of the date of the last writing, on file with the issuer, that indicates the owner's interest in the money order.

Acts 1983, 68th Leg., p. 3593, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 10, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1037, Sec. 8, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 179, Sec. 1, eff. June 1, 2004.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 3, eff. September 1, 2011.

Text of section effective on September 1, 2017

Sec. 72.1021. SHARES OF MUTUAL FUND; DESIGNATION OF REPRESENTATIVE FOR NOTICE. (a) The owner of shares of a mutual fund may designate the name and a mailing or e-mail address of a representative of the owner only for the purpose of receiving the notice required by Section 74.1011. The owner is not required to designate a representative under this subsection.

(b) The comptroller shall prescribe a form that a holder of shares of a mutual fund may make available to an owner of the shares to designate a representative for notice under this section.

(c) A representative for notice designated under this section does not have any rights to the mutual fund shares and may not access the shares.

(d) The running of the three-year period of abandonment under Section 72.101 ceases immediately if a representative designated

under this section communicates to the holder that the representative knows:

(1) the owner's location; and

(2) that the owner exists and has not abandoned the shares of the mutual fund.

Added by Acts 2015, 84th Leg., R.S., Ch. 925 (H.B. 1454), Sec. 1, eff. September 1, 2017.

Sec. 72.103. PRESERVATION OF PROPERTY. Notwithstanding any other provision of this title except a provision of this section or Section 72.1016 relating to a money order or a stored value card, a holder of abandoned property shall preserve the property and may not at any time, by any procedure, including a deduction for service, maintenance, or other charge, transfer or convert to the profits or assets of the holder or otherwise reduce the value of the property. For purposes of this section, value is determined as of the date of the last transaction or contact concerning the property, except that in the case of a money order, value is determined as of the date the property is presumed abandoned under Section 72.102(c). If a holder imposes service, maintenance, or other charges on a money order prior to the time of presumed abandonment, such charges may not exceed the amount of $1 per month for each month the money order remains uncashed prior to the month in which the money order is presumed abandoned.

Acts 1983, 68th Leg., p. 3594, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 11, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1037, Sec. 9, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 179, Sec. 2, eff. June 1, 2002.
Amended by:

Acts 2005, 79th Leg., Ch. 81 (S.B. 446), Sec. 4, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 4, eff. September 1, 2011.

Sec. 72.104. TANGIBLE PERSONAL PROPERTY HELD BY COUNTY. Tangible personal property that is found on county land or in a county park, facility, or right-of-way is presumed abandoned if, for

longer than 120 days:

(1) the personal property is held by the county;

(2) the existence and location of the owner of the personal property is unknown to the county; and

(3) according to the knowledge and records of the county, a claim to the personal property has not been asserted or an act of ownership of the personal property has not been exercised.

Added by Acts 2015, 84th Leg., R.S., Ch. 606 (S.B. 569), Sec. 2, eff. September 1, 2015.

CHAPTER 73. PROPERTY HELD BY FINANCIAL INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 73.001. DEFINITIONS AND APPLICATION OF CHAPTER. (a) In this chapter:

(1) "Account" means funds deposited with a depository in an interest-bearing account, a checking or savings account, or a child support debit card account established under Section 234.010, Family Code, or funds received by a depository in exchange for the purchase of a stored value card.

(2) "Depositor" means a person who has an ownership interest in an account.

(3) "Owner" means a person who has an ownership interest in a safe deposit box.

(4) "Holder" means a depository.

(5) "Check" includes a draft, cashier's check, certified check, registered check, or similar instrument.

(b) This chapter supplements other chapters in this title, and each chapter shall be followed to the extent applicable.

(c) Any property, other than an account, check, or safe deposit box, held by a depository is subject to the abandonment provisions of Chapter 72.

(d) A holder of accounts, checks, or safe deposit boxes presumed abandoned under this chapter is subject to the procedures of Chapter 74.

Acts 1983, 68th Leg., p. 3607, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 13, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 153, Sec. 7, 8, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 11, 12, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 81 (S.B. 446), Sec. 5, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 551 (S.B. 1777), Sec. 3, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 35, eff. June 19, 2009.

Sec. 73.002. DEPOSITORY. For the purposes of this chapter, a depository is a bank, savings and loan association, credit union, or other banking organization that:

(1) receives and holds a deposit of money or the equivalent of money in banking practice or other personal property in this state; or

(2) receives and holds such a deposit or other personal property in another state for a person whose last known residence is in this state.

Acts 1983, 68th Leg., p. 3607, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 13, eff. Sept. 1, 1997.

Sec. 73.003. PRESERVATION OF INACTIVE ACCOUNT OR SAFE DEPOSIT BOX. (a) A depository shall preserve an account that is inactive and the contents of a safe deposit box that is inactive. The depository may not, at any time, by any procedure, including the imposition of a service charge, transfer or convert to the profits or assets of the depository or otherwise reduce the value of the account or the contents of such a box. For purposes of this subsection, value is determined as of the date the account or safe deposit box becomes inactive.

(b) An account is inactive if for more than one year there has not been a debit or credit to the account because of an act by the depositor or an agent of the depositor, other than the depository, and the depositor has not communicated with the depository. A safe deposit box is inactive if the rental on the box is delinquent.

(c) This section does not affect the provisions of Subchapter B, Chapter 59, Finance Code.

Acts 1983, 68th Leg., p. 3607, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 8(b), eff. Oct. 2, 1984; Acts 1985, 69th Leg., ch. 230, Sec. 14, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 153, Sec. 9, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 36, Sec. 3.02, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 914, Sec. 11, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1037, Sec. 13, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.85, eff. Sept. 1, 1999.

SUBCHAPTER B. PRESUMPTION OF ABANDONMENT

Sec. 73.101. INACTIVE ACCOUNT OR SAFE DEPOSIT BOX PRESUMED ABANDONED. (a) An account or safe deposit box is presumed abandoned if:

(1) except as provided by Subsection (c), the account or safe deposit box has been inactive for at least five years as determined under Subsection (b);

(2) the location of the depositor of the account or owner of the safe deposit box is unknown to the depository; and

(3) the amount of the account or the contents of the box have not been delivered to the comptroller in accordance with Chapter 74.

(b) For purposes of Subsection (a)(1):

(1) an account becomes inactive beginning on the date of the depositor's last transaction or correspondence concerning the account; and

(2) a safe deposit box becomes inactive beginning on the date a rental was due but not paid.

(c) If the account is a checking or savings account or is a matured certificate of deposit, the account is presumed abandoned if the account has been inactive for at least three years as determined under Subsection (b)(1).

Acts 1983, 68th Leg., p. 3607, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 8(d), eff. Oct. 2, 1984; Acts 1985, 69th Leg., ch. 230, Sec. 16, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 153, Sec. 11, 12, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 14, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.05, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 5, eff. September 1, 2011.

Sec. 73.102. CHECKS. A check is presumed to be abandoned on the latest of:

(1) the third anniversary of the date the check was payable;

(2) the third anniversary of the date the issuer or payor of the check last received documented communication from the payee of the check; or

(3) the third anniversary of the date the check was issued if, according to the knowledge and records of the issuer or payor of the check, during that period, a claim to the check has not been asserted or an act of ownership by the payee has not been exercised.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 15, eff. Sept. 1, 1997.

Text of section effective on September 1, 2017

Sec. 73.103. DESIGNATION OF REPRESENTATIVE FOR NOTICE. (a) The depositor of an account or the owner of the contents of a safe deposit box may designate the name and a mailing or e-mail address of a representative of the depositor or the owner only for the purpose of receiving the notice required by Section 74.1011. The depositor or owner is not required to designate a representative under this subsection.

(b) The comptroller shall prescribe a form that a holder of an account or the contents of a safe deposit box may make available to a depositor of the account or owner of the contents of the box to designate a representative for notice under this section.

(c) A representative for notice designated under this section does not have any rights to the account or safe deposit box and may not access the account or box.

(d) The running of a period of abandonment under Section 73.101 ceases immediately if a representative designated under this section communicates to the holder that the representative knows:

(1) the depositor's or owner's location; and

(2) that the depositor or owner exists and has not abandoned the account or the contents of a safe deposit box.

Added by Acts 2015, 84th Leg., R.S., Ch. 925 (H.B. 1454), Sec. 2, eff. September 1, 2017.

CHAPTER 74. REPORT, DELIVERY, AND CLAIMS PROCESS

SUBCHAPTER A. APPLICABILITY

Sec. 74.001. APPLICABILITY. (a) Except as provided by Subsection (b), this chapter applies to a holder of property that is presumed abandoned under Chapter 72, Chapter 73, or Chapter 75.

(b) This chapter does not apply to a holder of property subject to Chapter 76.

(c) This chapter does not apply to small credit balances held by an institution of higher education in an unclaimed money fund under Section 51.011, Education Code.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 13, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 16, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 465, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 2.03, eff. Jan. 11, 2004. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 1.07, eff. June 17, 2011.

SUBCHAPTER B. PROPERTY REPORT

Sec. 74.101. PROPERTY REPORT. (a) Each holder who on March 1 holds property that is presumed abandoned under Chapter 72, 73, or 75 of this code or under Chapter 154, Finance Code, shall file a report of that property on or before the following July 1. The comptroller may require the report to be in a particular format, including a format that can be read by a computer.

(b) Repealed by Acts 1999, 76th Leg., ch. 1208, Sec. 5, eff. Sept. 1, 1999.

Text of subsection effective until September 1, 2017

(c) The property report must include, if known by the holder:

(1) the name, social security number, driver's license or state identification number, e-mail address, and the last known address of:

(A) each person who, from the records of the holder of

the property, appears to be the owner of the property; or

(B) any person who is entitled to the property;

(2) a description of the property, the identification number, if any, and, if appropriate, a balance of each account, except as provided by Subsection (d);

(3) the date that the property became payable, demandable, or returnable;

(4) the date of the last transaction with the owner concerning the property; and

(5) other information that the comptroller by rule requires to be disclosed as necessary for the administration of this chapter.

Text of subsection effective on September 1, 2017

(c) The property report must include, if known by the holder:

(1) the name, social security number, driver's license or state identification number, e-mail address, and last known address of:

(A) each person who, from the records of the holder of the property, appears to be the owner of the property; or

(B) any person who is entitled to the property;

(2) the name and last known mailing or e-mail address of any person designated as a representative for notice under Section 72.1021 or 73.103;

(3) a description of the property, the identification number, if any, and, if appropriate, a balance of each account, except as provided by Subsection (d);

(4) the date that the property became payable, demandable, or returnable;

(5) the date of the last transaction with the owner concerning the property; and

(6) other information that the comptroller by rule requires to be disclosed as necessary for the administration of this chapter.

(d) Amounts due that individually are less than $25 may be reported in the aggregate without furnishing any of the information required by Subsection (c).

(e) A holder of mineral proceeds under Chapter 75 that is regulated by the Railroad Commission of Texas under Chapter 91, Natural Resources Code, shall include in the property report for the proceeds, in addition to the information listed in Subsection (c), the following information with respect to each well the production from which resulted in the proceeds:

(1) the lease, property, or well name;

(2) any lease, property, or well identification number used to identify the lease, property, or well; and

(3) the county in which the lease, property, or well is located.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 426, Sec. 4, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 153, Sec. 14, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 1, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.06, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1208, Sec. 5, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 62, Sec. 7.86, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 465, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 2.04, eff. Jan. 11, 2004.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 232 (S.B. 1589), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 6, eff. January 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 118 (S.B. 1021), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 480 (S.B. 1589), Sec. 1, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 925 (H.B. 1454), Sec. 3, eff. September 1, 2017.

Sec. 74.1011. NOTICE BY PROPERTY HOLDER REQUIRED. (a) Except as provided by Subsection (b), a holder who on March 1 holds property valued at more than $250 that is presumed abandoned under Chapter 72, 73, or 75 of this code or Chapter 154, Finance Code, shall, on or before the following May 1, mail to the last known address of the known owner written notice stating that:

(1) the holder is holding the property; and

(2) the holder may be required to deliver the property to the comptroller on or before July 1 if the property is not claimed.

(b) The notice required under Subsection (a) does not apply to a holder who:

(1) has already provided such notice to the owner of the property or a person entitled to the property under existing federal law, rules, and regulations or state law within the time specified under Subsection (a); or

(2) does not have a record of an address for the property owner or any other person entitled to the property.

Text of subsection effective on September 1, 2017

(b-1) If an owner has designated a representative for notice under Section 72.1021 or 73.103, the holder shall mail or e-mail the written notice required under Subsection (a) to the representative in addition to mailing the notice to the owner.

(c) A holder that provides notice under this section may charge the cost of the postage as a service charge against the property.

Added by Acts 2009, 81st Leg., R.S., Ch. 232 (S.B. 1589), Sec. 2, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 7, eff. January 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 925 (H.B. 1454), Sec. 4, eff. September 1, 2017.

Sec. 74.102. SIGNED STATEMENT. (a) The person preparing a property report shall provide with each copy of the report a statement signed by:

(1) the individual holding the reported property;

(2) a partner, if the holder is a partnership;

(3) an officer, if the holder is an unincorporated association or a private corporation; or

(4) the chief fiscal officer, if the holder is a public corporation.

(b) The statement must include the following sentence:

"This report contains a full and complete list of all property held by the undersigned that, from the knowledge and records of the undersigned, is abandoned under the laws of the State of Texas."

(c) The comptroller may adopt rules or policies relating to the signature requirement, as the comptroller determines appropriate, to maximize the use of future developments in electronic filing technology.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 18, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1208, Sec. 1, eff. Sept. 1, 1999.

Sec. 74.103. RETENTION OF RECORDS.

Text of subsection effective until September 1, 2017

(a) A holder required to file a property report under Section 74.101 shall keep a record of:

(1) the name, the social security number, if known, and the last known address of each person who, from the records of the holder of the property, appears to be the owner of the property;

(2) a brief description of the property, including the identification number, if any; and

(3) the balance of each account, if appropriate.

Text of subsection effective on September 1, 2017

(a) A holder required to file a property report under Section 74.101 shall keep a record of:

(1) the name, the social security number, if known, and the last known address of each person who, from the records of the holder of the property, appears to be the owner of the property;

(2) the name and last known mailing or e-mail address of any representative for notice designated under Section 72.1021 or 73.103;

(3) a brief description of the property, including the identification number, if any; and

(4) the balance of each account, if appropriate.

(b) The record must be kept for 10 years from the date on which the property is reportable, regardless of whether the property is reported in the aggregate under Section 74.101.

(c) The comptroller may by rule provide for a shorter period for keeping a record required by this section.

(d) The comptroller may determine the liability of a holder required to file a property report under Section 74.101 using the best information available to the comptroller if the records of the holder are unavailable or incomplete for any portion of the required retention period.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985.

Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 19, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.07, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1310, Sec. 84, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 925 (H.B. 1454), Sec. 5, eff. September 1, 2017.

Sec. 74.104. CONFIDENTIALITY OF PROPERTY REPORT; EXCEPTIONS. (a) Except as provided by Subsection (c) and Section 74.201, 74.203, or 74.307, a property report filed with the comptroller under Section 74.101 is confidential until the second anniversary of the date the report is filed.

(b) The social security number of an owner that is provided to the comptroller is confidential.

(c) The information reported under Section 74.101(e) is confidential and not subject to disclosure under Chapter 552, Government Code.

(d) Notwithstanding Subsection (c), the comptroller may release the information about a well reported under Section 74.101(e) to a claimant of mineral proceeds from the well if the claim is approved by the comptroller under Section 74.501.

(e) Notwithstanding Subsection (c), the information compiled under Section 74.307(a)(2) is subject to disclosure under Chapter 552, Government Code.

Added by Acts 1991, 72nd Leg., ch. 153, Sec. 15, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 20, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.08, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 480 (S.B. 1589), Sec. 2, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 480 (S.B. 1589), Sec. 3, eff. January 1, 2016.

SUBCHAPTER C. NOTICE BY COMPTROLLER

Sec. 74.201. REQUIRED NOTICE. (a) Except as provided by Section 74.202, the comptroller may use one or more methods as

necessary to provide the most efficient and effective notice to each reported owner in the calendar year immediately following the year in which the report required by Section 74.101 is filed. The notice must be provided:

(1) in the county of the property owner's last known address; or

(2) in the county in which the holder has its principal place of business or its registered office for service in this state, if the property owner's last address is unknown.

(b) The notice must state that the reported property is presumed abandoned and subject to this chapter and must contain:

(1) the name and city of last known address of the reported owner;

(2) a statement that, by inquiry, any person possessing a legal or beneficial interest in the reported property may obtain information concerning the amount and description of the property; and

(3) a statement that the person may present proof of the claim and establish the person's right to receive the property.

(c) Deleted by Acts 1997, 75th Leg., ch. 1037, Sec. 21, eff. Sept. 1, 1997.

(d) The comptroller may offer for sale space for suitable advertisements in a notice published under this section.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 426, Sec. 5, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 153, Sec. 16, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 36, Sec. 3.03, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 21, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.09, eff. Sept. 1, 1997.

Sec. 74.202. NOTICE FOR ITEM WITH VALUE OF LESS THAN $100. In the notice required by Section 74.201, the comptroller is not required to publish information regarding an item having a value that is less than $100 unless the comptroller determines that publication of that information is in the public interest.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 571, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1037, Sec. 21, eff. Sept. 1, 1997; Acts

1997, 75th Leg., ch. 1423, Sec. 16.10, eff. Sept. 1, 1997.

Sec. 74.203. AUTHORIZED NOTICE. (a) During the calendar year immediately following the year in which the report required by Section 74.101 is filed, notice may be mailed to each person who has been reported with a Texas address and appears to be entitled to the reported property.

(b) The notice under Subsection (a) must conform to the requirements for notice under Section 74.201(b).

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 17, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 21, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.11, eff. Sept. 1, 1997.

Sec. 74.205. CHARGE FOR NOTICE. The comptroller may charge the following against the property delivered under this chapter:

(1) expenses incurred for the publication of notice required by Section 74.201; and

(2) the amount paid in postage for the notice to the owner required by Section 74.203.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 22, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.12, eff. Sept. 1, 1997.

SUBCHAPTER D. DELIVERY

Sec. 74.301. DELIVERY OF PROPERTY TO COMPTROLLER. (a) Except as provided by Subsection (c), each holder who on March 1 holds property that is presumed abandoned under Chapter 72, 73, or 75 shall deliver the property to the comptroller on or before the following July 1 accompanied by the report required to be filed under Section 74.101.

(b) If the property subject to delivery under Subsection (a) is stock or some other intangible ownership interest in a business association for which there is no evidence of ownership, the holder shall issue a duplicate certificate or other evidence of ownership to

the comptroller at the time delivery is required under this section.

(c) If the property subject to delivery under Subsection (a) is the contents of a safe deposit box, the comptroller may instruct a holder to deliver the property on a specified date before July 1 of the following year.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 19, 30(2), eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 22, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.13, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1208, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 465, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 2.05, eff. Jan. 11, 2004. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 8, eff. January 1, 2013.

Sec. 74.3011. DELIVERY OF MONEY TO RURAL SCHOLARSHIP FUND. (a) Notwithstanding and in addition to any other provision of this chapter or other law, a local telephone exchange company may deliver reported money to a scholarship fund for rural students instead of delivering the money to the comptroller as prescribed by Section 74.301.

(b) A local telephone exchange company may deliver the money under this section only to a scholarship fund established by one or more local telephone exchange companies in this state to enable needy students from rural areas to attend college, technical school, or another postsecondary educational institution.

(c) A local telephone exchange company shall file with the comptroller a verification of money delivered under this section that complies with Section 74.302.

(d) A claim for money delivered to a scholarship fund under this section must be filed with the local telephone exchange company that delivered the money. The local telephone exchange company shall forward the claim to the administrator of the scholarship fund to which the money was delivered. The scholarship fund shall pay the claim if the fund determines in good faith that the claim is valid. A person aggrieved by a claim decision may file a suit against the fund in a district court in the county in which the administrator of

the scholarship fund is located in accordance with Section 74.506.

(e) The comptroller shall prescribe forms and procedures governing this section, including forms and procedures relating to:

(1) notice of presumed abandoned property;

(2) delivery of reported money to a scholarship fund; and

(3) filing of a claim.

(f) In this section, "local telephone exchange company" means a telecommunications utility certificated to provide local exchange service within the state and that is a telephone cooperative or has fewer than 50,000 access lines in service in this state.

(g) During a state fiscal year, the total amount of money that may be transferred by all local telephone exchange companies under this section may not exceed $800,000. The comptroller shall keep a record of the total amount of money transferred annually. When the total amount of money transferred during a state fiscal year equals the amount allowed by this subsection, the comptroller shall notify each local telephone exchange company that the company may not transfer any additional money to the company's scholarship fund during the remainder of that state fiscal year.

Added by Acts 1995, 74th Leg., ch. 231, Sec. 50(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 23, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.14, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 163 (S.B. 947), Sec. 1, eff. September 1, 2007.

Sec. 74.3012. DELIVERY OF MONEY TO URBAN SCHOLARSHIP FUND. (a) Notwithstanding and in addition to any other provision of this chapter or other law, a local exchange company may deliver reported money to a scholarship fund for urban students instead of delivering the money to the comptroller as prescribed by Section 74.301.

(b) A local exchange company may deliver the money under this section only to a scholarship fund established by one or more local exchange companies in this state to enable needy students from urban areas to attend college, technical school, or another postsecondary educational institution.

(c) A local exchange company shall file with the comptroller a

verification of money delivered under this section that complies with Section 74.302.

(d) A claim for money delivered to a scholarship fund under this section must be filed with the local exchange company that delivered the money. The local exchange company shall forward the claim to the administrator of the scholarship fund to which the money was delivered. The scholarship fund shall pay the claim if the fund determines in good faith that the claim is valid. A person aggrieved by a claim decision may file a suit against the fund in a district court in the county in which the administrator of the scholarship fund is located in accordance with Section 74.506.

(e) The comptroller shall prescribe forms and procedures governing this section, including forms and procedures relating to:

(1) notice of presumed abandoned property;

(2) delivery of reported money to a scholarship fund; and

(3) filing of a claim.

(f) In this section, "local exchange company" means a telecommunications utility certificated to provide local exchange telephone service within the state and that has 50,000 or more access lines in service in this state and is not a telephone cooperative.

(g) During each state fiscal year, the total amount of money that may be transferred by all local exchange companies under this section may not exceed the total amount of money transferred to rural scholarship funds under Section 74.3011 during the previous state fiscal year. The comptroller shall keep a record of the total amount of money transferred annually. If the total amount of money transferred during a state fiscal year equals the amount allowed by this subsection, the comptroller shall notify each local exchange company that the company may not transfer any additional money to the company's scholarship fund during the remainder of that state fiscal year.

Added by Acts 1995, 74th Leg., ch. 231, Sec. 51(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 24, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.15, eff. Sept. 1, 1997.

Sec. 74.3013. DELIVERY OF MONEY FOR RURAL SCHOLARSHIP, ECONOMIC DEVELOPMENT, AND ENERGY EFFICIENCY ASSISTANCE. (a) Notwithstanding

and in addition to any other provision of this chapter or other law, a nonprofit cooperative corporation may deliver reported money to a scholarship fund for rural students, to stimulate rural economic development, or to provide energy efficiency assistance to members of electric cooperatives, instead of delivering the money to the comptroller as prescribed in Section 74.301.

(b) A nonprofit cooperative corporation may deliver the money under this section only:

(1) to a scholarship fund established by one or more nonprofit cooperative corporations in this state to enable students from rural areas to attend college, technical school, or other postsecondary educational institution;

(2) to an economic development fund for the stimulation and improvement of business and commercial activity for economic development in rural communities; and

(3) to an energy efficiency assistance fund to assist members of an electric cooperative in reducing their energy consumption and electricity bills.

(c) A nonprofit cooperative corporation shall file with the comptroller a verification of money delivered under this section that complies with Section 74.302.

(d) A claim for money delivered under this section must be filed with the nonprofit cooperative corporation that delivered the money. A nonprofit cooperative corporation shall forward the claim to the administrator of the fund to which the money was delivered. The fund shall pay the claim if the fund determines in good faith that the claim is valid. A person aggrieved by a claim decision may file a suit against the fund in a district court in the county in which the administrator of the fund is located in accordance with Section 74.506.

(e) The comptroller shall prescribe forms and procedures governing this section, including forms and procedures relating to:

(1) notice of presumed abandoned property;

(2) delivery of reported money to a scholarship, economic development fund, or energy efficiency assistance fund;

(3) filing of a claim; and

(4) procedures to allow equitable opportunity for participation by each nonprofit cooperative corporation in the state.

(f) During a state fiscal year the total amount of money that may be transferred by all nonprofit cooperative corporations under

this section may not exceed $2 million. No more than 20 percent of each nonprofit cooperative's funds eligible for delivery under this section shall be used for economic development. The comptroller shall adopt procedures to record the total amount of money transferred annually.

(g) Nonprofit cooperative corporations may combine funds from other sources with any funds delivered under this section. In addition, such cooperatives may engage in other business and commercial activities, in their own behalf or through such subsidiaries and affiliates as deemed necessary, in order to provide and promote educational opportunities and to stimulate rural economic development.

(h) In this section, a nonprofit cooperative corporation means a cooperative corporation organized under Chapters 51 and 52, Agriculture Code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), the Cooperative Association Act (Article 1396-50.01, Vernon's Texas Civil Statutes), and Chapter 161, Utilities Code.

Added by Acts 1997, 75th Leg., ch. 904, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.45, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 14, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 15, eff. September 1, 2007.

Sec. 74.302. STATEMENT OF DELIVERED PROPERTY. (a) Property delivered under Section 74.301 must be accompanied by a statement that:

(1) the property delivered is a complete and correct remittance of all accounts subject to this chapter in the holder's possession;

(2) the existence and location of the listed owners are unknown to the holder; and

(3) the listed owners have not asserted a claim or exercised an act of ownership with respect to the owner's reported property.

(b) The statement required by Subsection (a) shall be signed by:

(1) the individual holding the reported property;

(2) a partner, if the holder is a partnership;

(3) an officer, if the holder is an unincorporated association or a private corporation; or

(4) the chief fiscal officer, if the holder is a public corporation.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 20, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1208, Sec. 3, eff. Sept. 1, 1999.

Sec. 74.304. RESPONSIBILITY AFTER DELIVERY. (a) If reported property is delivered to the comptroller, the state shall assume custody of the property and responsibility for its safekeeping.

(b) A holder who delivers property to the comptroller in good faith is relieved of all liability to the extent of the value of the property delivered for any claim then existing, that may arise after delivery to the comptroller, or that may be made with respect to the property.

(c) If the holder delivers property to the comptroller in good faith and, after delivery, a person claims the property from the holder or another state claims the property under its laws relating to escheat or unclaimed property, the attorney general shall, on written notice of the claim, defend the holder against the claim, and the holder shall be indemnified from the unclaimed money received under this chapter or any other statute requiring delivery of unclaimed property to the comptroller against any liability on the claim.

(d) The comptroller is not, in the absence of negligence or mishandling of the property, liable to the person who claims the property for damages incurred while the property or the proceeds from the sale of the property are in the comptroller's possession. But in any event the liability of the state is limited to the extent of the property delivered under this chapter and remaining in the possession of the comptroller at the time a suit is filed.

(e) For the purposes of this section, payment or delivery is made in good faith if:

(1) payment or delivery was made in a reasonable attempt to comply with this chapter;

(2) the holder delivering the property was not a fiduciary then in breach of trust with respect to the property and had a reasonable basis for believing based on the facts then known to the holder that the property was abandoned or inactive for purposes of this chapter; and

(3) there is no showing that the records under which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(f) On delivery of a duplicate certificate or other evidence of ownership to the comptroller under Subsection (b) of Section 74.301, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate are relieved of all liability of every kind in accordance with this section to any person, including any person acquiring the original certificate or the duplicate of the certificate issued to the comptroller, for any losses or damages resulting to any person by the issuance and delivery to the comptroller of the duplicate certificate.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 25, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.16, eff. Sept. 1, 1997.

Sec. 74.306. UNCLAIMED PROPERTY HELD BY FEDERAL GOVERNMENT. (a) If the federal government enacts a law that provides for the discovery of unclaimed property held by the federal government and that provides or makes that information available to the states, the comptroller may pay to the federal government from the unclaimed money received under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller the proportional share of the necessary cost of examining records.

(b) If the federal government delivers unclaimed property to the comptroller, this state shall hold the federal government harmless from claims made by owners of the property after the delivery.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985.

Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 25, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.18, eff. Sept. 1, 1997.

Sec. 74.3061. ESCHEAT OF FUNDS IN THE POSSESSION OF THE UNITED STATES. (a) In the event any money is due to a resident of this state in the nature of a refund, rebate, or other overpayment of taxes or fees to the United States with respect to which the resident is likely to have his rights to secure such refund or rebate barred by a statute of limitations, or if for any reason at least three years has elapsed after the date on which the resident could have filed a timely claim for said refund or rebate, the comptroller is appointed agent of such resident to apply for said refund or rebate and is authorized to do any act which a natural person could do to recover said money. When the comptroller files an application or initiates any other proceeding to secure said refund or rebate, the comptroller is coupled with an interest in the money sought and money recovered. All property within this provision, including all principal and interest accruing thereon, is declared to have escheated and to have become the property of the state.

(b) The funds escheated by the state pursuant to this provision shall be given notice as provided by Section 74.201. Title to any such property shall be transferred by the state to any persons who in accordance with Subchapter F can show that the property belonged to them immediately prior to the escheat or that they were heirs to those funds immediately prior to the escheat.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 25, eff. Sept. 1, 1997.

Sec. 74.307. LIST OF OWNERS; OTHER PUBLIC INFORMATION. (a) The comptroller shall compile and revise each year:

(1) except as to amounts reported in the aggregate, an alphabetical list of the names and last known addresses of the owners listed in the reports and the amount credited to each account; and

(2) an alphabetical list by county of:

(A) the number of reports filed under Section 74.101 for mineral proceeds attributable to all wells located in each respective county; and

(B) the aggregate amount of mineral proceeds reported under Section 74.101 attributable to all wells, if any, located in each respective county.

(b) The comptroller shall make the lists available for public inspection during all reasonable business hours.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 25, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.19, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 480 (S.B. 1589), Sec. 4, eff. January 1, 2016.

Sec. 74.308. PERIOD OF LIMITATION NOT A BAR. The expiration, on or after September 1, 1987, of any period specified by contract, statute, or court order, during which an action or proceeding may be initiated or enforced to obtain payment of a claim for money or recovery of property, does not prevent the money or property from being presumed abandoned property and does not affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the comptroller.

Added by Acts 1987, 70th Leg., ch. 426, Sec. 5, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 25, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.20, eff. Sept. 1, 1997.

Sec. 74.309. PRIVATE ESCHEAT AGREEMENTS PROHIBITED. An individual, corporation, business association, or other organization may not act through amendment of articles of incorporation, amendment of bylaws, private agreement, or any other means to take or divert funds or personal property into income, divide funds or personal property among locatable patrons or stockholders, or divert funds or personal property by any other method for the purpose of circumventing the unclaimed property process.

Added by Acts 1987, 70th Leg., ch. 426, Sec. 5, eff. Sept. 1, 1987.

SUBCHAPTER E. DISPOSITION OF DELIVERED PROPERTY

Sec. 74.401. SALE OF PROPERTY. (a) Except as provided by Subsection (c) or Section 74.404, the comptroller shall sell at public sale all personal property, other than money and marketable securities, delivered to the comptroller in accordance with Section 74.301. The comptroller shall conduct the sale in the city in this state that the comptroller determines affords the most favorable market for the particular property.

(b) The comptroller shall sell the property to the highest bidder. If the comptroller determines that the highest bid is insufficient, the comptroller may decline that bid and offer the property for public or private sale.

(c) The comptroller is not required to offer property for sale if the property belongs to a person with an address outside this state or the comptroller determines that the probable cost of the sale of the property exceeds its value.

(d) If after investigation the comptroller determines that property delivered from a safe deposit box or other repository has insubstantial commercial value, the comptroller may destroy or otherwise dispose of the property at any time.

(e) A person may not maintain any action or proceeding against the state, an officer of the state, or the holder of property because of an action taken by the comptroller under this section.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 36, Sec. 3.04, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 26, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.21, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 800, Sec. 1, eff. Sept. 1, 2001.

Sec. 74.402. NOTICE OF SALE. Before the 21st day preceding the day on which a public sale is held under Section 74.401, the comptroller shall publish notice of the sale in a newspaper of general circulation in Travis County or in the county where the sale is to be held. If the public sale is to be held on the Internet or by an online auction, the comptroller may post the notice on the comptroller's own website before the seventh day preceding the date on which the sale or auction is held.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985.

Amended by Acts 1993, 73rd Leg., ch. 36, Sec. 3.05, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 26, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.22, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1263, Sec. 80, eff. Sept. 1, 2001.

Sec. 74.403. PURCHASER'S TITLE. (a) At a sale, public or private, of property that is held under this subchapter, the purchaser receives title to the purchased property free from all claims of the prior owner and prior holder of the property and all persons claiming through or under the owner or holder.

(b) The comptroller shall execute all documents necessary to complete the transfer of title.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 27, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.23, eff. Sept. 1, 1997.

Sec. 74.404. SALE OF MILITARY AWARDS AND DECORATIONS PROHIBITED. (a) In this section, "military award or decoration" means a military decoration for an act of valor, heroism, or exceptional service, a good conduct medal, a service medal, a service ribbon, or a badge, tab, certificate, or letter awarded in connection with military service.

(b) A military award or decoration delivered to the comptroller under this chapter:

(1) may not be sold under Section 74.401 or destroyed; and

(2) shall be delivered by the comptroller to the Texas military forces.

(c) The Texas military forces shall conduct a reasonable search of public records to locate the person to whom the military award or decoration was awarded. If the department cannot locate the person, the department shall attempt to locate the person's next of kin. If the department locates the person or the person's next of kin, the department shall deliver the award or decoration to the person or the person's next of kin, as applicable.

(d) If the Texas military forces cannot locate the person to whom a military award or decoration was awarded or the person's next

of kin, the award or decoration shall be held in trust for the comptroller at:

(1) a museum established by the department; or

(2) if no museum exists, any other public facility designated by the department.

(e) Except as provided by this subsection, a military award or decoration held in trust by a museum or facility designated under Subsection (d) shall be used in a display or exhibit that honors persons who have served the state or nation in military service. If the museum or facility cannot practically incorporate the award or decoration into an established display or exhibit of the museum or facility, the award or decoration shall be kept in a secure storage area or loaned to another museum for use in a display or exhibit that honors persons who have served the state or nation in military service.

(f) This section does not affect a person's right to claim a military award or decoration under Subchapter F.

Added by Acts 2001, 77th Leg., ch. 800, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 2.14, eff. September 1, 2013.

SUBCHAPTER F. CLAIM FOR DELIVERED PROPERTY

Sec. 74.501. CLAIM FILED WITH COMPTROLLER. (a) The comptroller shall review the validity of each claim filed under this section.

(b) If the comptroller determines that a claim is valid, the comptroller or the comptroller's authorized agent shall approve the claim. If the claim is for money and has been approved under this section, the comptroller shall pay the claim. If a claim is for personal property other than money and has been approved under this section, the comptroller shall deliver the property to the claimant unless the comptroller has sold the property. If the property has been sold under Section 74.401, the comptroller shall pay to the claimant the proceeds from the sale.

(c) All claims to which this section applies must be filed in accordance with procedures, contain the information, and be on forms prescribed by the comptroller.

(d) On receipt of a claim form and all necessary documentation and as may be appropriate under the circumstances, the comptroller may approve the claim of:

(1) the reported owner of the property;

(2) if the reported owner died testate:

(A) the appropriate legal beneficiaries of the owner as provided by the last will and testament of the owner that has been accepted into probate or filed as a muniment of title; or

(B) the executor of the owner's last will and testament who holds current letters testamentary;

(3) if the reported owner died intestate:

(A) the legal heirs of the owner as provided by Section 38, Texas Probate Code; or

(B) the court-appointed administrator of the owner's estate;

(4) the legal heirs of the reported owner as established by an affidavit of heirship order signed by a judge of the county probate court or by a county judge;

(5) if the reported owner is a minor child or an adult who has been adjudged incompetent by a court of law, the parent or legal guardian of the child or adult;

(6) if the reported owner is a corporation:

(A) the president or chair of the board of directors of the corporation, on behalf of the corporation; or

(B) any person who has legal authority to act on behalf of the corporation;

(7) if the reported owner is a corporation that has been dissolved or liquidated:

(A) the sole surviving shareholder of the corporation, if there is only one surviving shareholder;

(B) the surviving shareholders of the corporation in proportion to their ownership of the corporation, if there is more than one surviving shareholder;

(C) the corporation's bankruptcy trustee; or

(D) the court-ordered receiver for the corporation; or

(8) any other person that is entitled to receive the unclaimed property under other law or comptroller policy.

(e) Except as provided by Subsection (f), the comptroller may not pay to the following persons a claim to which this section applies:

(1) a creditor, a judgment creditor, a lienholder, or an assignee of the reported owner or of the owner's heirs; or

(2) a person holding a power of attorney from the reported owner or the owner's heirs.

(f) The comptroller may approve a claim for child support arrearages owed by the reported owner of the property and reflected in a child support lien notice that complies with Section 157.313, Family Code. A claim under this subsection may be submitted by the lienholder or the attorney general on behalf of the lienholder.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 28, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.24, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1310, Sec. 85, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 165 (H.B. 81), Sec. 1, eff. May 27, 2005.

Sec. 74.502. CLAIM FILED WITH HOLDER. (a) If a claim is filed with a holder under this section and the holder determines in good faith that the claim is valid, the holder may pay the amount of the claim.

(b) The comptroller shall reimburse the holder for a valid claim paid under this section.

(c) The request from a holder for reimbursement must be filed in accordance with procedures and on forms prescribed by the comptroller.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 851, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 28, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.25, eff. Sept. 1, 1997.

Sec. 74.504. HEARING. (a) The comptroller may hold a hearing and receive evidence concerning a claim filed under this subchapter.

(b) If the comptroller considers that a hearing is necessary to determine the validity of a claim, the comptroller shall sign the statement of the findings and the decision on the claim. The statement shall report the substance of the evidence heard and the

reasons for the decision. The statement is a public record.

(c) If the comptroller determines that a claim is valid, the comptroller shall approve and sign the claim.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 36, Sec. 3.07, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 851, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 29, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.27, eff. Sept. 1, 1997.

Sec. 74.506. APPEAL. (a) A person aggrieved by the decision of a claim filed under this subchapter may appeal the decision before the 61st day after the day on which it was rendered.

(b) If a claim has not been decided before the 91st day after the day on which it was filed, the claimant may appeal within the 60-day period beginning on the 91st day after the day of filing.

(c) An appeal under this section must be made by filing suit against the state in a district court in Travis County, Texas. The state's immunity from suit without consent is abolished with respect to suits brought under this section.

(d) A court shall try an action filed under this section de novo and shall apply the rules of practice of the court.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 30, eff. Sept. 1, 1997.

Sec. 74.507. FEE FOR RECOVERY. (a) A person who informs a potential claimant that the claimant may be entitled to claim property that is reportable to the comptroller under this chapter, that has been reported to the comptroller, or that is in the possession of the comptroller may not contract for or receive from the claimant for services an amount that exceeds 10 percent of the value of the property recovered. If the property involved is mineral proceeds, the amount for services may not include a portion of the underlying minerals or any production payment, overriding royalty, or similar payment.

(b) The person who informs a potential claimant and by contract or other written agreement is to receive a percentage of the value of

the property may not file or receive a form to claim on behalf of a claimant.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 426, Sec. 5, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 36, Sec. 3.09, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 31, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.29, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1208, Sec. 4, eff. Sept. 1, 1999.

Sec. 74.508. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY; PROCEDURE. (a) At any time after property has been paid or delivered to the comptroller under this chapter, another state may recover the property if:

(1) the property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(2) the last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder are in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(3) the records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(4) the property was subjected to custody by this state under Subdivision (6) of Subsection (a) of Section 72.001 and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(5) the property is the sum payable on a traveler's check, money order, or other similar instrument that was subjected to

custody by this state under Subdivision (4) and the instrument was purchased in the other state and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(b) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the comptroller, who shall decide the claim within 90 days after it is presented. The comptroller shall allow the claim if he determines that the other state is entitled to the abandoned property under Subsection (a).

Added by Acts 1987, 70th Leg., ch. 426, Sec. 5, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 31, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.30, eff. Sept. 1, 1997.

Sec. 74.509. HANDLING FEE FOR PROCESSING UNCLAIMED PROPERTY. A handling fee may be deducted from the amount of the claim payment if the payment is at least $100.

Added by Acts 1993, 73rd Leg., ch. 36, Sec. 3.10, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 31, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.31, eff. Sept. 1, 1997.

SUBCHAPTER G. UNCLAIMED MONEY

Sec. 74.601. UNCLAIMED MONEY. (a) The comptroller shall maintain a record that documents unclaimed money received under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller.

(b) The comptroller shall deposit to the credit of the general revenue fund:

(1) all funds, including marketable securities, delivered to the comptroller under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller;

(2) all proceeds from the sale of any property, including marketable securities, under this chapter;

(3) all funds that have escheated to the state under Chapter 71, except that funds relating to escheated real property

shall be deposited according to Section 71.202; and

(4) any income derived from investments of the unclaimed money.

(c) The comptroller shall keep a separate record and accounting for delivered unclaimed property, other than money, before its sale.

(d) Except as provided by Subsection (e), the comptroller shall from time to time invest the amount of unclaimed money in investments approved by law for the investment of state funds.

(e) The comptroller on receipt or from time to time may sell securities, including stocks, bonds, and mutual funds, received under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller and use the proceeds to buy, exchange, invest, or reinvest in marketable securities. When making or selling the investments, the comptroller shall exercise the judgment and care of a prudent person.

(f) The comptroller shall keep a separate record and accounting for securities delivered, sold, purchased, or exchanged and the proceeds and earnings from the securities.

(g) If an owner does not assert a claim for unclaimed money and the owner is reported to be the state or a state agency, the comptroller may deposit the unclaimed money to the credit of the general revenue fund. The comptroller may establish procedures and adopt rules as necessary to implement this subsection.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 36, Sec. 3.11, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 32, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.32, eff. Sept. 1, 1997. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 232 (S.B. 1589), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 9, eff. September 1, 2011.

Sec. 74.602. USE OF MONEY. Except as provided by Section 381.004, Local Government Code, the comptroller shall use the unclaimed money received under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller to pay the claims of persons or states establishing ownership of

property in the possession of the comptroller under this chapter or under any other unclaimed property or escheat statute.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg. ch. 304, Sec. 1.40, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 27, Sec. 3, eff. April 13, 1993; Acts 1993, 73rd Leg., ch. 36, Sec. 3.13, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 506, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1037, Sec. 32, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.33, eff. Sept. 1, 1997.

Sec. 74.603. AUDIT; APPROPRIATION. The unclaimed money received under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller is subject to audit by the State Auditor and to appropriation by the legislature for enforcing and administering this title.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 32, eff. Sept. 1, 1997.

SUBCHAPTER H. ENFORCEMENT

Sec. 74.701. RULES. The comptroller may adopt rules necessary to carry out this title.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 33, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.34, eff. Sept. 1, 1997.

Sec. 74.702. EXAMINATION OF RECORDS. (a) To enforce this chapter and to determine whether reports have been made as required by this chapter, the comptroller, the attorney general, or an authorized agent of either, at any reasonable time, may examine the books and records of any holder.

(b) The comptroller, the attorney general, or an agent of either may not make public any information obtained by an examination made under this section and may not disclose that information except

in the course of a judicial proceeding, authorized by this chapter, in which the state is a party or pursuant to an agreement with another state allowing joint audits or the exchange of information obtained under this section.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 21, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 36, Sec. 3.12, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 33, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.35, eff. Sept. 1, 1997.

Sec. 74.703. ADDITIONAL PERSONNEL. (a) The comptroller and the attorney general may employ, in the office of either official, additional personnel necessary to enforce this title.

(b) The salary rate of additional personnel may not exceed the rate paid to other state employees for similar services.

(c) The salaries of additional personnel shall be paid in accordance with Section 74.602.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th leg., ch. 1037, Sec. 34, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.36, eff. Sept. 1, 1997.

Sec. 74.704. ASSISTANCE IN ENFORCEMENT. If the comptroller or the attorney general requests, the State Auditor, Banking Commissioner of Texas, securities commissioner, commissioner of insurance, savings and mortgage lending commissioner, Credit Union Commission, Department of Public Safety of the State of Texas, or any district or county attorney shall assist the comptroller or attorney general in enforcing this title.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th leg., ch. 1037, Sec. 35, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.37, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.065, eff. September 1, 2007.

Sec. 74.705. INTEREST. A holder who fails to pay or deliver property within the time prescribed by this chapter shall pay to the comptroller interest, at an annual rate of 10 percent, on the property from the date the property should have been paid or delivered until the date the property is actually paid or delivered.

(b) to (e) Deleted by Acts 1997, 75th Leg., ch. 1037, Sec. 33, eff. Sept. 1, 1997.

(f) A person is exempt from payment of interest under Subsection (a) if the person's action or omission is in connection with the person's official duties as an officer or employee of a political subdivision of this state.

(g) In this section, "person" does not include a local governmental entity or an officer or employee of a local governmental entity who is performing the officer's or employee's official duties for the local governmental entity.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 426, Sec. 5, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 483, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 888, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1037, Sec. 35, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.38, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.01(90), eff. Sept. 1, 1999.

Sec. 74.706. PENALTY. (a) A penalty equal to five percent of the value of the property due shall be imposed on a holder who fails to pay or deliver property within the time prescribed by this chapter. If a holder fails to pay or deliver property before the 31st day after the date the property is due, an additional penalty equal to five percent of the value of the property due shall be imposed.

(b) For purposes of Subsection (a), "holder" does not include a local governmental entity or an officer or employee of a local governmental entity who is performing the officer's or employee's official duties for the local governmental entity.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 36, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 748, Sec. 1, eff. Sept. 1, 1999.

Sec. 74.707. WAIVER OR ABATEMENT OF PENALTY OR INTEREST. (a) The comptroller may waive penalty or interest imposed on delinquent property if the comptroller determines that the holder has made a good faith effort to comply with Chapters 72-75.

(b) The comptroller may provide for periods during which a holder of delinquent property may report and remit the unclaimed property without paying a penalty or interest.

(c) The comptroller may waive penalty and interest imposed on delinquent property if the holder delivering the property was required to deliver the property on or before November 1, 1997.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 36, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 137, Sec. 1, eff. May 16, 2001.

Sec. 74.708. PROPERTY HELD IN TRUST. A holder who on March 1 holds property presumed abandoned under Chapters 72-75 holds the property in trust for the benefit of the state on behalf of the missing owner and is liable to the state for the full value of the property, plus any accrued interest and penalty. A holder is not required by this section to segregate or establish trust accounts for the property provided the property is timely delivered to the comptroller in accordance with Section 74.301.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 36, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 10, eff. January 1, 2013.

Sec. 74.709. SUIT TO COMPEL DELIVERY OF PROPERTY AND CIVIL PENALTIES. (a) On request of the comptroller, the attorney general shall bring an action in district court, in the name of the state, to compel a holder to deliver property or to file a property report.

(b) Venue for a suit brought under this section is in Travis County.

(c) The fact that a suit seeks enforcement of this section from more than one holder is not grounds for an objection concerning misjoinder of parties or causes of action.

(d) When introduced into evidence, the verified property report, unless rebutted, is sufficient evidence that the property is abandoned and subject to delivery under this chapter and for entry of a judgment transferring custody of the property to the comptroller.

(e) The attorney general, on behalf of the comptroller, may recover reasonable attorney's fees from the holder in addition to recovery of any unclaimed property accrued or a penalty or interest due.

(f) In addition to a penalty or interest assessed on delinquent property, a holder who fails to pay or deliver property or who fails to file a property report within the time prescribed by this chapter is subject to a civil penalty not to exceed $100 for each day of violation.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 36, eff. Sept. 1, 1997.

Sec. 74.710. CRIMINAL OFFENSE. (a) A holder commits an offense if the holder wilfully violates this chapter, including:

(1) failing to file a report in accordance with this chapter;

(2) failing to pay or deliver property in accordance with this chapter; or

(3) refusing to permit examination of records in accordance with this chapter.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 36, eff. Sept. 1, 1997.

CHAPTER 75. TEXAS MINERALS

SUBCHAPTER A. APPLICABILITY

Sec. 75.001. DEFINITIONS; APPLICATION OF CHAPTER. (a) In this chapter:

(1) "Mineral" means oil, gas, uranium, sulphur, lignite, coal, and any other substance that is ordinarily and naturally considered a mineral in this state, regardless of the depth at which the oil, gas, uranium, sulphur, lignite, coal, or other substance is found.

(2) "Mineral proceeds" includes:

(A) all obligations to pay resulting from the

production and sale of minerals, including net revenue interests, royalties, overriding royalties, production payments, and joint operating agreements; and

(B) all obligations for the acquisition and retention of a mineral lease, including bonuses, delay rentals, shut-in royalties, and minimum royalties.

(3) "Holder" means a person, wherever organized or domiciled, who is:

(A) in possession of property that belongs to another;

(B) a trustee; or

(C) indebted to another on an obligation.

(b) This chapter applies to mineral proceeds and the owner's underlying right to receive those mineral proceeds if:

(1) the owner's underlying right to receive mineral proceeds is related to land located in this state;

(2) the mineral proceeds result from the production of minerals located in this state; or

(3) the mineral proceeds are an obligation for the acquisition or retention of a mineral lease to produce minerals located in this state.

(c) A holder of property presumed abandoned under this chapter is subject to the procedures of Chapter 74.

(d) This chapter supplements other chapters in this title, and each chapter shall be followed to the extent applicable.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 426, Sec. 6, eff. Sept. 1, 1987.

Sec. 75.002. TRANSFER AND PURCHASE OF MINERAL INTEREST ON MINERAL PROCEEDS. A person purchasing mineral proceeds of an owner whose name has been reported or is reportable to the comptroller shall provide documentation required by the comptroller to substantiate that the transfer is executed by the reported owner or the reported owner's legal agent.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 37, eff. Sept. 1, 1997.

SUBCHAPTER B. PRESUMPTION OF ABANDONMENT

Sec. 75.101. PRESUMPTION OF ABANDONMENT. (a) All mineral

proceeds that are held or owing by the holder and that have remained unclaimed by the owner for longer than three years after they became payable or distributable and the owner's underlying right to receive those mineral proceeds are presumed abandoned.

(b) At the time any owner's underlying right to receive mineral proceeds is presumed abandoned under this section, any mineral proceeds then held for or owing to the owner as a result of the underlying right and any mineral proceeds accruing after that time as a result of the underlying right and not previously presumed abandoned are presumed abandoned.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 426, Sec. 7, eff. Sept. 1, 1987.

Sec. 75.102. PRESERVATION OF PROPERTY. A holder of abandoned property shall preserve that property and may not by any procedure, including a deduction for service, maintenance, or other charge, transfer, convert, or reduce the property to the profits or assets of the holder.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985.

CHAPTER 76. REPORT, DELIVERY, AND CLAIMS PROCESS FOR CERTAIN PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 76.001. APPLICABILITY. (a) This chapter applies only to the holder of property if:

(1) the holder is a:

(A) school district;

(B) municipality;

(C) county; or

(D) junior college that has, in the manner described by Subsection (b), opted to handle property described by Subdivision (2) in accordance with this chapter; and

(2) the property is:

(A) presumed abandoned under Chapter 72 or 75; and

(B) valued at $100 or less.

(b) This chapter applies to a junior college only if the governing board of the junior college takes formal action to opt to handle property described by Subsection (a)(2) in accordance with

this chapter.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1015, Sec. 1, eff. Sept. 1, 2000.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 478 (H.B. 650), Sec. 1, eff. June 17, 2011.

Sec. 76.002. OFFICERS AND REPRESENTATIVES. In this chapter:

(1) a reference to the treasurer of a holder includes a person performing the duties of the treasurer of a holder in a school district, municipality, or county in which the office of treasurer does not exist;

(2) a reference to the chief fiscal officer of a holder includes a person performing the duties of the chief fiscal officer of a holder in a school district, municipality, or county in which the office of chief fiscal officer does not exist; and

(3) a reference to the attorney for a holder includes an attorney designated by the governing body of the holder to represent the holder.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1015, Sec. 2, eff. Sept. 1, 2000.

SUBCHAPTER B. PROPERTY REPORT

Sec. 76.101. PROPERTY REPORT. (a) Each holder who on June 30 holds property subject to this chapter shall file a report of that property on or before the following November 1. Each report shall be filed with the treasurer of the holder as provided by this section and on forms prescribed by the treasurer of the holder.

(b) A holder required by Subsection (a) to file a report shall file a report each successive year regardless of whether the holder has any reportable property on June 30 of the year in which the report is filed.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.102. VERIFICATION. (a) The person preparing a property report shall place at the end of each copy of the report a verification made under oath and executed by the chief fiscal officer of the holder, as designated by the holder.

(b) The verification must include the following sentence: "This report contains a full and complete list of all property held by the undersigned that, from the knowledge and records of the undersigned, is abandoned under the laws of the State of Texas."

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.103. RETENTION OF RECORDS. (a) The holder required to file a property report shall keep a record of:

(1) the name and last known address of each person who, from the records of the holder, appears to be the owner of the property;

(2) a brief description of the property, including the identification number of the account, if any; and

(3) the balance of each account, if appropriate.

(b) The record must be kept until the 10th anniversary of the date on which the property is reportable.

(c) The treasurer of the holder may provide for a shorter period for keeping a record required by this section.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.104. CONFIDENTIALITY OF PROPERTY REPORT. (a) Except as provided by this chapter, a property report filed with the treasurer of the holder is confidential until the second anniversary of the date the report is filed.

(b) Notwithstanding other law, the social security number of an owner that is reported to the treasurer of the holder is confidential.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

SUBCHAPTER C. NOTICE

Sec. 76.201. PUBLISHED NOTICE. (a) Except as provided by

Subsections (b) and (e), the treasurer of a holder shall publish a notice in a newspaper in the calendar year immediately following the year in which the property report is filed. The newspaper must be a newspaper of general circulation in the jurisdiction of the holder.

(b) The treasurer of the holder may use a method of publishing notice that is different from that prescribed by Subsection (a) if the treasurer determines that the different method would be as likely as the prescribed method to give actual notice to the person required to be named in the notice.

(c) The published notice must state that the reported property is presumed abandoned and subject to this chapter and must contain:

(1) a statement that, by addressing an inquiry to the treasurer of the holder, any person possessing a legal or beneficial interest in the reported property may obtain information concerning the amount of the property; and

(2) a statement that the owner may present proof of the claim to the treasurer of the holder and establish the owner's right to receive the property.

(d) The treasurer of a holder may offer for sale space for suitable advertisements in a notice published under this section. Proceeds from the sale of the advertising space shall be used to defray the cost of publishing the notices, with the remaining amount, if any, to be deposited to the credit of the unclaimed money fund.

(e) In the notice required by this section, the treasurer of the holder may publish other information regarding property if the treasurer determines that publication of that information is in the public interest.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.202. NOTICE TO OWNER. (a) During the calendar year immediately following the year in which the property report is filed, the treasurer of the holder may mail a notice to each person who has an address in this state and appears to be entitled to the reported property.

(b) The notice must contain:

(1) a statement that property is being held by the treasurer of the holder to which the addressee appears to be entitled; and

(2) a statement that the owner may present proof of the claim to the treasurer of the holder and establish the owner's right to receive the property.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.203. NOTICE THAT ACCOUNTS ARE SUBJECT TO THIS CHAPTER. Publication of notice in accordance with Section 76.201 is notice to the owner by the holder that the reported property is subject to this chapter.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.204. CHARGE FOR NOTICE. The treasurer of the holder may charge the following against the property delivered under this chapter:

(1) expenses incurred for the publication of notice required by Section 76.201; and

(2) the amount paid in postage for the notice to the owner required by Section 76.202.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

SUBCHAPTER D. DELIVERY

Sec. 76.301. DELIVERY OF PROPERTY TO TREASURER. (a) Each holder who on June 30 holds property that is subject to this chapter shall deliver the property to the treasurer of the holder on or before the following November 1 accompanied by the property report.

(b) If the property subject to delivery under Subsection (a) is stock or some other intangible ownership interest in a business association for which there is no evidence of ownership, the holder shall issue a duplicate certificate or other evidence of ownership to the treasurer of the holder at the time delivery is required under this section.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.302. VERIFICATION OF DELIVERED PROPERTY. (a) Property delivered under Section 76.301 must be accompanied by a verification under oath that:

(1) the property delivered is a complete and correct remittance of all accounts subject to this chapter in the holder's possession;

(2) the existence and location of the listed owners are unknown to the holder; and

(3) the listed owners have not asserted a claim or exercised an act of ownership with respect to the owner's reported property.

(b) The verification required by Subsection (a) shall be signed by the chief fiscal officer of the holder, as designated by the holder.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.303. LIST OF OWNERS. (a) The treasurer of the holder shall compile and revise each year an alphabetical list of names and last known addresses of the owners listed in the reports and the amount credited to each account.

(b) The treasurer of the holder shall make the list available for public inspection during all reasonable business hours.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.304. PERIOD OF LIMITATION NOT A BAR. The expiration of any period specified by statute or court order, during which an action or proceeding may be initiated or entered to obtain payment of a claim for money, does not prevent the money from being presumed abandoned property and does not affect any duty to file a report required by this chapter or to deliver abandoned property to the treasurer of the holder.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

SUBCHAPTER E. DISPOSITION OF DELIVERED PROPERTY

Sec. 76.401. SALE OF PROPERTY. (a) Except as provided by

Subsection (c), the treasurer of the holder shall sell at public sale all personal property, other than money and marketable securities, delivered to the treasurer of the holder in accordance with Section 76.301. The treasurer of the holder shall conduct the sale in the holder's jurisdiction.

(b) The treasurer of the holder shall sell the property to the highest bidder. If the treasurer of the holder determines that the highest bid is insufficient, the treasurer of the holder may decline that bid and offer the property for public or private sale.

(c) The treasurer of the holder is not required to offer property for sale if the property belongs to a person with an address outside this state or the treasurer of the holder determines that the probable cost of the sale of the property exceeds its value.

(d) If after investigation the treasurer of the holder determines that property delivered has insubstantial commercial value, the treasurer of the holder may destroy or otherwise dispose of the property at any time.

(e) A person may not maintain any action or proceeding against the state, an officer of the state, or the holder of property because of an action taken by the treasurer of the holder under this section.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.402. NOTICE OF SALE. Before the 21st day before the day on which a public sale is held under Section 76.401, the treasurer of the holder shall publish notice of the sale in a newspaper of general circulation in the county where the sale is to be held.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.403. PURCHASER'S TITLE. (a) At a sale, public or private, of property that is held under this subchapter, the purchaser receives title to the purchased property free from all claims of the prior owner and prior holder of the property and all persons claiming through or under the owner or holder.

(b) The treasurer of the holder shall execute all documents necessary to complete the transfer of title.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

SUBCHAPTER F. CLAIM FOR DELIVERED PROPERTY

Sec. 76.501. FILING OF CLAIM. (a) A claim for property delivered to the treasurer of the holder under this chapter must be filed with the treasurer of the holder.

(b) All claims to which this section applies must be filed in accordance with procedures and on forms prescribed by the treasurer of the holder.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.502. CONSIDERATION OF CLAIM. The treasurer of the holder shall consider the validity of each claim filed under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.503. HEARING. (a) The treasurer of the holder may hold a hearing and receive evidence concerning a claim filed under this subchapter.

(b) If the treasurer of the holder considers that a hearing is necessary to determine the validity of a claim, the treasurer of the holder shall sign the statement of the findings and the decision on the claim. The statement shall report the substance of the evidence heard and the reasons for the decision. The statement is a public record.

(c) If the treasurer of the holder determines that a claim is valid, the treasurer of the holder shall approve and sign the claim.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.504. PAYMENT OF CLAIM. (a) If a claim has been approved under this subchapter, the treasurer of the holder shall pay the claim.

(b) If a claim is for personal property other than money and has been approved under this subchapter, the treasurer of the holder

promptly shall deliver the property to the claimant unless the treasurer of the holder has sold the property. If the property has been sold under Section 76.401, the treasurer of the holder shall pay to the claimant the proceeds from the sale.

(c) Costs of publication and postage shall be deducted from the amounts paid under this section, but deductions for any costs of administration or service charges may not be made.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.505. APPEAL. (a) A person aggrieved by the decision on a claim filed under this subchapter may appeal the decision before the 61st day after the date the decision was rendered.

(b) If a claim has not been decided before the 91st day after the date the claim was filed, the claimant may appeal within the 60-day period beginning on the 91st day after the date of filing.

(c) An appeal under this section must be made by filing suit against the holder in a district court in the county in which the claimed property is located. The holder's immunity from suit without consent is waived with respect to a suit under this section.

(d) A court shall try an action filed under this section de novo and shall apply the rules of practice of the court.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.506. FEE FOR RECOVERY. A person who informs a potential claimant that the claimant may be entitled to claim property that is reportable to the treasurer of the holder under this chapter, that has been reported to the treasurer of the holder, or that is in the possession of the treasurer of the holder may not contract for or receive from the claimant for services an amount that exceeds 10 percent of the value of the property recovered. If the property involved is mineral proceeds, the amount for services may not include a portion of the underlying minerals or any production payment, overriding royalty, or similar payment.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.507. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY; PROCEDURE. (a) At any time after property has been paid or delivered to the treasurer of the holder under this chapter, another state may recover the property if:

(1) the property was subjected to custody by the holder because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(2) the last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state; or

(3) the records of the holder were erroneous in that the records did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state.

(b) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the treasurer of the holder, who shall decide the claim within 90 days after the date it is presented. The treasurer of the holder shall allow the claim if the treasurer of the holder determines that the other state is entitled to the abandoned property under Subsection (a).

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

SUBCHAPTER G. UNCLAIMED MONEY FUND

Sec. 76.601. FUND. (a) The treasurer of the holder shall maintain a fund known as the unclaimed money fund.

(b) The treasurer of the holder shall deposit to the credit of the fund:

(1) all funds, including marketable securities, delivered to the treasurer of the holder under this chapter or any other

statute requiring the delivery of unclaimed property to the treasurer of the holder;

(2) all proceeds from the sale of any property, including marketable securities, under this chapter; and

(3) any income derived from investments of the fund.

(c) The treasurer of the holder shall keep a separate record and accounting for delivered unclaimed property, other than money, before its sale.

(d) The treasurer of the holder shall from time to time invest the amount in the unclaimed money fund in investments approved by law for the investment of funds by the holder.

(e) The treasurer of the holder may from time to time sell securities in the fund, including stocks, bonds, and mutual funds, and use the proceeds to buy, exchange, invest, or reinvest in marketable securities. When making the investments, the treasurer of the holder shall exercise the judgment and care of a prudent person.

(f) The treasurer of the holder shall keep a separate record and accounting for securities delivered, sold, purchased, or exchanged and the proceeds and earnings from the securities.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.602. USE OF FUND. (a) The treasurer of the holder shall use the unclaimed money fund to pay the claims of persons establishing ownership of property in the possession of the treasurer of the holder under this chapter or under any other unclaimed property or escheat statute.

(b) Each fiscal year after deducting funds sufficient to pay anticipated expenses and claims of the unclaimed money fund, the treasurer of the holder shall transfer the remainder to the general fund of the holder.

(c) The treasurer of the holder and the attorney for the holder may use the unclaimed money fund generally for the enforcement and administration of this chapter, including the expenses of forms, notices, examinations, travel, court costs, supplies, equipment, and employment of necessary personnel and other necessary expenses.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.603. AUDIT; BUDGET. The unclaimed money fund is subject to:

(1) audit by the auditor of the holder or an independent auditor if the holder does not have an auditor; and

(2) budgetary procedures adopted by the governing body of the holder.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

SUBCHAPTER H. ENFORCEMENT

Sec. 76.701. RULES. The treasurer of the holder may adopt rules necessary to carry out this chapter.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.702. EXAMINATION OF RECORDS. (a) To enforce this chapter and to determine whether reports have been made as required by this chapter, the treasurer of the holder, at any reasonable time, may examine the books and records of the holder.

(b) The treasurer of the holder, attorney for the holder, or an agent of either person may not make public any information obtained by an examination made under this section and may not disclose that information except:

(1) in the course of a judicial proceeding authorized by this chapter in which the holder is a party; or

(2) under an agreement with another state allowing joint audits or the exchange of information obtained under this section.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.703. ADDITIONAL PERSONNEL. (a) The treasurer of the holder and the attorney for the holder may employ, in the office of either person, additional personnel necessary to enforce this chapter.

(b) The salary rate of additional personnel may not exceed the rate paid to other employees of the holder for similar services.

(c) The salaries of additional personnel shall be paid in accordance with Section 76.602.

(d) The provisions of this section are subject to the budgetary procedures adopted by the governing body of the holder.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.704. OFFENSE. (a) A person commits an offense if the person:

(1) wilfully fails to file a report required by this chapter;

(2) refuses to permit examination of records in accordance with this chapter;

(3) makes a deduction from or a service charge against a dormant account or dormant deposit of funds; or

(4) violates any other provision of this chapter.

(b) An offense under this section is punishable by:

(1) a fine of not less than $500 or more than $1,000;

(2) confinement in jail for a term not to exceed six months; or

(3) both the fine and confinement.

(c) In addition to a criminal penalty, a person who commits an offense under Subsection (a) is subject to a civil penalty not to exceed $100 for each day of the violation. The attorney for the holder shall collect the civil penalty by bringing suit in a district court of the county in which the holder is located.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

TITLE 6A. PROPERTY LOANED TO MUSEUMS

CHAPTER 80. OWNERSHIP, CONSERVATION, AND DISPOSITION OF PROPERTY LOANED TO MUSEUM

Sec. 80.001. PURPOSES. The purposes of this chapter are to establish the ownership of loaned cultural property that has been abandoned by the lender, to establish uniform procedures for the termination of loans of property to museums, to allow museums to conserve loaned property under certain conditions, and to limit actions to recover loaned property.

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

Sec. 80.002. DEFINITIONS. In this chapter:

(1) "Museum" means an institution located in this state and operated by a nonprofit corporation or public agency, primarily educational, scientific, or aesthetic in purpose, that owns, borrows, or cares for and studies, archives, or exhibits property.

(2) "Lender" means a person whose name appears on the records of a museum as the person entitled to property held or owed by the museum.

(3) "Loan," "loaned," and "on loan" include all deposits of property with a museum that are not accompanied by a transfer of title to the property.

(4) "Property" or "cultural property" means all tangible objects, animate and inanimate, under a museum's care that have intrinsic, scientific, historic, artistic, or cultural value.

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

Sec. 80.003. NOTICE TO LENDER. (a) If a museum is required to give a lender notice under this chapter, the museum is considered to have given the lender notice if the museum mails the notice to the lender at the lender's address and proof of receipt is received by the museum within 30 days after the date the notice is mailed.

(b) If the museum does not have an address for the lender or if proof of receipt is not received by the museum, the notice is considered to be given if the museum publishes notice at least once a week for two consecutive weeks in a newspaper of general circulation in both the county in which the museum is located and the county of the lender's address, if known.

(c) In addition to any other information prescribed by this chapter, notices given under this chapter must contain, if known, the lender's name, the lender's address, the date of the loan, and the name, address, and telephone number of the appropriate office or official to be contacted at the museum for information regarding the loan.

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

Sec. 80.004. ABANDONED PROPERTY; NOTICE; TITLE TO PROPERTY. (a) Unless there is a written unexpired loan agreement to the

contrary, any property on loan to a museum for 15 years or more and to which no person has made claim according to the records of the museum is considered abandoned and, notwithstanding Chapter 72, becomes the property of the museum if the museum has given the lender notice in accordance with Section 80.003.

(b) If no valid claim has been made to the property within 65 days after the date of the last notice given under Section 80.003, title to the property vests in the museum free from all claims of the owner and all persons claiming through or under the owner.

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

Sec. 80.005. INTENT TO TERMINATE LOAN; FORM; TRANSFORMATION OF SPECIFIED TERM TO INDEFINITE TERM. (a) A museum may give the lender notice of the museum's intent to terminate a loan that was made for an indefinite term or for a term in excess of seven years. A notice of intent to terminate a loan given under this section must comply with Section 80.003 and must include a statement containing substantially the following information:

The records of (name of museum) indicate that you have property on loan to it. The museum wishes to terminate the loan. You must contact the museum, establish your ownership of the property, and make arrangements to collect the property. If you fail to do so within 65 days after the date of this notice, you will be deemed to have donated the property to the museum. See Chapter 80, Property Code.

(b) If, within 65 days after the date of the notice given under Subsection (a), the lender fails to contact the museum, establish ownership of the property, and make arrangements to collect the property, the property is considered to be donated to the museum.

(c) For the purposes of this chapter, a loan for a specified term becomes a loan for an indefinite term if the property remains in the custody of the museum when the specified term expires.

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

Sec. 80.006. CONSERVATION OR DISPOSAL OF LOANED PROPERTY; CONDITIONS; LIEN; LIABILITY OF MUSEUM. (a) Unless there is a written loan agreement to the contrary, a museum may apply

conservation measures to or dispose of property on loan to the museum without a lender's permission if immediate action is required to protect the property on loan or to protect other property in the custody of the museum, or the property on loan has become a hazard to the health and safety of the public or of the museum's staff, and:

(1) the museum cannot reach the lender at the lender's last address of record so that the museum and the lender can promptly agree on a solution; or

(2) the lender will not agree to the protective measures the museum recommends, yet is unwilling or unable to terminate the loan and retrieve the property.

(b) If a museum applies conservation measures to or disposes of property under Subsection (a), the museum:

(1) has a lien on the property and on the proceeds from any disposition of the property for the costs incurred by the museum; and

(2) is not liable for injury to or loss of the property if the museum:

(A) had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum, or that the property on loan constituted a hazard to the health and safety of the public or the museum's staff; and

(B) exercised reasonable care in the choice and application of the conservation measures.

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

Sec. 80.007. ACTION TO RECOVER PROPERTY; LIMITATIONS. (a) The two-year limitation on actions to recover personal property prescribed by Section 16.003, Civil Practice and Remedies Code, runs from the date the museum gives the lender notice of its intent to terminate the loan under Section 80.005.

(b) No action may be brought against a museum to recover property on loan to a museum for 15 years or more and to which no person has made claim if the museum has complied with Section 80.004.

(c) A lender is considered to have donated loaned property to a museum if the lender fails to file an action to recover the property on loan to the museum within the period specified by Subsection (a).

(d) A person who purchases property from a museum acquires valid title to the property if the museum represents that it has acquired title to the property under Subsection (b) or (c).

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

Sec. 80.008. NOTICE OF PROVISIONS OF CHAPTER; LENDER'S NOTICES. (a) If, after August 31, 1987, a museum accepts a loan of property for an indefinite term or for a term in excess of seven years, the museum shall inform the lender in writing at the time of the loan of the provisions of this chapter.

(b) The lender of property to a museum shall notify the museum promptly in writing of any changes of address or change in ownership of the property.

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

TITLE 7. CONDOMINIUMS

CHAPTER 81. CONDOMINIUMS CREATED BEFORE ADOPTION OF UNIFORM CONDOMINIUM ACT

SUBCHAPTER A. PROVISIONS GENERALLY APPLICABLE TO CONDOMINIUMS

Sec. 81.001. SHORT TITLE. This chapter may be cited as the Condominium Act.

Acts 1983, 68th Leg., p. 3616, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.0011. APPLICABILITY. (a) This chapter applies only to a condominium regime created before January 1, 1994. A condominium regime created on or after January 1, 1994, is governed by Chapter 82.

(b) A condominium regime created before January 1, 1994, to which this chapter applies is also governed by Chapter 82 as provided by Section 82.002.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 3, eff. Jan. 1, 1994.

Sec. 81.002. DEFINITIONS. In this chapter:

(1) "Apartment" means an enclosed space, regardless of whether it is designed for residential or other use, that consists of one or more rooms in a building and that has a direct exit to a thoroughfare or to a common space that leads to a thoroughfare.

(2) "Building" includes each principal structure on or to be erected on real property dedicated in a declaration to a condominium regime.

(3) "Condominium" means a form of real property ownership that combines separate ownership of individual apartments or units with common ownership of other elements.

(4) "Council of owners" means all the apartment owners in a condominium project.

(5) "Declaration" means the instrument that establishes property under a condominium regime.

(6) "General common elements" means the property that is part of a condominium regime other than property that is part of or belongs to an apartment in the regime, including:

(A) land on which the building is erected;

(B) foundations, bearing walls and columns, roofs, halls, lobbies, stairways, and entrance, exit, and communication ways;

(C) basements, flat roofs, yards, and gardens, except as otherwise provided;

(D) premises for the lodging of janitors or persons in charge of the building, except as otherwise provided;

(E) compartments or installation of central services such as power, light, gas, water, refrigeration, central heat and air, reservoirs, water tanks and pumps, and swimming pools; and

(F) elevators and elevator shafts, garbage incinerators, and all other devices and installations generally existing for common use.

(7) "Limited common elements" means a portion of the common elements allocated by unanimous agreement of a council of owners for the use of one or more but less than all of the apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and similar areas or facilities.

(8) "Master deed" means a deed that establishes property under a condominium regime.

(9) "Master lease" means a lease that establishes property

under a condominium regime.

(10) "Project" means a plan to offer for sale or to sell real property consisting of four or more apartments, rooms, office spaces, or other units in an existing or proposed building as a condominium.

(11) "Property" means real property, whether leased or owned, the improvements on the property, and the incorporeal rights that are appurtenant to the property.

Acts 1983, 68th Leg., p. 3616, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.003. APPLICABILITY OF LOCAL ORDINANCES AND REGULATIONS. (a) A planning or zoning commission of a county or municipality may adopt regulations governing condominium regimes that supplement this chapter.

(b) A local zoning ordinance must be construed to treat similar structures, lots, or parcels in a similar manner regardless of whether the property is a condominium or is leased.

Acts 1983, 68th Leg., p. 3617, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

Sec. 81.101. CREATION OF CONDOMINIUM. An owner or developer of an existing or a planned building establishes a condominium regime by recording a master deed, master lease, or declaration under Section 81.102.

Acts 1983, 68th Leg., p. 3618, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.102. CONTENTS OF DECLARATION, MASTER DEED, OR MASTER LEASE. (a) A declaration, master deed, or master lease for a condominium must contain:

(1) the legal description of the real property dedicated to the condominium regime, depicted by a plat of the property that locates and identifies by letter each existing or proposed building;

(2) a general description of each apartment, including the square footage, location, number, and other information necessary for identification of the apartment, depicted by a plat of the floor of

the building in which the apartment is located that identifies the building by letter and the floor and the apartment by number;

(3) a general description of each area not already described that is subject to individual ownership and exclusive control, such as a garage or carport, depicted by a plat that shows the area and appropriately identifies it by letter or number;

(4) a description of the general common elements that are not described under Subdivision 1;

(5) a description of the limited common elements;

(6) each apartment's fractional or percentage interest in the entire condominium regime;

(7) a provision that the declaration may only be amended at a meeting of the apartment owners at which the amendment is approved by the holders of at least 67 percent of the ownership interests in the condominium; and

(8) a provision that an amendment of the declaration may not alter or destroy a unit or a limited common element without the consent of the owners affected and the owners' first lien mortgagees.

(b) A declaration, master deed, or master lease for a condominium may contain any covenants or other matters the declarant considers appropriate.

Acts 1983, 68th Leg., p. 3618, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 9(b), eff. Oct. 2, 1984.

Sec. 81.103. PUBLIC RECORDS. (a) Each county clerk shall maintain suitable records called "Condominium Records" in which the clerk shall record master deeds, master leases, and declarations for condominiums.

(b) A county clerk shall record plats and other instruments in a declaration without prior approval from any other authority.

(c) A document required or authorized by this chapter to be recorded must be recorded according to law in the real property records of the county in which the property to which the document relates is located.

Acts 1983, 68th Leg., p. 3618, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.104. APARTMENT OWNERSHIP. (a) An owner of an apartment in a condominium regime owns it exclusively, and the owner may possess, convey, or encumber the apartment, or subject it to judicial acts, independently of the other apartments in the condominium regime.

(b) An individual title or interest in an apartment in a condominium regime is recordable.

(c) The entire interest in the condominium regime shall be divided among the apartments.

(d) A person may own an apartment in a condominium regime jointly or in common with others.

(e) A condominium association may not alter or destroy an apartment or a limited common element without the consent of all owners affected and the first lien mortgagees of all affected owners.

Acts 1983, 68th Leg., p. 3619, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 9(c), eff. Oct. 2, 1984.

Sec. 81.105. APARTMENT BOUNDARIES. (a) The boundaries of an apartment in a condominium regime are the interior surfaces of the apartment's perimeter walls, floors, and ceilings, and the exterior surfaces of the apartment's balconies and terraces.

(b) Except for common elements, the portions of a building on the boundaries of an apartment in a condominium regime and the airspace within those boundaries are part of the apartment.

(c) In interpreting a legal instrument relating to an apartment or to an apartment that has been reconstructed substantially according to the original plans of the apartment, the physical boundaries of the apartment are conclusively presumed to be the proper boundaries of the apartment regardless of settling, rising, or lateral movement of the building containing the apartment and regardless of variances between boundaries shown on the plat of the building and the actual boundaries of the building.

Acts 1983, 68th Leg., p. 3619, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.106. APARTMENT DEEDS. A deed to an apartment in a condominium regime must:

(1) include by reference the plats in the declaration;
(2) state the encumbrances against the apartment;
(3) describe the apartment according to the plat; and
(4) state the apartment's fractional or percentage interest in the condominium regime.

Acts 1983, 68th Leg., p. 3620, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.107. INTERESTS IN COMMON ELEMENTS. An owner of an apartment in a condominium regime shares ownership of the regime's common elements with the other apartment owners. An apartment owner may use the common elements according to their intended purposes, as expressed in the plat, declaration, or bylaws of the condominium regime, without interfering with the rights of the other apartment owners.

Acts 1983, 68th Leg., p. 3620, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.108. PARTITION OF COMMON ELEMENTS. (a) The ownership of the general and the limited common elements of a condominium regime may not be judicially partitioned or divided while they are suitable for a condominium regime.

(b) A person may not initiate an action for partition of the limited or general common elements of a condominium regime unless the mortgages on the property are paid or the consent of the mortgagees is obtained.

(c) An agreement contrary to this section is void.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.109. CONVEYANCE OF COMMON ELEMENTS. An apartment in a condominium regime and the undivided interest of an apartment owner in the common elements of the regime that are attributable to the apartment may not be conveyed separately. If a conveyance of an apartment does not refer to the common elements, the undivided interest of the apartment owner in the general and the limited common elements of the regime attributable to the apartment is conveyed with the apartment.

Acts 1983, 68th Leg., p. 3622, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.110. TERMINATION OF CONDOMINIUM REGIME. (a) By unanimous agreement, or if the declaration provides for termination by agreement of the owners, by agreement of the holders of at least 67 percent or a stated percentage in the declaration, whichever is greater, of the ownership interests in the condominium, the owners of a building in a condominium regime may terminate the regime and request the county clerk of the county in which the regime is located to merge the records of the estates that comprise the condominium regime, if any creditors in whose behalf encumbrances against the building are recorded agree to accept the undivided portions of the property owned by the debtors as security, provided no amendment may be made to a declaration to reduce the vote required for termination of the condominium regime.

(b) If a condominium regime is terminated, each apartment owner owns an undivided interest in the common property that corresponds to the undivided interest previously owned by the apartment owner in the common elements.

(c) Property that has been removed from a condominium regime may be dedicated to another condominium regime at any time.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 157, Sec. 1, eff. May 25, 1989.

Sec. 81.111. AMENDMENT OF CONDOMINIUM DECLARATION. After a condominium declaration is recorded with a county clerk, the declaration may not be amended except at a meeting of the apartment owners at which the amendment is approved by the holders of at least 67 percent of the ownership interests in the condominium.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 9(d), eff. Oct. 2, 1984.

Sec. 81.112. RESTRICTION RELATING TO CLUB MEMBERSHIP. (a) A provision of a declaration, master deed, master lease, or other recorded contract that requires owners of apartments in a condominium regime to maintain a membership in a specified private club is not

valid after the 10th anniversary of the date the provision is recorded or renewed unless renewed after the ninth anniversary of that date at a meeting of the apartment owners at which the renewal is approved by the holders of at least 67 percent of the ownership interests in the condominium and the text of the renewed provision is recorded in the real property records of each county in which the condominium is located.

(b) A provision described by this section may not be enacted or renewed as a bylaw by a council of owners.

Added by Acts 2003, 78th Leg., ch. 1101, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER C. CONDOMINIUM MANAGEMENT

Sec. 81.201. AUTHORITY OF COUNCIL OF OWNERS. (a) The council of owners of a condominium regime may adopt and amend bylaws.

(b) A council of owners of a condominium regime may institute litigation on behalf of two or more apartment owners concerning a matter related to the common elements of two or more apartments. The council of owners may delegate its authority under this subsection by designating in the bylaws a person who may exercise the authority. This subsection does not limit the right of an apartment owner to bring an action in the apartment owner's own behalf.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.202. BYLAWS. The bylaws of a condominium regime govern the administration of the buildings that comprise the regime.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.203. VOTING MAJORITY. For the purposes of this chapter, the apartment owners who own at least 51 percent of the interests in a condominium regime, as determined under the declaration, are a majority of the apartment owners.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.204. MAINTENANCE OF CONDOMINIUM. (a) An apartment owner in a condominium regime is responsible for the apartment owner's pro rata share of:

(1) the expenses to administer the condominium regime and to maintain and repair the general common elements;

(2) in proper cases, the expenses to administer the limited common elements of the buildings in the condominium regime; and

(3) other expenses approved by the council of owners.

(b) An apartment owner in a condominium regime is not exempted from the obligation under this section to contribute toward the expenses of the condominium regime by waiving the use of the common elements or abandoning the apartment.

Acts 1983, 68th Leg., p. 3622, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.205. INSURANCE. (a) By resolution of a majority of the council of owners or in the manner provided or required by the declaration or bylaws, the council of owners may acquire the insurance it deems appropriate for the protection of the buildings and the apartment owners.

(b) Insurance may be written in the name of the council of owners, or in the name of a person designated in the declaration or bylaws, as trustee for the apartment owners and their mortgagees. Each apartment owner and mortgagee of an apartment owner is a beneficiary of the policy, whether named as a beneficiary or not, in proportion to the interest of an apartment owner in the condominium regime as established by the declaration.

(c) The acquisition of insurance by the council of owners does not prejudice the right of an apartment owner in a condominium regime to obtain insurance for the apartment owner's own benefit.

Acts 1983, 68th Leg., p. 3622, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.206. DISPOSITION OF INSURANCE PROCEEDS. (a) Except as provided by Subsection (b), if a building in a condominium regime is damaged by a casualty against which it is insured, the proceeds of the insurance policy shall be used to reconstruct the building. The council of owners or the bylaws of the condominium regime govern the conduct of the reconstruction.

(b) If more than two-thirds of a building in a condominium regime requires reconstruction because of a casualty against which it is insured, the council of owners may elect not to reconstruct the building. Unless the council of owners unanimously agrees otherwise, the insurance proceeds shall be paid to the individual apartment owners or their mortgagees, as their interest may appear, in proportion to the interest of an apartment owner in the condominium regime as established by the declaration.

Acts 1983, 68th Leg., p. 3622, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.207. INSUFFICIENT INSURANCE. (a) If under Section 81.206 a damaged building in a condominium regime must be reconstructed but insurance proceeds are insufficient to pay for the cost of reconstruction, the apartment owners directly affected by the damage shall pay the difference between the cost of reconstruction and the insurance proceeds, unless the bylaws provide otherwise. Each affected apartment owner shall contribute an amount for reconstruction that is proportionate to the interest of the apartment owner in the condominium regime.

(b) If one or more but less than a majority of the affected apartment owners refuse to make a payment required under this section, after a resolution by the majority of the affected apartment owners stating the circumstances of the case and the cost of the work, the majority may repair the damage at the expense of all apartment owners benefited by the reconstruction.

(c) By a unanimous resolution subsequent to the date of a casualty, the apartment owners in a condominium regime who are concerned with the application of this section may elect to modify its effects.

Acts 1983, 68th Leg., p. 3623, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.208. ASSESSMENTS DUE ON CONVEYANCE. If an apartment owner conveys the apartment and assessments against the apartment are unpaid, the apartment owner shall pay the past due assessments out of the sale price of the apartment, or the purchaser shall pay the assessments, in preference to any other charges against the property except:

(1) assessments, liens, and charges in favor of this state or a political subdivision of this state for taxes on the apartment that are due and unpaid; or

(2) an obligation due under a validly recorded mortgage.

Acts 1983, 68th Leg., p. 3623, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.209. CONDOMINIUM RECORDS. (a) The administrator or board of administration of a condominium regime or a person appointed by the bylaws of the regime shall keep a detailed written account of the receipts and expenditures related to the building and its administration that specifies the expenses incurred by the regime.

(b) The accounts and supporting vouchers of a condominium regime shall be made available to the apartment owners for examination on working days at convenient, established, and publicly announced hours.

(c) The books and records of a condominium regime must comply with good accounting procedures and must be audited at least once each year by an auditor who is not associated with the condominium regime.

Acts 1983, 68th Leg., p. 3625, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.210. LOANS AS ELIGIBLE INVESTMENTS. (a) If a fiduciary or a bank, savings and loan association, trust company, life insurance company, or other lending institution is authorized to make real estate loans, a loan on an apartment in a condominium regime and the undivided interest in the common elements of the regime that is appurtenant to the apartment is an eligible investment for the fiduciary or lending institution.

(b) A lender may not consider the existence of a prior lien for taxes, assessments, or other similar charges that are not delinquent in determining whether a mortgage or deed of trust is a first lien on the security for a loan under this section.

(c) For the purposes of this section, an apartment in a condominium regime and the undivided interest in the common elements appurtenant to the apartment are a single unit independent of the other units in the regime.

(d) This section does not affect any otherwise applicable

provision of law that limits mortgage investments based on a special fraction or percentage of the value of the mortgaged property.

Acts 1983, 68th Leg., p. 3625, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 82. UNIFORM CONDOMINIUM ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 82.001. SHORT TITLE. This chapter may be cited as the Uniform Condominium Act.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.002. APPLICABILITY. (a) This chapter applies to all commercial, industrial, residential, and other types of condominiums in this state for which the declaration is recorded on or after January 1, 1994. A condominium for which the declaration was recorded before January 1, 1994, may be governed exclusively under this chapter if either:

(1) the owners of units vote to amend the declaration, in accordance with the amendment process authorized by the declaration, to have this chapter apply and that amendment is filed for record in the condominium records in each county in which the condominium is located; or

(2) a declaration or amendment of declaration was recorded before January 1, 1994, and the declaration or amendment states that this chapter will apply in its entirety on January 1, 1994.

(b) An amendment to a declaration under Subsection (a)(1) that implements a vote of the unit owners to be governed by this chapter may not affect the rights of a declarant or impose duties on a declarant that are greater than or in addition to the declarant's duties immediately before the date of the vote or amendment.

(c) This section and the following sections apply to a condominium in this state for which the declaration was recorded before January 1, 1994: Sections 82.005, 82.006, 82.007, 82.053, 82.054, 82.102(a)(1)-(7), (a)(12)-(21), (f), and (g), 82.108, 82.111, 82.113, 82.114, 82.116, 82.118, 82.157, and 82.161. The definitions prescribed by Section 82.003 apply to a condominium in this state for which the declaration was recorded before January 1, 1994, to the extent the definitions do not conflict with the declaration. The

sections listed in this subsection apply only with respect to events and circumstances occurring on or after January 1, 1994, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of a condominium for which the declaration was recorded before January 1, 1994.

(d) Chapter 81 does not apply to a condominium for which the declaration was recorded on or after January 1, 1994, and does not invalidate any amendment to the declaration, bylaws, or plats and plans of any condominium for which the declaration was recorded before January 1, 1994, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by Chapter 81. If the amendment grants to a person a right, power, or privilege permitted by this chapter, all correlative obligations, liabilities, and restrictions prescribed by this chapter also apply to that person.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 956, Sec. 1, eff. Jan. 1, 1998. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1323 (H.B. 3128), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 678 (H.B. 2075), Sec. 1, eff. September 1, 2013.

Sec. 82.003. DEFINITIONS. (a) In this chapter:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person is a general partner, officer, director, or employer of the declarant; directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than 20 percent of the voting interests in the declarant; determines in any manner the election of a majority of the directors of the declarant; or has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant is a general partner, officer, director, or employer of the person; directly or indirectly or acting in concert with one or more other persons, or

through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests in the person; determines in any manner the election of a majority of the directors of the person; or has contributed more than 20 percent of the capital of the person.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Association" means the unit owners' association organized under Section 82.101.

(4) "Board" means the board of directors or the body, regardless of name, designated to act on behalf of the association.

(5) "Common elements" means all portions of a condominium other than the units and includes both general and limited common elements.

(6) "Common expense liability" means the liability for common expenses allocated to each unit.

(7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(8) "Condominium" means a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners.

(9) "Conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(10) "Declarant" means a person, or group of persons acting in concert, who:

(A) as part of a common promotional plan, offers to dispose of the person's interest in a unit not previously disposed of; or

(B) reserves or succeeds to any special declarant

right.

(11) "Declaration" means an instrument, however denominated, that creates a condominium, and any amendment to that instrument.

(11-a) "Dedicatory instrument" means each document governing the establishment, maintenance, or operation of a condominium regime. The term includes a declaration or similar instrument subjecting real property to:

(A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a unit owners' association;

(B) properly adopted rules and regulations of the unit owners' association; or

(C) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

(12) "Development rights" means a right or combination of rights reserved by a declarant in the declaration to:

(A) add real property to a condominium;

(B) create units, common elements, or limited common elements within a condominium;

(C) subdivide units or convert units into common elements; or

(D) withdraw real property from a condominium.

(13) "Disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit but does not include the transfer or release of a security interest.

(14) "General common elements" means common elements that are not limited common elements.

(15) "Identifying number" means a symbol or address that identifies only one unit in a condominium.

(16) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.

(17) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of Section 82.052 for the exclusive use of one or more but less than all of the units.

(18) "Plan" means a dimensional drawing that is recordable in the real property records or the condominium plat records and that

horizontally and vertically identifies or describes units and common elements that are contained in buildings.

(19) "Plat" means a survey recordable in the real property records or the condominium plat records and containing the information required by Section 82.059. As used in this chapter, "plat" does not have the same meaning as "plat" in Chapter 212 or 232, Local Government Code, or other statutes dealing with municipal or county regulation of property development.

(20) "Purchaser" means a person, other than a declarant, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than a leasehold interest or as security for an obligation.

(21) "Residential purposes" means recreational or dwelling purposes, or both.

(22) "Special declarant rights" means rights reserved for the benefit of a declarant to:

(A) complete improvements indicated on plats and plans filed with the declaration;

(B) exercise any development right;

(C) make the condominium part of a larger condominium or a planned community;

(D) maintain sales, management, and leasing offices, signs advertising the condominium, and models;

(E) use easements through the common elements for the purpose of making improvements within the condominium or within real property that may be added to the condominium; or

(F) appoint or remove any officer or board member of the association during any period of declarant control.

(23) "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described by the declaration.

(24) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

(b) Unless otherwise provided by the declaration or bylaws, a term defined by Subsection (a) has the same meaning if used in a declaration or bylaws.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 678 (H.B. 2075), Sec. 2, eff. September 1, 2013.

Sec. 82.004. VARIATION BY AGREEMENT. Except as expressly provided by this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A person may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this chapter or the declaration.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.005. SEPARATE TITLES AND TAXATION. (a) If there is a unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.

(b) If there is a unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against common elements for which a declarant has not reserved development rights. Any portion of the common elements for which a declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

(c) If there is no unit owner other than a declarant, the real property constituting the condominium may be taxed and assessed in any manner provided by law.

(d) The laws relating to homestead exemptions from property taxes apply to condominium units, which are entitled to homestead exemptions in those cases in which the owner of a single family dwelling would qualify.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.006. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES. A zoning, subdivision, building code, or other real property use law, ordinance, or regulation may not prohibit the

condominium form of ownership or impose any requirement on a condominium that it would not impose on a physically identical development under a different form of ownership. Otherwise, this chapter does not invalidate or modify any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.007. CONDEMNATION. (a) If a unit is acquired by condemnation, or if part of a unit is acquired by condemnation leaving the unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the condemnation award must compensate the unit owner for the unit and its common element interest, whether or not any common element interest is acquired. On acquisition, unless the decree provides otherwise, the condemned unit's entire allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. A remnant of a unit remaining after part of a unit is taken under this subsection is a common element.

(b) Except as provided by Subsection (a), if part of a unit is acquired by condemnation, the award must compensate the unit owner for the reduction in value of the unit and its common element interest. On acquisition, the condemned unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified by the declaration, and the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by condemnation, the award must be paid to the association, as trustee for the unit owners, and to persons holding liens on the condemned property, as their interests may appear. The association shall divide any portion of the award not used for any restoration or repair of the remaining

common elements among the unit owners in proportion to their respective common element interests before the taking, but the portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition, or in any manner the declaration provides.

(d) The court decree shall be recorded in each county in which any portion of the condominium is located.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.008. VENUE. Venue for an action to enforce a right or obligation arising under the declaration, bylaws, or rules of the association is in each county in which any part of the condominium is located.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

SUBCHAPTER B. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

Sec. 82.051. CREATION OF CONDOMINIUM. (a) A condominium may be created under this chapter only by recording a declaration executed in the same manner as a deed by all persons who have an interest in the real property that will be conveyed to unit owners and by every lessor of a lease the expiration or termination of which will terminate the condominium or reduce its size. The declaration shall be recorded in each county in which any portion of the condominium is located.

(b) A declarant may not convey an interest in a unit until each holder of a mortgage on the unit immediately before conveyance has executed a consent to declaration, and the consent has been recorded, or is recorded concurrently with the conveyance, as part of the declaration or an amendment to the declaration.

(c) If a recorded declaration is not properly executed, that defect may be cured by a subsequent execution conforming to Subsection (a). After an execution defect is cured by authority of this subsection, the declaration is retroactively effective on the date it was first recorded.

(d) A county clerk shall, without prior approval from any other authority, record declarations and amendments to declarations in the

real property records and record condominium plats or plans in the real property records or in books maintained for that purpose. If a county clerk maintains a book for the condominium plat records, the book shall be the same size and type as the book for recording subdivision plats.

(e) This chapter does not affect or diminish the rights of municipalities and counties to approve plats of subdivisions and enforce building codes as may be authorized or required by law.

(f) A person may not file for record or have recorded in the county clerk's office a plat, replat, or amended plat or replat of a condominium unless the plat, replat, or amended plat or replat has attached to it an original tax certificate from each taxing unit with jurisdiction of the real property indicating that no delinquent ad valorem taxes are owed on the real property. If the plat, replat, or amended plat or replat is filed after September 1 of a year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for each taxing unit with jurisdiction of the property indicating that the taxes imposed by the taxing unit for the current year have been paid or, if the taxes for the current year have not been calculated, a statement from the collector for the taxing unit indicating that the taxes to be imposed by that taxing unit for the current year have not been calculated. If the tax certificate for a taxing unit does not cover the preceding year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for the taxing unit indicating that the taxes imposed by the taxing unit for the preceding year have been paid. This subsection does not apply if a taxing unit acquired the condominium for public use through eminent domain proceedings or voluntary sale.

(g) This chapter does not permit development of a subdivision golf course, as defined by Section 212.0155(b), Local Government Code, without a plat if the plat is otherwise required by applicable law. A municipality may require as a condition to the development of a previously platted or unplatted subdivision golf course that the subdivision golf course be platted or replatted.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 289 (H.B. 989), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1092 (H.B. 3232), Sec. 2, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(77), eff. September 1, 2009.

Sec. 82.052. UNIT BOUNDARIES. Except as otherwise provided by the declaration or plat:

(1) if walls, floors, or ceilings are designated as boundaries of a unit, then all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements;

(2) if any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture is partially within and partially outside the designated boundaries of a unit, then the portion serving only that unit is a limited common element allocated solely to that unit, and the portion serving more than one unit or the common elements is a part of the general common elements;

(3) subject to Subdivision (2), the spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit; and

(4) shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.053. CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS. (a) The provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, or rules of the association.

(c) If there is a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the

extent the declaration is inconsistent with this chapter.

(d) Title to a unit and common elements is not made unmarketable or otherwise affected by a provision of unrecorded bylaws or by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.054. DESCRIPTION OF UNITS. A description of a unit is a sufficient legal description of the unit and all rights, obligations, and interests appurtenant to the unit that were created by the declaration or bylaws if the description contains:

(1) the name of the condominium;

(2) the recording data for the declaration, including any amendments, plats, and plans;

(3) the county in which the condominium is located; and

(4) the identifying number of the unit.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.055. CONTENTS OF DECLARATION FOR ALL CONDOMINIUMS. The declaration for a condominium must contain:

(1) the name of the condominium, which must include the word "condominium" or be followed by the words "a condominium" or a phrase that includes the word "condominium," and the name of the association;

(2) the name of each county in which any part of the condominium is located;

(3) a legally sufficient description of the real property included in the condominium;

(4) a description of the boundaries of each unit created by the declaration, including the unit's identifying number;

(5) a statement of the maximum number of units that the declarant reserves the right to create;

(6) a description of the limited common elements other than those listed in Sections 82.052(2) and (4);

(7) a description of any real property, except real property subject to development rights, that may be allocated

subsequently as limited common elements, together with a statement that the property may be so allocated;

(8) an allocation to each unit of its allocated interests;

(9) any restrictions on use, occupancy, or alienation of the units;

(10) a description of and the recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by reservation in the declaration;

(11) the method of amending the declaration;

(12) a plat or plan or the recording data of a plat or plan that has been recorded in the real property or condominium plat records;

(13) a statement of the association's obligation under Section 82.111(i) to rebuild or repair any part of the condominium after a casualty or any other disposition of the proceeds of a casualty insurance policy;

(14) a description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real property to which each of those rights applies, and a time limit within which each of those rights must be exercised;

(15) if any development right may be exercised with respect to different parcels of real property at different times, a statement to that effect, together with:

(A) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards; and

(B) a statement as to whether, if any development right is exercised in any portion of the real property subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real property;

(16) all matters required by this chapter to be stated in the declaration; and

(17) any other matters the declarant considers appropriate.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.056. LEASEHOLD CONDOMINIUMS. (a) Any lease the expiration or termination of which may terminate the condominium or reduce its size must be recorded. The lessor shall sign the declaration, and the declaration must state:

(1) the recording data for the lease;

(2) the date on which the lease is scheduled to expire;

(3) a legally sufficient description of the real property subject to the lease;

(4) any right of the unit owners to redeem the reversion and the manner in which the unit owners may exercise that right, or a statement that the unit owners do not have that right;

(5) any right of the unit owners to remove improvements within a reasonable time after the expiration or termination of the lease, or a statement that the unit owners do not have that right; and

(6) any right of the unit owners to renew the lease and the conditions of renewal, or a statement that the unit owners do not have that right.

(b) After the declaration for a leasehold condominium is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of the unit owner's share of the rent and otherwise complies with all covenants that, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Acquisition of the leasehold interest of a unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated as though those units had been taken by condemnation unless otherwise provided by the declaration. Reallocation shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.057. ALLOCATION OF COMMON ELEMENT INTERESTS, VOTES, AND COMMON EXPENSE LIABILITIES. (a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. These allocations may not discriminate in favor of units owned by a declarant.

(b) If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(c) The declaration may provide:

(1) that different allocations of votes must be made to the units on particular matters specified in the declaration; and

(2) for class voting on specified issues affecting the class if necessary to protect valid interests of the class.

(d) A declarant may not use cumulative or class voting to evade any limitation imposed on declarants by this chapter. Units may not constitute a class because the units are owned by a declarant.

(e) Except for minor variations due to rounding, the sums of the undivided interests in the common elements and of the common expense liabilities allocated at any time to all the units shall each equal one if stated as fractions or 100 percent if stated as percentages. If a discrepancy exists between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(f) The common elements are not subject to partition. Any purported conveyance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements without the unit to which that interest is allocated is void.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.058. LIMITED COMMON ELEMENTS. (a) The limited common elements and the provisions of the declaration relating to the right to use the limited common elements may not be altered without the consent of each affected unit owner and the owner's first lien mortgagee.

(b) Except as otherwise provided by the declaration, a limited

common element may be reallocated by an amendment to the declaration, executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall deliver it to the association, which shall record it at the expense of the reallocating unit owners.

(c) A common element not previously allocated as a limited common element may not be allocated except pursuant to the declaration made in accordance with Section 82.055(7). The allocation shall be made by amendment to the declaration.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.059. PLATS AND PLANS. (a) Plats and plans are a part of the declaration and may be recorded as a part of the declaration or separately. Each plat or plan must be legible and contain a certification that the plat or plan contains all information required by this section.

(b) Each plat must show:

(1) the name and a survey or general schematic map of the entire condominium;

(2) the location and dimensions of all real property not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real property;

(3) a legally sufficient description of any real property subject to development rights, labeled to identify the rights applicable to each parcel;

(4) the extent of any encroachments by or on any portion of the condominium;

(5) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the condominium, and the location of any underground utility line that is actually known by the declarant at the time of filing the declaration to have been constructed outside a recorded easement;

(6) the location and dimensions of any vertical unit boundaries not shown or projected on recorded plans and the unit's identifying number;

(7) the location, with reference to established data, of any horizontal unit boundaries not shown or projected on recorded

plans and the unit's identifying number;

(8) a legally sufficient description of any real property in which the unit owners will own only an estate for years, labeled as "leasehold real property";

(9) the distance between noncontiguous parcels of real property constituting the condominium;

(10) the location and dimensions of limited common elements, other than those described by Sections 82.052(2) and (4);

(11) in the case of real property not subject to development rights, all other matters required by law on land surveys; and

(12) the distance and bearings locating each building from all other buildings and from at least one boundary line of the real property constituting the condominium.

(c) A plat may also show the intended location and dimensions of a contemplated improvement to be constructed anywhere within the condominium, which must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(d) To the extent not shown on the plats, plans must show:

(1) the location and dimensions of the vertical boundaries of each unit, and the unit's identifying number;

(2) the horizontal unit boundaries, with reference to established data, and the unit's identifying number; and

(3) any units, appropriately identified, in which the declarant has reserved the right to create additional units or common elements.

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans. Interior walls and partitions within a unit need not be included in the plats or plans.

(f) On exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of this section or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of this section.

(g) An independent licensed surveyor or engineer shall certify at least one plat, whether contained in one or more pages, showing all perimeter land boundaries of the condominium, except for additional real property, and showing the locations on the ground of

all buildings labeled "MUST BE BUILT" in relation to land boundaries. Certification of any other plat or plan required by this chapter shall be made by an independent licensed architect, surveyor, or engineer.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.060. EXERCISE OF DEVELOPMENT RIGHT. (a) To exercise a development right, the declarant must prepare, execute, and record an amendment to the declaration and record new plats and plans for that real property. The declarant is the unit owner of any units created. The amendment to the declaration must assign an identifying number to each new unit created and, except for subdivision or conversion of units described by Subsection (b), reallocate the allocated interest among all units. The amendment must describe any limited common elements created, designating the unit to which each is allocated.

(b) Development rights may be reserved within any real property added to the condominium if the amendment adding the real property includes the information required by Section 82.055 or 82.056, as appropriate, and the plats and plans include the information required by Section 82.059(b). This provision does not extend the time limit on the exercise of development rights imposed by the declaration. Real property to be added is not part of a condominium or subject to a declaration until the declaration is amended to make the additional real property part of the condominium.

(c) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(1) if the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the other units as if the unit had been taken by condemnation; and

(2) if the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(d) If the declaration provides that all or a portion of the real property is subject to the development right of withdrawal:

(1) if all the real property is subject to withdrawal, and the declaration does not describe separate portions of real property subject to that right, none of the real property may be withdrawn after a unit has been conveyed to a purchaser; and

(2) if a portion or portions are subject to withdrawal, no portion may be withdrawn after a unit in that portion has been conveyed to a purchaser.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.061. ALTERATIONS OF UNITS. (a) Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) may make improvements or alterations to the owner's unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;

(2) may not change the appearance of the common elements or the exterior appearance of a unit or any other portion of the condominium without prior written permission of the association; and

(3) after acquiring an adjoining unit or an adjoining part of an adjoining unit, with the prior written approval of the association, may remove, alter, and create apertures in an intervening partition, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium.

(b) Removal of partitions or creation of apertures under Subsection (a)(3) is not an alteration of boundaries.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.062. RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS. Subject to the declaration, the boundaries between adjoining units may be relocated by an amendment to the declaration on written application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the board determines not later than the 30th day after the date the application is received that the

reallocation is unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocation, is executed by the applying unit owners, and contains words of conveyance between them. At the expense of the applying unit owners, the association shall prepare and record the amendment and plats or plans necessary to show the altered boundaries between adjoining units, and the units' dimensions and identifying numbers.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.063. SUBDIVISION OF UNITS. (a) If the declaration expressly permits, a unit may be subdivided into two or more units. Subject to the declaration, on written application of a unit owner to subdivide a unit and after payment by the unit owner of the cost of preparing and recording amendments and plats, the association shall prepare, execute, and record an amendment to the declaration, including the plats and plans, subdividing the unit.

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.064. EASEMENT FOR ENCROACHMENTS. To the extent that a unit or common element encroaches on another unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of the owner's wilful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.065. USE FOR SALES PURPOSES. The declaration may permit a declarant to maintain sales, leasing, or management offices and models in units or on common elements in the condominium if the declaration specifies the rights of a declarant with regard to the

number, size, location, and relocation of the offices and models. If the declaration fails to expressly permit an office or model, a declarant may maintain no more than one unit as a model and no more than one unit as an office for sales, leasing, and management purposes at any one time. A sales, leasing, or management office or model not designated as a unit by the declaration is a common element and is subject to the exclusive use of a declarant until the declarant ceases to be a unit owner or until the declarant no longer uses the office or model for such purposes, whichever occurs earlier. A declarant may modify the exterior of a sales, leasing, or management office to conform to the aesthetic exterior plan of the condominium. A declarant who ceases to be a unit owner ceases to have any rights with regard to an office or model unless it is removed within a reasonable time from the condominium in accordance with a right to remove reserved in the declaration. Subject to limitations in the declaration, a declarant may maintain signs on the common elements that advertise the condominium for sale or lease. This section is subject to local ordinances and other state law.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.066. EASEMENT RIGHTS. Subject to the declaration, a declarant has an easement through the common elements as may be reasonably necessary for discharging the declarant's obligations or exercising special declarant rights whether arising under this chapter or reserved by the declaration.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.067. AMENDMENT OF DECLARATION. (a) Except as provided by Subsection (b), a declaration, including the plats and plans, may be amended only by vote or agreement of unit owners to which at least 67 percent of the votes in the association are allocated, or any larger majority the declaration specifies. A declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use. An amendment to a declaration may be adopted:

(1) by written ballot that states the exact wording or substance of the amendment and that specifies the date by which a ballot must be received to be counted;

(2) at a meeting of the members of the association after written notice of the meeting has been delivered to an owner of each unit stating that a purpose of the meeting is to consider an amendment to the declaration; or

(3) by any method permitted by the declaration.

(b) The amendment procedures of this section do not apply to amendments that may be executed by:

(1) a declarant under Section 82.051(c), 82.059(f), or 82.060 or Subsection (f);

(2) the association under Section 82.007, 82.056(d), 82.058(c), 82.062, or 82.063 or Subsection (f); or

(3) certain unit owners under Section 82.058(b), 82.062, 82.063(b), or 82.068(b).

(c) An action to challenge the validity of an amendment adopted by the association under this section must be brought before the first anniversary of the date the amendment is recorded.

(d) To be effective, an amendment to the declaration must be recorded in each county in which any portion of the condominium is located.

(e) Except as permitted or required by this chapter, an amendment may not create or increase special declarant rights, increase the number of units, change the boundaries of a unit, alter or destroy a unit or limited common element, change a unit's allocated interest, or change the use restrictions on a unit unless the amendment is approved by 100 percent of the votes in the association. Except as agreed to by the declarant, an amendment may not increase or otherwise modify the obligations imposed by a declaration on a declarant, or reduce or otherwise modify the rights granted by a declaration to a declarant, including special declarant rights.

(f) If permitted by the declaration, the board or the declarant, if the declarant owns a unit that has never been occupied, may without a vote of the unit owners or approval of the association amend the declaration in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration.

(g) Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded, and certified by an officer of the association designated for that

purpose or, in the absence of designation, by the president of the association.

(h) An association may amend the declaration to authorize the board:

(1) to bring an action to evict a tenant of a unit owner for the tenant's violation of the declaration, bylaws, or rules of the association;

(2) to bring an action to evict a tenant of a unit owner who fails to pay the association for the cost of repairs to common elements damaged substantially by the owner's tenant; or

(3) to collect rents from a tenant of a unit owner who is at least 60 days' delinquent in the payment of any amount due to the association.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.0675. RESTRICTION RELATING TO CLUB MEMBERSHIP. (a) A provision of a declaration or recorded contract that requires owners of units in a condominium to maintain a membership in a specified private club is not valid after the 10th anniversary of the date the provision is recorded or renewed unless renewed after the ninth anniversary of that date in the manner provided by the declaration or recorded contract for amending the declaration or recorded contract and the text of the renewed provision is filed in the real property records of each county in which the condominium is located.

(b) A provision described by this section may not be enacted or renewed as a bylaw by the unit owners' association.

Added by Acts 2003, 78th Leg., ch. 1101, Sec. 2, eff. Sept. 1, 2003.

Sec. 82.068. TERMINATION OF CONDOMINIUM. (a) Unless the declaration provides otherwise and except for a taking of all the units by condemnation, a condominium may be terminated only by the agreement of 100 percent of the votes in the association and each holder of a deed of trust or vendor's lien on a unit. The declaration may not allow a termination by less than 80 percent of the votes in the association if any unit is restricted exclusively to residential uses.

(b) An agreement of unit owners to terminate a condominium must

be evidenced by the execution or ratification of a termination agreement by the requisite number of unit owners. If, pursuant to a termination agreement, the real property constituting the condominium is to be sold following termination, the termination agreement must set forth the terms of the sale. To be effective, a termination agreement and all ratifications of the agreement must be recorded in each county in which a portion of the condominium is located.

(c) The association, on behalf of the unit owners, may contract for the sale of real property in the condominium, but the contract is not binding on the unit owners until it is approved under Subsections (a) and (b). If the real property constituting the condominium is to be sold following termination, on termination title to that real property vests in the association as trustee for the holders of all interests in the units, and the association has all powers necessary and appropriate to effect the sale, including the power to convey the interests of nonconsenting owners. Until the sale has been concluded and the proceeds distributed, the association shall continue to exist and retains the powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided by Subsection (f). Unless the termination agreement specifies differently, as long as the association holds title to the real property, each unit owner and the owner's successors in interest have an exclusive right to occupy the portion of the real property that formerly constituted the owner's unit. During that period of occupancy a unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(d) If the real property constituting the condominium is not to be sold following termination, on termination title to the real property vests in the unit owners as tenants in common in proportion to their respective interests, and liens on the units shift accordingly. While the tenancy in common exists, a unit owner and the owner's successors in interest have an exclusive right to occupy the portion of the real property that formerly constituted the owner's unit.

(e) Following termination of the condominium, and after payment of or provision for the claims of the association's creditors, the assets of the association shall be distributed to unit owners in

proportion to their respective interests. The proceeds of sale described by Subsection (c) and held by the association as trustee are not assets of the association.

(f) The interest of a unit owner referred to in Subsections (c), (d), and (e) is, except as provided by Subsection (g), the fair market value of the owner's unit, limited common elements, and common element interest immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved by unit owners of units to which 25 percent of the votes in the association are allocated not later than the 30th day after the date of distribution. The proportion of a unit owner's interest to that of all unit owners is determined by dividing the fair market value of the unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(g) If a unit or a limited common element is destroyed to the extent that an appraisal of the fair market value before the destruction cannot be made, the interest of a unit owner is the owner's common element interest immediately before the termination.

(h) Foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium does not withdraw that portion from the condominium, unless the portion is withdrawable real property or unless the mortgage being foreclosed was recorded before the date the declaration was recorded and the mortgagee did not consent in writing to the declaration.

(i) By agreement of the same percentage of unit owners that is required to terminate the condominium, the unit owners may rescind a termination agreement and reinstate the declaration in effect immediately before the election to terminate. To be effective, the rescission agreement must be in writing, executed by the unit owners who desire to rescind, and recorded in each county in which any portion of the condominium is located.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.069. RIGHTS OF SECURED LENDERS. The declaration may

require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but a requirement for approval may not operate to:

(1) deny or delegate control over the general administrative affairs of the association by the unit owners or the board; or

(2) prevent the association or the board from:

(A) commencing, intervening in, or settling any litigation or proceeding; or

(B) receiving and distributing insurance proceeds under Section 82.111.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.070. MEETING AT WHICH AMENDMENTS MAY BE ADOPTED. (a) An association or a board may not meet to adopt an amendment or other change to the declaration, articles of incorporation, bylaws, or rules of the association unless the association or board has given to each unit owner a document showing the specific amendment or other change that would be made to the declaration, articles of incorporation, bylaws, or rules.

(b) The information described by Subsection (a) must be given to each unit owner after the 20th day but before the 10th day preceding the date of the meeting. The information is considered to have been given to a unit owner on the date the information is personally delivered to the unit owner, as shown by a receipt signed by the unit owner, or on the date shown by the postmark on the information after it is deposited in the United States mail with a proper address and postage paid.

Added by Acts 1997, 75th Leg., ch. 956, Sec. 2, eff. Jan. 1, 1998.

SUBCHAPTER C. CONDOMINIUM MANAGEMENT

Sec. 82.101. ORGANIZATION OF UNIT OWNERS' ASSOCIATION. A unit owners' association must be organized as a profit or nonprofit corporation. The declarant may not convey a unit until the secretary of state has issued a certificate of incorporation under Article

3.03, Texas Business Corporation Act, or Article 3.03, Texas Non-Profit Corporation Act (Article 1396-3.03, Vernon's Texas Civil Statutes). The membership of the association at all times consists exclusively of all the unit owners or, following termination of the condominium, all former unit owners entitled to distribution of proceeds, or the owners' heirs, successors, or assigns.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.102. POWERS OF UNIT OWNERS' ASSOCIATION. (a) Unless otherwise provided by the declaration, the association, acting through its board, may:

(1) adopt and amend bylaws;

(2) adopt and amend budgets for revenues, expenditures, and reserves, and collect assessments for common expenses from unit owners;

(3) hire and terminate managing agents and other employees, agents, and independent contractors;

(4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;

(5) make contracts and incur liabilities relating to the operation of the condominium;

(6) regulate the use, maintenance, repair, replacement, modification, and appearance of the condominium;

(7) adopt and amend rules regulating the use, occupancy, leasing or sale, maintenance, repair, modification, and appearance of units and common elements, to the extent the regulated actions affect common elements or other units;

(8) cause additional improvements to be made as a part of the common elements;

(9) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except common elements of the condominium;

(10) grant easements, leases, licenses, and concessions through or over the common elements;

(11) impose and receive payments, fees, or charges for the use, rental, or operation of the common elements and for services

provided to unit owners;

(12) impose interest and late charges for late payments of assessments, returned check charges, and, if notice and an opportunity to be heard are given in accordance with Subsection (d), reasonable fines for violations of the declaration, bylaws, and rules of the association;

(13) adopt and amend rules regulating the collection of delinquent assessments and the application of payments;

(14) adopt and amend rules regulating the termination of utility service to a unit, the owner of which is delinquent in the payment of an assessment that is used, in whole or in part, to pay the cost of that utility;

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

(16) enter a unit for bona fide emergency purposes when conditions present an imminent risk of harm or damage to the common elements, another unit, or the occupants;

(17) suspend the voting privileges of or the use of certain general common elements by an owner delinquent for more than 30 days in the payment of assessments;

(18) purchase insurance and fidelity bonds it considers appropriate or necessary;

(19) exercise any other powers conferred by the declaration or bylaws;

(20) exercise any other powers that may be exercised in this state by a corporation of the same type as the association; and

(21) exercise any other powers necessary and proper for the government and operation of the association.

(b) The declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(c) To be enforceable, a bylaw or rule of the association must not be arbitrary or capricious.

(d) Before an association may charge the unit owner for property damage for which the unit owner is liable or levy a fine for violation of the declaration, bylaws, or rules, the association shall give to the unit owner a written notice that:

(1) describes the violation or property damage and states

the amount of the proposed fine or damage charge;

(2) states that not later than the 30th day after the date of the notice, the unit owner may request a hearing before the board to contest the fine or damage charge; and

(3) allows the unit owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the unit owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 months.

(e) The association may give a copy of the notice required by Subsection (d) to an occupant of the unit. The association must give notice of a levied fine or damage charge to the unit owner not later than the 30th day after the date of levy.

(f) Except as provided by Subsection (g), the association by resolution of the board of directors may:

(1) borrow money; and

(2) assign as collateral for the loan authorized by the resolution:

(A) the association's right to future income, including the right to receive assessments; and

(B) the association's lien rights.

(g) If a dedicatory instrument requires a vote of members of the association to borrow money or assign the association's right to future income or the association's lien rights, the loan or assignment must be approved as provided by the dedicatory instrument. The board may determine whether a vote for that purpose may be cast electronically, by absentee ballot, in person or by proxy at a meeting called for that purpose, or by written consent. If a lower approval threshold is not provided by the dedicatory instrument, approval requires the consent of owners holding 67 percent of all voting interests.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 678 (H.B. 2075), Sec. 3, eff. September 1, 2013.

Sec. 82.103. BOARD MEMBERS AND OFFICERS. (a) Except as provided by the declaration, bylaws, or this chapter, the board shall act in all instances on behalf of the association if in the good-

faith judgment of the board the action is reasonable. Each officer or member of the board is liable as a fiduciary of the unit owners for the officer's or member's acts or omissions. All acts of the association must be by and through the board unless otherwise provided by the declaration or bylaws or by law.

(b) The board may not act on behalf of the association to amend the declaration except as permitted by this chapter, to terminate the condominium, to elect members of the board, or to determine the qualifications, powers and duties, or terms of office of board members. The board may fill a vacancy in its membership for the unexpired portion of a term.

(c) Subject to Subsection (d), 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 the officers and members of the board. Regardless of the period provided by the declaration, a period of declarant control terminates not later than the 120th day after conveyance of 75 percent of the units that may be created to unit owners other than a declarant. Transfer of special declarant rights does not terminate the period of declarant control. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board before termination of the period, but in that event the declarant may require, for the duration of the period that the declarant would otherwise control, that specified actions of the association or board be approved by the declarant before they become effective.

(d) Not later than the 120th day after conveyance of 50 percent of the units that may be created to unit owners other than a declarant, not less than one-third of the members of the board must be elected by unit owners other than the declarant.

(e) Not later than the termination of a period of declarant control, the unit owners shall elect a board of at least three members who need not be unit owners. The board shall elect the officers before the 31st day after the date declarant control terminates. The persons elected shall take office on election.

(f) An officer or director of the association is not liable to the association or any unit owner for monetary damages for an act or omission occurring in the person's capacity as an officer or director unless:

(1) the officer or director breached a fiduciary duty to

the association or a unit owner;

(2) the officer or director received an improper benefit; or

(3) the act or omission was in bad faith, involved intentional misconduct, or was one for which liability is expressly provided by statute.

(g) Subsection (f) does not diminish a limitation of liability provided an officer or director of the association by the declaration, bylaws, articles of incorporation of the association, or other laws.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.104. TRANSFER OF SPECIAL DECLARANT RIGHTS. (a) Special declarant rights created or reserved under this chapter may not be transferred except by an instrument evidencing the transfer recorded in each county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

(b) On transfer of any special declarant right, a transferor is not relieved of an obligation or liability arising before the transfer. A transferor is not liable for an act or omission or a breach of an obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided by a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of a unit owned by a declarant or of real property in a condominium subject to development rights, a person acquiring title to all the real property being foreclosed or sold may request to succeed to all special declarant rights or only to rights reserved by the declaration to maintain models, offices, and signs. The judgment or instrument conveying title may provide for transfer of only the special declarant rights requested.

(d) On foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings of all units and other real property in a condominium

owned by a declarant:

(1) the declarant ceases to have any special declarant rights; and

(2) the period of declarant control terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) a successor to a special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(2) a successor to a special declarant right, other than a successor described by Subdivision (3) or (4), who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(3) a successor to only a right reserved by the declaration to maintain models, offices, and signs, who is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a condominium information statement and any liability arising as a result; and

(4) a successor to all special declarant rights held by the successor's transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under Subsection (c) may declare the person's intention in a recorded instrument to hold those rights solely for transfer to another person; thereafter, until all special declarant rights are transferred to a person acquiring title to any unit owned by the successor, or until an instrument permitting exercise of all those rights is recorded, the successor may not exercise any of those rights other than any right held by the successor's transferor to control the board as provided by Section 82.103(c) for the duration of the period of declarant control, and an attempt to exercise those rights is void; so long as a successor declarant may not exercise special declarant rights under this subdivision, the successor is not subject to any liability or obligation as a declarant other than

liability for acts and omissions under Section 82.103(a).

(f) This section does not subject a successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.105. TERMINATION OF CONTRACTS AND LEASES OF DECLARANT. An association in a residential or recreational condominium may terminate, without penalty, contracts or leases between the association and a declarant or an affiliate of a declarant if:

(1) the contract is entered into by the association while controlled by the declarant;

(2) the association terminates the contract or lease before the first anniversary of the date a board elected by the unit owners takes office; and

(3) the association gives at least 90 days' notice of its intent to terminate the contract or lease to the other party.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.106. BYLAWS. (a) The administration and operation of the condominium are governed by the bylaws, which must provide for:

(1) the number of members on the board and the titles of the officers of the association;

(2) election by the board of a president, treasurer, secretary, and any other officers the bylaws specify;

(3) the qualifications, powers and duties, terms of office, and the manner of electing and removing a board member or officer and filling vacancies;

(4) the powers, if any, that the board or an officer may delegate to other persons or to a managing agent;

(5) the designation of officers who are authorized to prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(6) the method of amending the bylaws; and

(7) the manner of notice of meetings of the association.

(b) Subject to the declaration, the bylaws may provide for

other matters the association considers desirable, necessary, or appropriate.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.107. UPKEEP OF CONDOMINIUM. (a) Except as provided by the declaration or Subsections (b) and (c), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the owner's unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair of the damage.

(b) Except as provided by the declaration, each unit owner is responsible for the cost of maintenance, repair, and replacement of any utility installation or equipment serving only the owner's unit, without regard to whether the installation or equipment is located wholly or partially outside the designated boundaries of the unit. For purposes of this subsection, utility installations and equipment include electricity, water, sewage, gas, water heaters, heating and air conditioning equipment, and television antennas.

(c) Except as provided by the declaration, each unit owner is responsible for the cost of maintenance, repair, and replacement of windows and doors serving only the owner's unit.

(d) Unless otherwise provided by the declaration, the association may enter a unit, after giving notice to the owner and occupant of the unit, to:

(1) prevent or terminate waste of water purchased by the association as a common expense; or

(2) perform maintenance and repairs of the condominium that, if not performed, may result in increased damage by water to components of the condominium that the association maintains.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.108. MEETINGS. (a) Meetings of the association must

be held at least once each year. Unless the declaration provides otherwise, special meetings of the association may be called by the president, a majority of the board, or unit owners having at least 20 percent of the votes in the association.

(b) Meetings of the association and board must be open to unit owners, subject to the right of the board to adjourn a meeting of the board and reconvene in closed executive session to consider actions involving personnel, pending litigation, contract negotiations, enforcement actions, matters involving the invasion of privacy of individual unit owners, or matters that are to remain confidential by request of the affected parties and agreement of the board. The general nature of any business to be considered in executive session must first be announced at the open meeting.

(c) Unless the declaration, bylaws, or articles of incorporation of the association provide otherwise:

(1) a meeting of the board may be held by any method of communication, including electronic and telephonic, if:

(A) notice of the meeting has been given in accordance with Subsection (e);

(B) each director may hear and be heard by every other director; and

(C) the meeting does not involve voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular association member before the member has an opportunity to attend a board meeting to present the member's position, including any defense, on the issue; and

(2) the board may act by unanimous written consent of all the directors, without a meeting, if:

(A) the board action does not involve voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular association member before the member has an opportunity to attend a board meeting to present the member's position, including any defense, on the issue; and

(B) a record of the board action is filed with the minutes of board meetings.

(d) Notice of a meeting of the association must be given as provided by the bylaws, or, if the bylaws do not provide for notice, notice must be given to each unit owner in the same manner in which

notice is given to members of a nonprofit corporation under Section A, Article 2.11, Texas Non-Profit Corporation Act (Article 1396-2.11, Vernon's Texas Civil Statutes).

(e) Notice of a meeting of the board must be given as provided by the bylaws, or, if the bylaws do not provide for notice, notice must be given to each board member in the same manner in which notice is given to members of the board of a nonprofit corporation under Section B, Article 2.19, Texas Non-Profit Corporation Act (Article 1396-2.19, Vernon's Texas Civil Statutes).

(f) An association, on the written request of a unit owner, shall inform the unit owner of the time and place of the next regular or special meeting of the board. If the association representative to whom the request is made does not know the time and place of the meeting, the association promptly shall obtain the information and disclose it to the unit owner or inform the unit owner where the information may be obtained.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 956, Sec. 3, eff. Jan. 1, 1998.

Sec. 82.109. QUORUMS. (a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast at least 20 percent of the votes that may be cast for election of the board are present in person or by proxy at the beginning of the meeting. The bylaws may not reduce the standard for a quorum to less than 10 percent.

(b) Unless the bylaws specify a larger percentage, a quorum is present throughout a meeting of the board if persons entitled to cast at least 50 percent of the votes on the board are present at the beginning of the meeting.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.110. VOTING AND PROXIES. (a) If only one of the multiple owners of a unit is present at a meeting of the association, that person may cast the vote or votes allocated to that unit. If more than one of the multiple owners is present, the vote or votes allocated to that unit may be cast only in accordance with the owners' unanimous agreement unless the declaration provides

otherwise. Multiple owners are in unanimous agreement if one of the multiple owners casts the votes allocated to a unit and none of the other owners makes prompt protest to the person presiding over the meeting.

(b) Votes allocated to a unit may be cast under a written proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a proxy duly executed by the unit owner. A unit owner may not revoke a proxy given under this section except by giving actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or if it purports to be revocable without notice. A proxy terminates one year after its date unless it specifies a shorter or longer time.

(c) Cumulative voting is not allowed.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.111. INSURANCE. (a) Beginning not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) property insurance on the insurable common elements insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage, in a total amount of at least 80 percent of the replacement cost or actual cash value of the insured property as of the effective date and at each renewal date of the policy; and

(2) commercial general liability insurance, including medical payments insurance, in an amount determined by the board but not less than any amount specified by the declaration covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) If a building contains units having horizontal boundaries described in the declaration, the insurance maintained under Subsection (a)(1), to the extent reasonably available, must include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described by Subsections (a) and (b) is

not reasonably available, the association shall cause notice of that fact to be delivered or mailed to all unit owners and lienholders. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance the board considers appropriate to protect the condominium, the association, or the unit owners. Insurance policies maintained under Subsection (a) may provide for commercially reasonable deductibles as the board determines appropriate or necessary. This section does not affect the right of a holder of a mortgage on a unit to require a unit owner to acquire insurance in addition to that provided by the association.

(d) Insurance policies carried under Subsection (a) must provide that:

(1) each unit owner is an insured person under the policy with respect to liability arising out of the person's ownership of an undivided interest in the common elements or membership in the association;

(2) the insurer waives its right to subrogation under the policy against a unit owner;

(3) no action or omission of a unit owner, unless within the scope of the unit owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(4) if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy provides primary insurance.

(e) A claim for any loss covered by the policy under Subsection (a)(1) must be submitted by and adjusted with the association. The insurance proceeds for that loss shall be payable to an insurance trustee designated by the association for that purpose, if the designation of an insurance trustee is considered by the board to be necessary or desirable, or otherwise to the association, and not to any unit owner or lienholder.

(f) The insurance trustee or the association shall hold insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to Subsection (i), the proceeds paid under a policy must be disbursed first for the repair or restoration of the damaged common elements and units, and unit owners and lienholders are not entitled to receive payment of any portion of the

proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

(g) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(h) The insurer issuing the policy may not cancel or refuse to renew it less than 30 days after written notice of the proposed cancellation or nonrenewal has been mailed to the association.

(i) Except as provided by this section, any portion of the condominium for which insurance is required that is damaged or destroyed shall be promptly repaired or replaced by the association unless the condominium is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance, or at least 80 percent of the unit owners vote to not rebuild. Each owner of a unit may vote, regardless of whether the owner's unit or limited common element has been damaged or destroyed. A vote may be cast electronically or by written ballot if a meeting is not held for that purpose or in person or by proxy at a meeting called for that purpose. A vote to not rebuild does not increase an insurer's liability to loss payment obligation under a policy, and the vote does not cause a presumption of total loss. Except as provided by this section, the cost of repair or replacement in excess of the insurance proceeds is a common expense, and the board may levy an assessment to pay the expenses in accordance with each owner's common expense liability. If the entire condominium is not repaired or replaced, any insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, the insurance proceeds attributable to units and limited common elements that are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were assigned, or to their mortgagees, as their interests may appear, and the remainder of the proceeds shall be distributed to all the unit owners in accordance with each owner's undivided interest in the common elements unless otherwise provided in the declaration. If the unit owners vote to not rebuild any unit, that unit's allocated interests shall be automatically reallocated on the vote as if the unit had been condemned, and the association shall prepare, execute, and record an amendment to the declaration

reflecting the reallocation. Section 82.068 governs the distribution of insurance proceeds if the condominium is terminated.

(j) If the cost to repair damage to a unit or common element covered by the association's insurance is less than the amount of the applicable insurance deductible, the party who would be responsible for the repair in the absence of insurance shall pay the cost for the repair of the unit or common element.

(k) If the association's insurance provides coverage for the loss and the cost to repair the damage to a unit or common element is more than the amount of the applicable insurance deductible, the dedicatory instruments determine payment for the cost of the association's deductible and costs incurred before insurance proceeds are available. If the dedicatory instruments are silent, the board of directors of the association by resolution shall determine the payment of those costs, or if the board does not approve a resolution, the costs are a common expense. A resolution under this subsection is considered a dedicatory instrument and must be recorded in each location in which the declaration is recorded.

(l) If damage to a unit or the common elements is due wholly or partly to an act or omission of any unit owner or a guest or invitee of the unit owner, the association may assess the deductible expense and any other expense in excess of insurance proceeds against the owner and the owner's unit.

(m) The provisions of this section may be varied or waived if all the units in a condominium are restricted to nonresidential use.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 678 (H.B. 2075), Sec. 4, eff. September 1, 2013.

Sec. 82.112. ASSESSMENTS FOR COMMON EXPENSES. (a) Until an association makes a common expense assessment, a declarant shall pay all the expenses of the condominium as the expenses accrue. After an initial assessment by an association, assessments must be made at least annually and must be based on a budget adopted at least annually by the association. The association's reserves and the unit owners' working capital contributions may not be used to pay operational expenses until the declarant control terminates.

(b) From the date of the initial assessment until declarant control terminates, or three years from a declarant's first conveyance of a unit, whichever is earlier, the declarant shall periodically pay to the association:

(1) an amount equal to all operational expenses of the association, less the operational expense portion of the assessments paid by unit owners other than declarant; or

(2) the common expense liability allocated to each unit owned by the declarant.

(c) Common expenses shall be assessed against all units conveyed, rented, or used as models or offices by the declarant and against all units owned by a declarant after termination of a declarant's control or three years from a declarant's first conveyance of a unit, whichever is earlier, in accordance with the common expense liability allocated to each unit. A past due assessment or installment of an assessment may bear interest at a lawful rate established by the association.

(d) Except as provided by the declaration and Section 82.107, a common expense for the maintenance, repair, or replacement of a limited common element shall be assessed against all the units as if it were for a general common element.

(e) If common expense liabilities are reallocated, common expense assessments and an assessment installment not yet due shall be recomputed in accordance with the reallocated common expense liabilities.

(f) A declaration may allow the accumulation of reserve funds for an unspecified period to provide for any anticipated expense of the condominium.

(g) This section does not prevent a declarant from collecting from a purchaser at closing the prorated amount of any expenses, such as insurance or taxes, that the declarant has prepaid to the association or directly to others on behalf of the unit that is being purchased.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.113. ASSOCIATION'S LIEN FOR ASSESSMENTS. (a) An assessment levied by the association against a unit or unit owner is a personal obligation of the unit owner and is secured by a

continuing lien on the unit and on rents and insurance proceeds received by the unit owner and relating to the owner's unit. In this section, "assessments" means regular and special assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due to the association by the unit owner or levied against the unit by the association, all of which are enforceable as assessments under this section unless the declaration provides otherwise.

(b) The association's lien for assessments has priority over any other lien except:

(1) a lien for real property taxes and other governmental assessments or charges against the unit unless otherwise provided by Section 32.05, Tax Code;

(2) a lien or encumbrance recorded before the declaration is recorded;

(3) a first vendor's lien or first deed of trust lien recorded before the date on which the assessment sought to be enforced becomes delinquent under the declaration, bylaws, or rules; and

(4) unless the declaration provides otherwise, a lien for construction of improvements to the unit or an assignment of the right to insurance proceeds on the unit if the lien or assignment is recorded or duly perfected before the date on which the assessment sought to be enforced becomes delinquent under the declaration, bylaws, or rules.

(c) The association's lien for assessments is created by recordation of the declaration, which constitutes record notice and perfection of the lien. Unless the declaration provides otherwise, no other recordation of a lien or notice of lien is required.

(d) By acquiring a unit, a unit owner grants to the association a power of sale in connection with the association's lien. By written resolution, a board may appoint, from time to time, an officer, agent, trustee, or attorney of the association to exercise the power of sale on behalf of the association. Except as provided by the declaration, an association shall exercise its power of sale pursuant to Section 51.002.

(e) The association has the right to foreclose its lien judicially or by nonjudicial foreclosure pursuant to the power of sale created by this chapter or the declaration, except that the association may not foreclose a lien for assessments consisting

solely of fines. Costs of foreclosure may be added to the amount owed by the unit owner to the association. A unit owner may not petition a court to set aside a sale solely because the purchase price at the foreclosure sale was insufficient to fully satisfy the owner's debt.

(f) The association may bid for and purchase the unit at foreclosure sale as a common expense. The association may own, lease, encumber, exchange, sell, or convey a unit.

(g) The owner of a unit purchased at a foreclosure sale of the association's lien for assessments may redeem the unit not later than the 90th day after the date of the foreclosure sale. If the association is the purchaser, the owner must pay to the association to redeem the unit all amounts due the association at the time of the foreclosure sale, interest from the date of foreclosure sale to the date of redemption at the rate provided by the declaration for delinquent assessments, reasonable attorney's fees and costs incurred by the association in foreclosing the lien, any assessment levied against the unit by the association after the foreclosure sale, and any reasonable cost incurred by the association as owner of the unit, including costs of maintenance and leasing. If a party other than the association is the purchaser, the redeeming owner must pay to the purchaser of the unit at the foreclosure sale an amount equal to the amount bid at the sale, interest on the bid amount computed from the date of the foreclosure sale to the date of redemption at the rate of six percent, any assessment paid by the purchaser after the date of foreclosure, and any reasonable costs incurred by the purchaser as the owner of the unit, including costs of maintenance and leasing. The redeeming owner must also pay to the association all assessments that are due as of the date of the redemption and reasonable attorney's fees and costs incurred by the association in foreclosing the lien. On redemption, the purchaser of the unit at the foreclosure sale shall execute a deed with no warranty to the redeeming unit owner. The exercise of the right of redemption is not effective against a subsequent purchaser or lender for value without notice of the redemption after the redemption period expires unless the redeeming unit owner records the deed from the purchaser of the unit at the foreclosure sale or an affidavit stating that the owner has exercised the right of redemption. A unit that has been redeemed remains subject to all liens and encumbrances on the unit before foreclosure. All rents and other income collected from the unit by

the purchaser of the unit at the foreclosure sale from the date of foreclosure sale to the date of redemption belong to the purchaser of the unit at the foreclosure sale, but the rents and income shall be credited against the redemption amount. The purchaser of a unit at a sale foreclosing an association's assessment lien may not transfer ownership of the unit during the redemption period to a person other than a redeeming owner.

(h) If a unit owner defaults in the owner's monetary obligations to the association, the association may notify other lien holders of the default and the association's intent to foreclose its lien. The association shall notify any holder of a recorded lien or duly perfected mechanic's lien against a unit who has given the association a written request for notification of the unit owner's monetary default or the association's intent to foreclose its lien.

(i) This section does not prohibit the association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien.

(j) At any time before a nonjudicial foreclosure sale, a unit owner may avoid foreclosure by paying all amounts due the association.

(k) If, on January 1, 1994, a unit is the homestead of the unit owner and is subject to a declaration that does not contain a valid assessment lien against the unit, the lien provided by this section does not attach against the unit until the unit ceases to be the homestead of the person owning it on January 1, 1994.

(l) Foreclosure of a tax lien attaching against a unit under Chapter 32, Tax Code, does not discharge the association's lien for assessments under this section or under a declaration for amounts becoming due to the association after the date of foreclosure of the tax lien.

(m) If a unit owner is delinquent in payment of assessments to an association, at the request of the association a holder of a recorded lien against the unit may provide the association with information about the unit owner's debt secured by the holder's lien against the unit and other relevant information. At the request of a lien holder, the association may furnish the lien holder with information about the condominium and the unit owner's obligations to the association.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 678 (H.B. 2075), Sec. 5, eff. September 1, 2013.

Sec. 82.114. ASSOCIATION RECORDS. (a) The association shall keep:

(1) detailed financial records that comply with generally accepted accounting principles and that are sufficiently detailed to enable the association to prepare a resale certificate under Section 82.157;

(2) the plans and specifications used to construct the condominium except for buildings originally constructed before January 1, 1994;

(3) the condominium information statement prepared under Section 82.152 and any amendments;

(4) the name and mailing address of each unit owner;

(5) voting records, proxies, and correspondence relating to amendments to the declaration; and

(6) minutes of meetings of the association and board.

(b) All financial and other records of the association shall be reasonably available at its registered office or its principal office in this state for examination by a unit owner and the owner's agents. An attorney's files and records relating to the association are not records of the association and are not subject to inspection by unit owners or production in a legal proceeding.

(c) The association shall, as a common expense, annually obtain an independent audit of the records. Copies of the audit must be made available to the unit owners. An audit required by this subsection shall be performed by a certified public accountant if required by the bylaws or a vote of the board of directors or a majority vote of the members of the association voting at a meeting of the association.

(d) A declarant shall furnish copies to the association of the information required by Subsection (a) on the date the first unit is sold.

(e) Not later than the 30th day after the date of acquiring an interest in a unit, the unit owner shall provide the association with:

(1) the unit owner's mailing address, telephone number, and

driver's license number, if any;

(2) the name and address of the holder of any lien against the unit, and any loan number;

(3) the name and telephone number of any person occupying the unit other than the unit owner; and

(4) the name, address, and telephone number of any person managing the unit as agent of the unit owner.

(f) A unit owner shall notify the association not later than the 30th day after the date the owner has notice of a change in any information required by Subsection (e), and shall provide the information on request by the association from time to time.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.115. ASSOCIATION AS TRUSTEE. A third person dealing with an association in the association's capacity as a trustee may assume without inquiry the existence of trust powers and their proper exercise by the association. A third person who lacks actual knowledge that an association is exceeding or improperly exercising its powers is fully protected in dealing with the association as if the association possessed and properly exercised the powers it purports to exercise. A third person is not bound to ensure the proper application of trust assets paid or delivered to an association in its capacity as trustee.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.116. MANAGEMENT CERTIFICATE. (a) An association shall record in each county in which any portion of the condominium is located a certificate, signed and acknowledged by an officer of the association, stating:

(1) the name of the condominium;

(2) the name of the association;

(3) the location of the condominium;

(4) the recording data for the declaration;

(5) the mailing address of the association, or the name and mailing address of the person or entity managing the association; and

(6) other information the association considers

appropriate.

(a-1) The county clerk of each county in which a management certificate is filed as required by this section shall record the management certificate in the real property records of the county and index the document as a "Condominium Association Management Certificate."

(b) The association shall record a management certificate not later than the 30th day after the date the association has notice of a change in any information in a recorded certificate required by Subdivisions (a)(1)-(5).

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 678 (H.B. 2075), Sec. 6, eff. September 1, 2013.

Sec. 82.117. OBLIGATIONS OF UNIT OWNERS. Without limiting the obligations of the unit owners and except as provided by the declaration, bylaws, rules of the association, or this chapter, the unit owner:

(1) shall pay assessments, interest, and other charges properly levied by the association against the owner or the owner's unit, and shall pay regular periodic assessments without demand by the association;

(2) shall comply with the declaration, bylaws, and rules of the association, including any amendments;

(3) shall pay for damage to the condominium caused by the negligence or wilful misconduct of the owner, an occupant of the owner's unit, or the owner or occupant's family, guests, employees, contractors, agents, or invitees; and

(4) is liable to the association for violations of the declaration, bylaws, or rules of the association, including any amendments, by the owner, an occupant of the owner's unit, or the owner or occupant's family, guests, employees, agents, or invitees, and for costs incurred by the association to obtain compliance,

including attorney's fees whether or not suit is filed.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.118. SERVICE OF PROCESS ON UNIT OWNERS IN CERTAIN MUNICIPALITIES; CHANGE OF ADDRESS REQUIRED. (a) A unit owner of a condominium located wholly or partly in a municipality with a population of more than 1.9 million may be served with process by the municipality or the municipality's agent for a judicial or administrative proceeding initiated by the municipality and directly related to the unit owner's property interest in the condominium by serving the unit owner at the unit owner's last known address, according to the records of the appraisal district in which the condominium is located, by any means permitted by Rule 21a, Texas Rules of Civil Procedure.

(b) Notwithstanding Subsection (a), a unit owner may not offer proof in the judicial or administrative proceeding, or in a subsequent related proceeding, that otherwise proper service by mail of the notice was not received not later than three days after the date the notice was deposited in a post office or official depository under the care and custody of the United States Postal Service.

(c) Not later than the 90th day after the date a unit owner changes the unit owner's mailing address, the owner must provide written notice of the owner's new address to the appraisal district in which the condominium is located.

Added by Acts 2009, 81st Leg., R.S., Ch. 1323 (H.B. 3128), Sec. 2, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 693 (H.B. 364), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 693 (H.B. 364), Sec. 3, eff. September 1, 2011.

Sec. 82.119. PROCEDURES FOR FILING SUIT OR INITIATING ARBITRATION PROCEEDINGS FOR DEFECT OR DESIGN CLAIMS FOR CERTAIN ASSOCIATIONS. (a) This section does not apply to an association with less than eight units.

(b) In addition to any preconditions to filing suit or

initiating an arbitration proceeding included in the declaration, an association, before filing suit or initiating an arbitration proceeding to resolve a claim pertaining to the construction or design of a unit or the common elements, must:

(1) obtain an inspection and a written independent third-party report from a licensed professional engineer that:

(A) identifies the specific units or common elements subject to the claim;

(B) describes the present physical condition of the units or common elements subject to the claim; and

(C) describes any modifications, maintenance, or repairs to the units or common elements performed by the unit owners or the association; and

(2) obtain approval from unit owners holding more than 50 percent of the total votes allocated under the declaration, voting in person or by proxy as provided by Section 82.110, at a regular, annual, or special meeting called in accordance with the declaration or bylaws, as applicable.

(c) The association must provide written notice of the inspection to be conducted by the engineer to each party subject to a claim not later than the 10th day before the date the inspection occurs. The notice must:

(1) identify the party engaged to prepare the report required by Subsection (b)(1);

(2) identify the specific units or common elements to be inspected; and

(3) include the date and time the inspection will occur.

(d) Each party subject to a claim may attend the inspection conducted by the engineer, either personally or through an agent.

(e) Before providing the notice of the meeting under Subsection (f), an association must:

(1) on completion of the independent third-party report, provide the report to each unit owner and each party subject to a claim; and

(2) allow each party subject to a claim at least 90 days after the date of completion of the report to inspect and correct any condition identified in the report.

(f) Not later than the 30th day before the date the meeting described by Subsection (b)(2) is held, the association must provide each unit owner with written notice of the date, time, and location

of the meeting. The notice must also include:

(1) a description of the nature of the claim, the relief sought, the anticipated duration of prosecuting the claim, and the likelihood of success;

(2) a copy of the report required by Subsection (b)(1);

(3) a copy of the contract or proposed contract between the association and the attorney selected by the board to assert or provide assistance with the claim;

(4) a description of the attorney's fees, consultant fees, expert witness fees, and court costs, whether incurred by the association directly or for which the association may be liable as a result of prosecuting the claim;

(5) a summary of the steps previously taken by the association to resolve the claim;

(6) a statement that initiating a lawsuit or arbitration proceeding to resolve a claim may affect the market value, marketability, or refinancing of a unit while the claim is prosecuted; and

(7) a description of the manner in which the association proposes to fund the cost of prosecuting the claim.

(g) The notice required by Subsection (f) must be prepared and signed by a person who is not:

(1) the attorney who represents or will represent the association in the claim;

(2) a member of the law firm of the attorney who represents or will represent the association in the claim; or

(3) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the association in the claim.

(h) The period of limitations for filing a suit or initiating an arbitration proceeding for a claim described by Subsection (b) is tolled until the first anniversary of the date the procedures are initiated by the association under that subsection if the procedures are initiated during the final year of the applicable period of limitation.

Added by Acts 2015, 84th Leg., R.S., Ch. 730 (H.B. 1455), Sec. 1, eff. September 1, 2015.

Sec. 82.120. BINDING ARBITRATION FOR CERTAIN CLAIMS. (a) A declaration may provide that a claim pertaining to the construction or design of a unit or the common elements must be resolved by binding arbitration and may provide for a process by which the claim is resolved.

(b) An amendment to the declaration that modifies or removes the arbitration requirement or the process associated with resolution of a claim may not apply retroactively to a claim regarding the construction or design of units or common elements based on an alleged act or omission that occurred before the date of the amendment.

Added by Acts 2015, 84th Leg., R.S., Ch. 730 (H.B. 1455), Sec. 1, eff. September 1, 2015.

SUBCHAPTER D. PROTECTION OF PURCHASERS

Sec. 82.151. APPLICABILITY. (a) This subchapter applies to each unit subject to this chapter, except as provided by Subsection (b) or as modified or waived by the agreement of a purchaser of a unit in a condominium in which all units are restricted to nonresidential use.

(b) A condominium information statement or resale certificate need not be prepared or delivered in the case of:

(1) a gratuitous disposition of a unit;

(2) a disposition pursuant to court order;

(3) a disposition by a government or governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure; or

(5) a disposition that may be canceled at any time, for any reason, and without penalty.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.152. LIABILITY FOR CONDOMINIUM INFORMATION STATEMENT. (a) Except as provided by Subsection (b), a declarant shall prepare a condominium information statement before offering to the public any interest in a unit.

(b) A declarant may transfer responsibility for preparation of all or a part of the condominium information statement to a successor

declarant or to a person in the business of selling real property who intends to offer units in the condominium for the person's own account. On such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to prepare a condominium information statement.

(c) A declarant or other person in the business of selling real property who offers a unit for the person's own account to a purchaser shall provide a purchaser of a unit with a copy of the condominium information statement, as amended, before conveyance of the unit or the date of a contract of sale, whichever is earlier.

(d) The person preparing all or part of the condominium information statement is liable for any false or misleading statement or for any omission of material fact in the portion of the condominium information statement that the person prepared. If a declarant did not prepare any part of a condominium information statement that the declarant delivers, the declarant is not liable for any false or misleading statement or any omission of material fact unless the declarant actually knew or should have known of the statement or omission.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.153. CONDOMINIUM INFORMATION STATEMENTS IN GENERAL. (a) A condominium information statement must contain or accurately disclose:

(1) the name and principal address of the declarant and of the condominium;

(2) a general description of the condominium that includes the types of units and the maximum number of units;

(3) the minimum and maximum number of additional units, if any, that may be included in the condominium;

(4) a brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;

(5) copies of the declaration, articles of incorporation of the association, the bylaws, any rules of the association, and amendments to any of them, and copies of leases and contracts, other than loan documents, that are required by the declarant to be signed by purchasers at closing;

(6) a projected or pro forma budget for the association that complies with Subsection (b) for the first fiscal year of the association following the date of the first conveyance to a purchaser, identification of the person who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors;

(7) a general description of each lien, lease, or encumbrance on or affecting the title to the condominium after conveyance by the declarant;

(8) a copy of each written warranty provided by the declarant;

(9) a description of any unsatisfied judgments against the association and any pending suits to which the association is a party or which are material to the land title and construction of the condominium of which a declarant has actual knowledge;

(10) a general description of the insurance coverage provided for the benefit of unit owners;

(11) current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium; and

(12) for a condominium located wholly or partly in a municipality with a population of more than 1.9 million a statement that a unit owner:

(A) as an alternative to personal service, may be served with process by the municipality or the municipality's agent for a judicial or administrative proceeding initiated by the municipality and directly related to the unit owner's property interest in the condominium by serving the unit owner at the unit owner's last known address, according to the records of the appraisal district in which the condominium is located, by any means permitted by Rule 21a, Texas Rules of Civil Procedure;

(B) shall notify the appraisal district in writing of a change in the unit owner's mailing address not later than the 90th day after the date the unit owner changes the address; and

(C) may not offer proof in the judicial or administrative proceeding, or in a subsequent related proceeding, that otherwise proper service by mail of the notice was not received not later than three days after the date the notice was deposited in a post office or official depository under the care and custody of the United States Postal Service.

(b) A budget under Subsection (a)(6) must be prepared in accordance with generally accepted accounting principles and a consideration of the physical condition of the condominium and be based on assumptions that, to the best of the declarant's knowledge and belief, are reasonable. The budget must include:

(1) a statement of the amount included, or a statement that no amount is included, in the budget as a reserve; and

(2) the projected monthly common expense assessment for each type of unit.

(c) A declarant shall promptly amend the condominium information statement to reflect a material and substantial change in its contents. If the change may adversely affect a prospective purchaser who has received a condominium information statement, the declarant shall furnish a copy of the amendment to the prospective purchaser before closing.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1323 (H.B. 3128), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 693 (H.B. 364), Sec. 4, eff. September 1, 2011.

Sec. 82.154. CONDOMINIUMS WITH CONVERSION BUILDINGS. If a building contains units that may be occupied for residential use, the condominium information statement of a condominium containing any conversion building must additionally contain:

(1) a dated statement by the declarant, based on a report by an independent architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(2) a dated statement by the declarant of the expected useful life of each item reported in Subdivision (1) or a statement that no representations are made in that regard; and

(3) a list of violations of building code or other governmental regulations of which the declarant has received notice and that have not been cured, together with the estimated cost of curing those violations.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.155. CONDOMINIUM SECURITIES. A declarant satisfies all requirements relating to preparation of a condominium information statement if an interest in the condominium is currently registered with the Securities and Exchange Commission of the United States and if the declarant delivers to the purchaser a copy of the public offering statement filed with the commission.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.156. PURCHASER'S RIGHT TO CANCEL. (a) If a purchaser of a unit from a unit owner other than a declarant has not received from the seller the declaration, bylaws, and association rules required by Section 82.157 before the purchaser executes a contract of sale or if the contract does not contain an underlined or bold-print provision acknowledging the purchaser's receipt of those documents and recommending that the purchaser read those documents before executing the contract, the purchaser may cancel the contract before the sixth day after the date the purchaser receives those documents. If a purchaser has not received a resale certificate before executing a contract of sale, the purchaser may cancel the contract before the sixth day after the date the purchaser receives the resale certificate or executes a waiver under Section 82.157, whichever occurs first.

(b) If a purchaser from a declarant has not received the condominium information statement before the purchaser executes a contract of sale or if a contract does not contain an underlined or bold-print provision acknowledging the purchaser's receipt of the condominium information statement and recommending that the purchaser read the condominium information statement before executing the contract, the purchaser may cancel the contract before the sixth day after the date the purchaser receives the condominium information statement.

(c) If a purchaser elects to cancel a contract under Subsection (a) or (b), the cancellation must be by hand-delivering written notice of cancellation to the declarant or selling unit owner or by mailing notice of cancellation by certified United States mail, return receipt requested, to the offeror or the offeror's agent for

service of process within the five-day cancellation period. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded.

(d) A selling unit owner may not require a purchaser to close until the purchaser is given the declaration, bylaws, and any association rules. A declarant may not require a purchaser to close until a condominium information statement has been furnished to the purchaser.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.157. RESALE OF UNIT. (a) Except as provided by Subsection (c), if a unit owner other than a declarant intends to sell a unit, before executing a contract or conveying the unit, the unit owner must furnish to the purchaser a current copy of the declaration, bylaws, any association rules, and a resale certificate that must have been prepared not earlier than three months before the date it is delivered to the purchaser. The resale certificate must be issued by the association and must contain the current operating budget of the association and statements of:

(1) any right of first refusal or other restraint contained in the declaration that restricts the right to transfer a unit;

(2) the amount of the periodic common expense assessment and the unpaid common expenses or special assessments currently due and payable from the selling unit owner;

(3) other unpaid fees or amounts payable to the association by the selling unit owner;

(4) capital expenditures, if any, approved by the association for the next 12 months;

(5) the amount of reserves, if any, for capital expenditures and of portions of those reserves designated by the association for a specified project;

(6) any unsatisfied judgments against the association;

(7) the nature of any pending suits against the association;

(8) insurance coverage provided for the benefit of unit owners;

(9) whether the board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned

to that unit violate the declaration, bylaws, or association rules;

(10) whether the board has received notice from a governmental authority concerning violations of health or building codes with respect to the unit, the limited common elements assigned to that unit, or any other portion of the condominium;

(11) the remaining term of any leasehold estate that affects the condominium and the provisions governing an extension or renewal of the lease;

(12) the name, mailing address, and telephone number of the association's managing agent, if any;

(13) the association's current operating budget and balance sheet; and

(14) all fees payable to the association or an agent of the association that are associated with the transfer of ownership, including a description of each fee, to whom the fee is paid, and the amount of the fee.

(b) Not later than the 10th day after the date of receiving a written request by a unit owner, an association shall furnish to the selling unit owner or the owner's agent a resale certificate signed and dated by an officer or authorized agent of the association containing the information required by Subsection (a). A selling unit owner or the owner's agent is not liable to the purchaser for erroneous information provided by the association in the certificate. If an association does not furnish a resale certificate or any information required in the certificate within the 10-day period, the unit owner may provide the purchaser with a sworn affidavit signed by the unit owner in lieu of the certificate. An affidavit must state that the unit owner requested information from the association concerning its financial condition, as required by this section, and that the association did not timely provide a resale certificate or the information required in the certificate. If a unit owner has furnished an affidavit to a purchaser, the unit owner and the purchaser may agree in writing to waive the requirement to furnish a resale certificate. The association is not liable to a selling unit owner for delay or failure to furnish a resale certificate, and an officer or agent of the association is not liable for a delay or failure to furnish a certificate unless the officer or agent wilfully refuses to furnish the certificate or is grossly negligent in not furnishing the resale certificate. Failure to provide a resale certificate does not void a deed to a purchaser.

(c) If a properly executed resale certificate incorrectly states the total of delinquent sums owed by the selling unit owner to the association, the purchaser is not liable for payment of additional delinquencies that are unpaid on the date the certificate is prepared and that exceed the total sum stated in the certificate. A unit owner or the owner's agent is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner.

(d) A resale certificate does not affect:

(1) an association's right to recover debts or claims that arise or become due after the date the certificate is prepared; or

(2) an association's lien on a unit securing payment of future assessments.

(e) A purchaser, lender, or title insurer who relies on a resale certificate is not liable for any debt or claim that is not disclosed in the certificate. An association may not deny the validity of any statement in the certificate.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 1, eff. September 1, 2015.

Sec. 82.158. ESCROW OF DEPOSITS. A deposit made in connection with the purchase or reservation of a unit from a declarant shall be placed in escrow and held in this state in an account designated for that purpose by a real estate broker, an attorney, a title insurance company licensed in this state, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until delivered to the declarant at closing, delivered to the declarant because of the purchaser's default under a contract to purchase the unit, or refunded to the purchaser. Escrow deposits may be placed in interest-bearing accounts, and the interest is payable as may be agreed in writing between the declarant and the purchaser.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.159. RELEASE OF LIENS. Before conveying real property

to an association, a declarant shall have that real property released from all liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of the owners' units, and all other liens on that real property unless the condominium information statement describes certain real property that may be conveyed subject to liens in specified amounts.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.160. CONVERSION BUILDINGS. (a) A declarant of a condominium containing a conversion building shall give each residential tenant or subtenant in possession of a portion of a conversion building notice of the conversion at least 60 days before the date the declarant will require the tenant or subtenant in possession to vacate. The notice must state generally the rights of tenants and subtenants under this section and shall be hand-delivered to the unit or mailed by certified United States mail, return receipt requested, to the tenant or subtenant at the address of the unit or any other mailing address provided by the tenant or subtenant. The declarant may not require a tenant or subtenant to vacate on less than 60 days' notice, except for nonpayment of rent, waste, or conduct that violates the rental agreement or is illegal, and the terms of a tenancy may not be altered during that period. Failure of a declarant to give notice as required by this section is a defense to an action for possession.

(b) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with Section 24.005, the notice also constitutes legal notice to vacate on that date for purposes of Section 24.005. A declarant may not terminate a lease in violation of its terms.

(c) Unless expressly authorized by a rental agreement, a declarant may not make substantial alterations to the interior of a leased premises for purposes of a condominium conversion.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.161. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION AND ATTORNEY'S FEES. (a) If a declarant or any other person subject to this chapter violates this chapter, the declaration, or the bylaws,

any person or class of persons adversely affected by the violation has a claim for appropriate relief.

(b) The prevailing party in an action to enforce the declaration, bylaws, or rules is entitled to reasonable attorney's fees and costs of litigation from the nonprevailing party.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.162. LABELING OF PROMOTIONAL MATERIAL. If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a plat or plan or is to be located within a portion of a condominium with respect to which the declarant has reserved a development right, no promotional material that describes or depicts the improvement may be displayed or delivered to prospective purchasers unless the description or depiction of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT."

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.163. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE. The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans. The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created under this chapter.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.164. LOANS AS ELIGIBLE INVESTMENTS. (a) A loan on a condominium unit and the undivided interest in the common elements is an eligible investment for a bank, savings and loan association, trust company, life insurance company, or other lending institution that is authorized to make real property loans, and for an administrator, guardian, executor, trustee, individual, partnership, corporation, or other fiduciary that is authorized to make real property loans. In determining eligibility, the existence of a prior lien for taxes, assessments, or other similar charges not yet

delinquent may not be considered in determining whether a mortgage or deed of trust on the security is a first lien. This section does not change any provision of law that would otherwise be applicable that limits mortgage investments based on a special fraction or percentage of the value of the mortgaged property.

(b) An association's lien for assessments does not make a condominium unit ineligible for loans for which the unit would otherwise qualify.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

TITLE 8. LANDLORD AND TENANT

CHAPTER 91. PROVISIONS GENERALLY APPLICABLE TO LANDLORDS AND TENANTS

Sec. 91.001. NOTICE FOR TERMINATING CERTAIN TENANCIES. (a) A monthly tenancy or a tenancy from month to month may be terminated by the tenant or the landlord giving notice of termination to the other.

(b) If a notice of termination is given under Subsection (a) and if the rent-paying period is at least one month, the tenancy terminates on whichever of the following days is the later:

(1) the day given in the notice for termination; or

(2) one month after the day on which the notice is given.

(c) If a notice of termination is given under Subsection (a) and if the rent-paying period is less than a month, the tenancy terminates on whichever of the following days is the later:

(1) the day given in the notice for termination; or

(2) the day following the expiration of the period beginning on the day on which notice is given and extending for a number of days equal to the number of days in the rent-paying period.

(d) If a tenancy terminates on a day that does not correspond to the beginning or end of a rent-paying period, the tenant is liable for rent only up to the date of termination.

(e) Subsections (a), (b), (c), and (d) do not apply if:

(1) a landlord and a tenant have agreed in an instrument signed by both parties on a different period of notice to terminate the tenancy or that no notice is required; or

(2) there is a breach of contract recognized by law.

Acts 1983, 68th Leg., p. 3625, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 200, Sec. 3, eff. Aug. 26, 1985.

Sec. 91.003. TERMINATION OF LEASE BECAUSE OF PUBLIC INDECENCY CONVICTION. (a) A landlord may terminate a lease executed or renewed after June 15, 1981, if:

(1) the tenant or occupant of the leasehold uses the property for an activity for which the tenant or occupant or for which an agent or employee of the tenant or occupant is convicted under Chapter 43, Penal Code, as amended; and

(2) the convicted person has exhausted or abandoned all avenues of direct appeal from the conviction.

(b) The fee owner or an intermediate lessor terminates the lease by giving written notice of termination to the tenant or occupant within six months after the right to terminate arises under this section. The right to possess the property reverts to the landlord on the 10th day after the date the notice is given.

(c) This section applies regardless of a term of the lease to the contrary.

Acts 1983, 68th Leg., p. 3627, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 91.004. LANDLORD'S BREACH OF LEASE; LIEN. (a) If the landlord of a tenant who is not in default under a lease fails to comply in any respect with the lease agreement, the landlord is liable to the tenant for damages resulting from the failure.

(b) To secure payment of the damages, the tenant has a lien on the landlord's nonexempt property in the tenant's possession and on the rent due to the landlord under the lease.

Acts 1983, 68th Leg., p. 3627, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 91.005. SUBLETTING PROHIBITED. During the term of a lease, the tenant may not rent the leasehold to any other person without the prior consent of the landlord.

Acts 1983, 68th Leg., p. 3627, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 91.006. LANDLORD'S DUTY TO MITIGATE DAMAGES. (a) A landlord has a duty to mitigate damages if a tenant abandons the leased premises in violation of the lease.

(b) A provision of a lease that purports to waive a right or to exempt a landlord from a liability or duty under this section is void.

Added by Acts 1997, 75th Leg., ch. 1205, Sec. 8, eff. Sept. 1, 1997.

CHAPTER 92. RESIDENTIAL TENANCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 92.001. DEFINITIONS. Except as otherwise provided by this chapter, in this chapter:

(1) "Dwelling" means one or more rooms rented for use as a permanent residence under a single lease to one or more tenants.

(2) "Landlord" means the owner, lessor, or sublessor of a dwelling, but does not include a manager or agent of the landlord unless the manager or agent purports to be the owner, lessor, or sublessor in an oral or written lease.

(3) "Lease" means any written or oral agreement between a landlord and tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a dwelling.

(4) "Normal wear and tear" means deterioration that results from the intended use of a dwelling, including, for the purposes of Subchapters B and D, breakage or malfunction due to age or deteriorated condition, but the term does not include deterioration that results from negligence, carelessness, accident, or abuse of the premises, equipment, or chattels by the tenant, by a member of the tenant's household, or by a guest or invitee of the tenant.

(5) "Premises" means a tenant's rental unit, any area or facility the lease authorizes the tenant to use, and the appurtenances, grounds, and facilities held out for the use of tenants generally.

(6) "Tenant" means a person who is authorized by a lease to occupy a dwelling to the exclusion of others and, for the purposes of Subchapters D, E, and F, who is obligated under the lease to pay rent.

Acts 1983, 68th Leg., p. 3630, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 12, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 357, Sec. 1, eff. Sept. 1, 1993.

Sec. 92.002. APPLICATION. This chapter applies only to the relationship between landlords and tenants of residential rental property.

Acts 1983, 68th Leg., p. 3631, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.003. LANDLORD'S AGENT FOR SERVICE OF PROCESS. (a) In a lawsuit by a tenant under either a written or oral lease for a dwelling or in a suit to enforce a legal obligation of the owner as landlord of the dwelling, the owner's agent for service of process is determined according to this section.

(b) If written notice of the name and business street address of the company that manages the dwelling has been given to the tenant, the management company is the owner's sole agent for service of process.

(c) If Subsection (b) does not apply, the owner's management company, on-premise manager, or rent collector serving the dwelling is the owner's authorized agent for service of process unless the owner's name and business street address have been furnished in writing to the tenant.

Acts 1983, 68th Leg., p. 3631, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.004. HARASSMENT. A party who files or prosecutes a suit under Subchapter B, D, E, or F in bad faith or for purposes of harassment is liable to the defendant for one month's rent plus $100 and for attorney's fees.

Acts 1983, 68th Leg., p. 3631, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.005. ATTORNEY'S FEES. (a) A party who prevails in a suit brought under this subchapter or Subchapter B, E, or F may recover the party's costs of court and reasonable attorney's fees in relation to work reasonably expended.

(b) This section does not authorize a recovery of attorney's fees in an action brought under Subchapter E or F for damages that relate to or arise from property damage, personal injury, or a criminal act.

Acts 1983, 68th Leg., p. 3631, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 357, Sec. 2, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1439, Sec. 2, eff. Sept. 1, 1999.

Sec. 92.006. WAIVER OR EXPANSION OF DUTIES AND REMEDIES. (a) A landlord's duty or a tenant's remedy concerning security deposits, security devices, the landlord's disclosure of ownership and management, or utility cutoffs, as provided by Subchapter C, D, E, or G, respectively, may not be waived. A landlord's duty to install a smoke alarm under Subchapter F may not be waived, nor may a tenant waive a remedy for the landlord's noninstallation or waive the tenant's limited right of installation and removal. The landlord's duty of inspection and repair of smoke alarms under Subchapter F may be waived only by written agreement.

(b) A landlord's duties and the tenant's remedies concerning security devices, the landlord's disclosure of ownership and management, or smoke alarms, as provided by Subchapter D, E, or F, respectively, may be enlarged only by specific written agreement.

(c) A landlord's duties and the tenant's remedies under Subchapter B, which covers conditions materially affecting the physical health or safety of the ordinary tenant, may not be waived except as provided in Subsections (d), (e), and (f) of this section.

(d) A landlord and a tenant may agree for the tenant to repair or remedy, at the landlord's expense, any condition covered by Subchapter B.

(e) A landlord and a tenant may agree for the tenant to repair or remedy, at the tenant's expense, any condition covered by Subchapter B if all of the following conditions are met:

(1) at the beginning of the lease term the landlord owns only one rental dwelling;

(2) at the beginning of the lease term the dwelling is free from any condition which would materially affect the physical health or safety of an ordinary tenant;

(3) at the beginning of the lease term the landlord has no reason to believe that any condition described in Subdivision (2) of this subsection is likely to occur or recur during the tenant's lease term or during a renewal or extension; and

(4)(A) the lease is in writing;

(B) the agreement for repairs by the tenant is either

underlined or printed in boldface in the lease or in a separate written addendum;

(C) the agreement is specific and clear; and

(D) the agreement is made knowingly, voluntarily, and for consideration.

(f) A landlord and tenant may agree that, except for those conditions caused by the negligence of the landlord, the tenant has the duty to pay for repair of the following conditions that may occur during the lease term or a renewal or extension:

(1) damage from wastewater stoppages caused by foreign or improper objects in lines that exclusively serve the tenant's dwelling;

(2) damage to doors, windows, or screens; and

(3) damage from windows or doors left open.

This subsection shall not affect the landlord's duty under Subchapter B to repair or remedy, at the landlord's expense, wastewater stoppages or backups caused by deterioration, breakage, roots, ground conditions, faulty construction, or malfunctioning equipment. A landlord and tenant may agree to the provisions of this subsection only if the agreement meets the requirements of Subdivision (4) of Subsection (e) of this section.

(g) A tenant's right to vacate a dwelling and avoid liability under Section 92.016 or 92.017 may not be waived by a tenant or a landlord, except as provided by those sections.

(h) A tenant's right to a jury trial in an action brought under this chapter may not be waived in a lease or other written agreement.

Acts 1983, 68th Leg., p. 3631, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 650, Sec. 1, eff. Aug. 28, 1989. Amended by:

Acts 2005, 79th Leg., Ch. 348 (S.B. 1186), Sec. 2, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1198 (S.B. 1367), Sec. 3, eff. January 1, 2016.

Sec. 92.007. VENUE. Venue for an action under this chapter is governed by Section 15.0115, Civil Practice and Remedies Code.

Acts 1983, 68th Leg., p. 3632, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 332, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 650, Sec. 2, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 48, Sec. 13, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 138, Sec. 9, eff. Aug. 28, 1995.

Sec. 92.008. INTERRUPTION OF UTILITIES. (a) A landlord or a landlord's agent may not interrupt or cause the interruption of utility service paid for directly to the utility company by a tenant unless the interruption results from bona fide repairs, construction, or an emergency.

(b) Except as provided by this section, a landlord may not interrupt or cause the interruption of water, wastewater, gas, or electric service furnished to a tenant by the landlord as an incident of the tenancy or by other agreement unless the interruption results from bona fide repairs, construction, or an emergency.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1112, Sec. 3, eff. January 1, 2010.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1112, Sec. 3, eff. January 1, 2010.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1112, Sec. 3, eff. January 1, 2010.

(f) If a landlord or a landlord's agent violates this section, the tenant may:

(1) either recover possession of the premises or terminate the lease; and

(2) in addition to other remedies available under law, recover from the landlord an amount equal to the sum of the tenant's actual damages, one month's rent plus $1,000, reasonable attorney's fees, and court costs, less any delinquent rents or other sums for which the tenant is liable to the landlord.

(g) A provision of a lease that purports to waive a right or to exempt a party from a liability or duty under this section is void.

(h) Subject to Subsections (i), (j), (k), (m), and (o), a landlord who submeters electricity or allocates or prorates nonsubmetered master metered electricity may interrupt or cause the interruption of electric service for nonpayment by the tenant of an electric bill issued to the tenant if:

(1) the landlord's right to interrupt electric service is

provided by a written lease entered into by the tenant;

(2) the tenant's electric bill is not paid on or before the 12th day after the date the electric bill is issued;

(3) advance written notice of the proposed interruption is delivered to the tenant by mail or hand delivery separately from any other written content that:

(A) prominently displays the words "electricity termination notice" or similar language underlined or in bold;

(B) includes:

(i) the date on which the electric service will be interrupted;

(ii) a location where the tenant may go during the landlord's normal business hours to make arrangements to pay the bill to avoid interruption of electric service;

(iii) the amount that must be paid to avoid interruption of electric service;

(iv) a statement providing that when the tenant makes a payment to avoid interruption of electric service, the landlord may not apply that payment to rent or other amounts owed under the lease;

(v) a statement providing that the landlord may not evict a tenant for failure to pay an electric bill when the landlord has interrupted the tenant's electric service unless the tenant fails to pay for the electric service after the electric service has been interrupted for at least two days, not including weekends or state or federal holidays; and

(vi) a description of the tenant's rights under Subsection (j) to avoid interruption of electric service if the interruption will cause a person residing in the tenant's dwelling to become seriously ill or more seriously ill; and

(C) is delivered not earlier than the first day after the bill is past due or later than the fifth day before the interruption date stated in the notice; and

(4) the landlord, at the same time the service is interrupted, hand delivers or places on the tenant's front door a written notice that:

(A) prominently displays the words "electricity termination notice" or similar language underlined or in bold; and

(B) includes:

(i) the date the electric service has been

interrupted;

(ii) a location where the tenant may go during the landlord's normal business hours to make arrangements to pay the bill to reestablish interrupted electric service;

(iii) the amount that must be paid to reestablish electric service;

(iv) a statement providing that when the tenant makes a payment to reestablish electric service, a landlord may not apply that payment to rent or other amounts owed under the lease;

(v) a statement providing that the landlord may not evict a tenant for failure to pay an electric bill when the landlord has interrupted the tenant's electric service unless the tenant fails to pay for the electric service after the electric service has been interrupted for at least two days, not including weekends or state or federal holidays; and

(vi) a description of the tenant's rights under Subsection (j) to avoid interruption of electric service if the interruption will cause a person residing in the tenant's dwelling to become seriously ill or more seriously ill.

(i) Unless a dangerous condition exists or the tenant requests disconnection, a landlord may not interrupt or cause the interruption of electric service under Subsection (h) on a day:

(1) on which the landlord or a representative of the landlord is not available to collect electric bill payments and reestablish electric service;

(2) that immediately precedes a day described by Subdivision (1); or

(3) on which:

(A) the previous day's highest temperature did not exceed 32 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service reports; or

(B) the National Weather Service issues a heat advisory for a county in which the premises is located or has issued such an advisory on one of the two preceding days.

(j) A landlord may not interrupt or cause the interruption of electric service under Subsection (h) of a tenant who, before the interruption date specified in the notice required by Subsection (h)(3), has:

(1) established that the interruption will cause a person

residing in the tenant's dwelling to become seriously ill or more seriously ill by having a physician, nurse, nurse practitioner, or other similar licensed health care practitioner attending to the person who is or may become ill provide a written statement to the landlord or a representative of the landlord stating that the person will become seriously ill or more seriously ill if the electric service is interrupted; and

(2) entered into a deferred payment plan that complies with Subsection (l).

(k) If a tenant has established, in accordance with Subsection (j), the circumstances necessary to avoid electric service interruption under that subsection, the landlord may not interrupt or cause the interruption of the tenant's electric service under Subsection (h) before:

(1) the 63rd day after the date those circumstances are established; or

(2) an earlier date agreed to by the landlord and the tenant.

(l) A deferred payment plan for the purposes of this section must be in writing. The deferred payment plan must allow the tenant to pay the outstanding electric bill in installments that extend beyond the due date of the next electric bill and must provide that the delinquent amount may be paid in equal installments over a period equal to at least three electric service billing cycles.

(m) A landlord may not interrupt or cause the interruption of electric service under Subsection (h) to a tenant who receives energy assistance for a billing period during which the landlord receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue the electric service.

(n) If a delinquent electric bill is paid, or a deferred payment plan is entered into, during normal business hours, the landlord shall reconnect the tenant's electric service within two hours of payment or entry into the deferred payment plan.

(o) A landlord may not interrupt or cause the interruption of electric service under Subsection (h) for any of the following reasons:

(1) a delinquency in payment for electric service furnished to a previous tenant;

(2) failure to pay non-electric bills, rent, or other fees;

(3) failure to pay electric bills that are six or more months delinquent; or

(4) failure to pay an electric bill disputed by the tenant, unless the landlord has conducted an investigation as required by the particular case and reported the results in writing to the tenant.

(p) A landlord who provides notice in accordance with Subsection (h) may not apply a payment made by a tenant to avoid interruption of electric service or reestablish electric service to rent or any other amounts owed under the lease.

(q) The landlord may not evict a tenant for failure to pay an electric bill when the landlord has interrupted the tenant's electric service under Subsection (h) unless the tenant fails to pay for the electric service after the electric service has been interrupted for at least two days, not including weekends or state or federal holidays.

(r) Subject to this subsection, a reconnection fee may be applied if electric service to the tenant is disconnected for nonpayment of bills under Subsection (h). The reconnection fee must be computed based on the average cost to the landlord for the expenses associated with the reconnection, but may not exceed $10. A reconnection fee may not be applied unless agreed to by the tenant in a written lease that states the exact dollar amount of the reconnection fee. A fee may not be applied to a deferred payment plan entered into under this section.

Acts 1983, 68th Leg., p. 3632, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 200, Sec. 4, eff. Aug. 26, 1985. Renumbered from Sec. 91.002 by Acts 1987, 70th Leg., ch. 683, Sec. 2, eff. Aug. 31, 1987. Amended as Sec. 91.002 by Acts 1987, 70th Leg., ch. 826, Sec. 1, eff. Aug. 31, 1987. Renumbered from Sec. 91.002 and amended by Acts 1989, 71st Leg., ch. 689, Sec. 1, 3, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 869, Sec. 1, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 952, Sec. 1, eff. Sept. 1, 1995. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1112 (H.B. 882), Sec. 1, eff. January 1, 2010.

Acts 2009, 81st Leg., R.S., Ch. 1112 (H.B. 882), Sec. 3, eff. January 1, 2010.

Acts 2013, 83rd Leg., R.S., Ch. 899 (H.B. 1086), Sec. 1, eff. September 1, 2013.

Sec. 92.0081. REMOVAL OF PROPERTY AND EXCLUSION OF RESIDENTIAL TENANT. (a) A landlord may not remove a door, window, or attic hatchway cover or a lock, latch, hinge, hinge pin, doorknob, or other mechanism connected to a door, window, or attic hatchway cover from premises leased to a tenant or remove furniture, fixtures, or appliances furnished by the landlord from premises leased to a tenant unless the landlord removes the item for a bona fide repair or replacement. If a landlord removes any of the items listed in this subsection for a bona fide repair or replacement, the repair or replacement must be promptly performed.

(b) A landlord may not intentionally prevent a tenant from entering the leased premises except by judicial process unless the exclusion results from:

(1) bona fide repairs, construction, or an emergency;

(2) removing the contents of premises abandoned by a tenant; or

(3) changing the door locks on the door to the tenant's individual unit of a tenant who is delinquent in paying at least part of the rent.

(c) If a landlord or a landlord's agent changes the door lock of a tenant who is delinquent in paying rent, the landlord or the landlord's agent must place a written notice on the tenant's front door stating:

(1) an on-site location where the tenant may go 24 hours a day to obtain the new key or a telephone number that is answered 24 hours a day that the tenant may call to have a key delivered within two hours after calling the number;

(2) the fact that the landlord must provide the new key to the tenant at any hour, regardless of whether or not the tenant pays any of the delinquent rent; and

(3) the amount of rent and other charges for which the tenant is delinquent.

(d) A landlord may not intentionally prevent a tenant from entering the leased premises under Subsection (b)(3) unless:

(1) the landlord's right to change the locks because of a tenant's failure to timely pay rent is placed in the lease;

(2) the tenant is delinquent in paying all or part of the rent; and

(3) the landlord has locally mailed not later than the fifth calendar day before the date on which the door locks are changed or hand-delivered to the tenant or posted on the inside of the main entry door of the tenant's dwelling not later than the third calendar day before the date on which the door locks are changed a written notice stating:

(A) the earliest date that the landlord proposes to change the door locks;

(B) the amount of rent the tenant must pay to prevent changing of the door locks;

(C) the name and street address of the individual to whom, or the location of the on-site management office at which, the delinquent rent may be discussed or paid during the landlord's normal business hours; and

(D) in underlined or bold print, the tenant's right to receive a key to the new lock at any hour, regardless of whether the tenant pays the delinquent rent.

(e) A landlord may not change the locks on the door of a tenant's dwelling under Subsection (b)(3) on a day, or on a day immediately before a day, on which the landlord or other designated individual is not available, or on which any on-site management office is not open, for the tenant to tender the delinquent rent.

(e-1) A landlord who changes the locks or otherwise prevents a tenant from entering the tenant's individual rental unit may not change the locks or otherwise prevent a tenant from entering a common area of residential rental property.

(f) A landlord who intentionally prevents a tenant from entering the tenant's dwelling under Subsection (b)(3) must provide the tenant with a key to the changed lock on the dwelling without regard to whether the tenant pays the delinquent rent.

(g) If a landlord arrives at the dwelling in a timely manner in response to a tenant's telephone call to the number contained in the notice as described by Subsection (c)(1) and the tenant is not present to receive the key to the changed lock, the landlord shall leave a notice on the front door of the dwelling stating the time the landlord arrived with the key and the street address to which the tenant may go to obtain the key during the landlord's normal office hours.

(h) If a landlord violates this section, the tenant may:

(1) either recover possession of the premises or terminate

the lease; and

(2) recover from the landlord a civil penalty of one month's rent plus $1,000, actual damages, court costs, and reasonable attorney's fees in an action to recover property damages, actual expenses, or civil penalties, less any delinquent rent or other sums for which the tenant is liable to the landlord.

(i) If a landlord violates Subsection (f), the tenant may recover, in addition to the remedies provided by Subsection (h), an additional civil penalty of one month's rent.

(j) A provision of a lease that purports to waive a right or to exempt a party from a liability or duty under this section is void.

(k) A landlord may not change the locks on the door of a tenant's dwelling under Subsection (b)(3):

(1) when the tenant or any other legal occupant is in the dwelling; or

(2) more than once during a rental payment period.

(l) This section does not affect the ability of a landlord to pursue other available remedies, including the remedies provided by Chapter 24.

Acts 1983, 68th Leg., p. 3632, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 200, Sec. 4, eff. Aug. 26, 1985. Renumbered from Sec. 91.002 by Acts 1987, 70th Leg., ch. 683, Sec. 2, eff. Aug. 31, 1987. Amended as Sec. 91.002 by Acts 1987, 70th Leg., ch. 826, Sec. 1, eff. Aug. 31, 1987. Renumbered from Sec. 91.002 and amended by Acts 1989, 71st Leg., ch. 689, Sec. 1, 3, eff. Sept. 1, 1989. Redesignated from Property Code Sec. 92.008(b) to (f) and amended by Acts 1995, 74th Leg., ch. 869, Sec. 1, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 952, Sec. 1, Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 917 (H.B. 3101), Sec. 1, eff. January 1, 2008.

Sec. 92.009. RESIDENTIAL TENANT'S RIGHT OF REENTRY AFTER UNLAWFUL LOCKOUT. (a) If a landlord has locked a tenant out of leased premises in violation of Section 92.0081, the tenant may recover possession of the premises as provided by this section.

(b) The tenant must file with the justice court in the precinct in which the rental premises are located a sworn complaint for

reentry, specifying the facts of the alleged unlawful lockout by the landlord or the landlord's agent. The tenant must also state orally under oath to the justice the facts of the alleged unlawful lockout.

(c) If the tenant has complied with Subsection (b) and if the justice reasonably believes an unlawful lockout has likely occurred, the justice may issue, ex parte, a writ of reentry that entitles the tenant to immediate and temporary possession of the premises, pending a final hearing on the tenant's sworn complaint for reentry.

(d) The writ of reentry must be served on either the landlord or the landlord's management company, on-premises manager, or rent collector in the same manner as a writ of possession in a forcible detainer action. A sheriff or constable may use reasonable force in executing a writ of reentry under this section.

(e) The landlord is entitled to a hearing on the tenant's sworn complaint for reentry. The writ of reentry must notify the landlord of the right to a hearing. The hearing shall be held not earlier than the first day and not later than the seventh day after the date the landlord requests a hearing.

(f) If the landlord fails to request a hearing on the tenant's sworn complaint for reentry before the eighth day after the date of service of the writ of reentry on the landlord under Subsection (d), a judgment for court costs may be rendered against the landlord.

(g) A party may appeal from the court's judgment at the hearing on the sworn complaint for reentry in the same manner as a party may appeal a judgment in a forcible detainer suit.

(h) If a writ of possession is issued, it supersedes a writ of reentry.

(i) If the landlord or the person on whom a writ of reentry is served fails to immediately comply with the writ or later disobeys the writ, the failure is grounds for contempt of court against the landlord or the person on whom the writ was served, under Section 21.002, Government Code. If the writ is disobeyed, the tenant or the tenant's attorney may file in the court in which the reentry action is pending an affidavit stating the name of the person who has disobeyed the writ and describing the acts or omissions constituting the disobedience. On receipt of an affidavit, the justice shall issue a show cause order, directing the person to appear on a designated date and show cause why he should not be adjudged in contempt of court. If the justice finds, after considering the evidence at the hearing, that the person has directly or indirectly

disobeyed the writ, the justice may commit the person to jail without bail until the person purges himself of the contempt in a manner and form as the justice may direct. If the person disobeyed the writ before receiving the show cause order but has complied with the writ after receiving the order, the justice may find the person in contempt and assess punishment under Section 21.002(c), Government Code.

(j) This section does not affect a tenant's right to pursue a separate cause of action under Section 92.0081.

(k) If a tenant in bad faith files a sworn complaint for reentry resulting in a writ of reentry being served on the landlord or landlord's agent, the landlord may in a separate cause of action recover from the tenant an amount equal to actual damages, one month's rent or $500, whichever is greater, reasonable attorney's fees, and costs of court, less any sums for which the landlord is liable to the tenant.

(l) The fee for filing a sworn complaint for reentry is the same as that for filing a civil action in justice court. The fee for service of a writ of reentry is the same as that for service of a writ of possession. The fee for service of a show cause order is the same as that for service of a civil citation. The justice may defer payment of the tenant's filing fees and service costs for the sworn complaint for reentry and writ of reentry. Court costs may be waived only if the tenant executes a pauper's affidavit.

(m) This section does not affect the rights of a landlord or tenant in a forcible detainer or forcible entry and detainer action.

Added by Acts 1989, 71st Leg., ch. 687, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1205, Sec. 9, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 21.001, eff. September 1, 2011.

Sec. 92.0091. RESIDENTIAL TENANT'S RIGHT OF RESTORATION AFTER UNLAWFUL UTILITY DISCONNECTION. (a) If a landlord has interrupted utility service in violation of Section 92.008, the tenant may obtain relief as provided by this section.

(b) The tenant must file with the justice court in the precinct

in which the rental premises are located a sworn complaint specifying the facts of the alleged unlawful utility disconnection by the landlord or the landlord's agent. The tenant must also state orally under oath to the justice the facts of the alleged unlawful utility disconnection.

(c) If the tenant has complied with Subsection (b) and if the justice reasonably believes an unlawful utility disconnection has likely occurred, the justice may issue, ex parte, a writ of restoration of utility service that entitles the tenant to immediate and temporary restoration of the disconnected utility service, pending a final hearing on the tenant's sworn complaint.

(d) The writ of restoration of utility service must be served on either the landlord or the landlord's management company, on-premises manager, or rent collector in the same manner as a writ of possession in a forcible detainer suit.

(e) The landlord is entitled to a hearing on the tenant's sworn complaint for restoration of utility service. The writ of restoration of utility service must notify the landlord of the right to a hearing. The hearing shall be held not earlier than the first day and not later than the seventh day after the date the landlord requests a hearing.

(f) If the landlord fails to request a hearing on the tenant's sworn complaint for restoration of utility service before the eighth day after the date of service of the writ of restoration of utility service on the landlord under Subsection (d), a judgment for court costs may be rendered against the landlord.

(g) A party may appeal from the court's judgment at the hearing on the sworn complaint for restoration of utility service in the same manner as a party may appeal a judgment in a forcible detainer suit.

(h) If a writ of possession is issued, it supersedes a writ of restoration of utility service.

(i) If the landlord or the person on whom a writ of restoration of utility service is served fails to immediately comply with the writ or later disobeys the writ, the failure is grounds for contempt of court against the landlord or the person on whom the writ was served under Section 21.002, Government Code. If the writ is disobeyed, the tenant or the tenant's attorney may file in the court in which the action is pending an affidavit stating the name of the person who has disobeyed the writ and describing the acts or omissions constituting the disobedience. On receipt of an affidavit,

the justice shall issue a show cause order, directing the person to appear on a designated date and show cause why the person should not be adjudged in contempt of court. If the justice finds, after considering the evidence at the hearing, that the person has directly or indirectly disobeyed the writ, the justice may commit the person to jail without bail until the person purges the contempt action or omission in a manner and form as the justice may direct. If the person disobeyed the writ before receiving the show cause order but has complied with the writ after receiving the order, the justice may find the person in contempt and assess punishment under Section 21.002(c), Government Code.

(j) If a tenant in bad faith files a sworn complaint for restoration of utility service resulting in a writ being served on the landlord or landlord's agent, the landlord may in a separate cause of action recover from the tenant an amount equal to actual damages, one month's rent or $500, whichever is greater, reasonable attorney's fees, and costs of court, less any sums for which the landlord is liable to the tenant.

(k) The fee for filing a sworn complaint for restoration of utility service is the same as that for filing a civil action in justice court. The fee for service of a writ of restoration of utility service is the same as that for service of a writ of possession. The fee for service of a show cause order is the same as that for service of a civil citation. The justice may defer payment of the tenant's filing fees and service costs for the sworn complaint for restoration of utility service and writ of restoration of utility service. Court costs may be waived only if the tenant executes a pauper's affidavit.

Added by Acts 2009, 81st Leg., R.S., Ch. 1112 (H.B. 882), Sec. 2, eff. January 1, 2010.

Sec. 92.010. OCCUPANCY LIMITS. (a) Except as provided by Subsection (b), the maximum number of adults that a landlord may allow to occupy a dwelling is three times the number of bedrooms in the dwelling.

(b) A landlord may allow an occupancy rate of more than three adult tenants per bedroom:

(1) to the extent that the landlord is required by a state

or federal fair housing law to allow a higher occupancy rate; or

(2) if an adult whose occupancy causes a violation of Subsection (a) is seeking temporary sanctuary from family violence, as defined by Section 71.004, Family Code, for a period that does not exceed one month.

(c) An individual who owns or leases a dwelling within 3,000 feet of a dwelling as to which a landlord has violated this section, or a governmental entity or civic association acting on behalf of the individual, may file suit against a landlord to enjoin the violation. A party who prevails in a suit under this subsection may recover court costs and reasonable attorney's fees from the other party. In addition to court costs and reasonable attorney's fees, a plaintiff who prevails under this subsection may recover from the landlord $500 for each violation of this section.

(d) In this section:

(1) "Adult" means an individual 18 years of age or older.

(2) "Bedroom" means an area of a dwelling intended as sleeping quarters. The term does not include a kitchen, dining room, bathroom, living room, utility room, or closet or storage area of a dwelling.

Added by Acts 1993, 73rd Leg., ch. 937, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 7.002(o), eff. Sept. 1, 2003.

Sec. 92.011. CASH RENTAL PAYMENTS. (a) A landlord shall accept a tenant's timely cash rental payment unless a written lease between the landlord and tenant requires the tenant to make rental payments by check, money order, or other traceable or negotiable instrument.

(b) A landlord who receives a cash rental payment shall:

(1) provide the tenant with a written receipt; and

(2) enter the payment date and amount in a record book maintained by the landlord.

(c) A tenant or a governmental entity or civic association acting on the tenant's behalf may file suit against a landlord to enjoin a violation of this section. A party who prevails in a suit brought under this subsection may recover court costs and reasonable attorney's fees from the other party. In addition to court costs and

reasonable attorney's fees, a tenant who prevails under this subsection may recover from the landlord the greater of one month's rent or $500 for each violation of this section.

Added by Acts 1993, 73rd Leg., ch. 938, Sec. 1, eff. Sept. 1, 1993. Renumbered from Property Code Sec. 92.010 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(44), eff. Sept. 1, 1995.

Sec. 92.012. NOTICE TO TENANT AT PRIMARY RESIDENCE. (a) If, at the time of signing a lease or lease renewal, a tenant gives written notice to the tenant's landlord that the tenant does not occupy the leased premises as a primary residence and requests in writing that the landlord send notices to the tenant at the tenant's primary residence and provides to the landlord the address of the tenant's primary residence, the landlord shall mail to the tenant's primary residence:

(1) all notices of lease violations;

(2) all notices of lease termination;

(3) all notices of rental increases at the end of the lease term; and

(4) all notices to vacate.

(b) The tenant shall notify the landlord in writing of any change in the tenant's primary residence address. Oral notices of change are insufficient.

(c) A notice to a tenant's primary residence under Subsection (a) may be sent by regular United States mail and shall be considered as having been given on the date of postmark of the notice.

(d) If there is more than one tenant on a lease, the landlord is not required under this section to send notices to the primary residence of more than one tenant.

(e) This section does not apply if notice is actually hand delivered to and received by a person occupying the leased premises.

Added by Acts 1997, 75th Leg., ch. 1205, Sec. 10, eff. Sept. 1, 1997.

Sec. 92.013. NOTICE OF RULE OR POLICY CHANGE AFFECTING TENANT'S PERSONAL PROPERTY. (a) A landlord shall give prior written notice to a tenant regarding a landlord rule or policy change that is not included in the lease agreement and that will affect any personal

property owned by the tenant that is located outside the tenant's dwelling. A landlord shall provide to the tenant in a multiunit complex, as that term is defined by Section 92.151, a copy of any applicable vehicle towing or parking rules or policies of the landlord and any changes to those rules or policies as provided by Section 92.0131.

(b) The notice must be given in person or by mail to the affected tenant. Notice in person may be by personal delivery to the tenant or any person residing at the tenant's dwelling who is 16 years of age or older or by personal delivery to the tenant's dwelling and affixing the notice to the inside of the main entry door. Notice by mail may be by regular mail, by registered mail, or by certified mail, return receipt requested. If the dwelling has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to leave the notice on the inside of the main entry door, the landlord may securely affix the notice on the outside of the main entry door.

(c) A landlord who fails to give notice as required by this section is liable to the tenant for any expense incurred by the tenant as a result of the landlord's failure to give the notice.

Added by Acts 1999, 76th Leg., ch. 942, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1060 (H.B. 1399), Sec. 1, eff. January 1, 2006.

Sec. 92.0131. NOTICE REGARDING VEHICLE TOWING OR PARKING RULES OR POLICIES. (a) This section applies only to a tenant in a multiunit complex, as that term is defined by Section 92.151.

(b) If at the time a lease agreement is executed a landlord has vehicle towing or parking rules or policies that apply to the tenant, the landlord shall provide to the tenant a copy of the rules or policies before the lease agreement is executed. The copy of the rules or policies must be:

(1) signed by the tenant;

(2) included in a lease agreement signed by the tenant; or

(3) included in an attachment to the lease agreement that is signed by the tenant, but only if the attachment is expressly referred to in the lease agreement.

(c) If the rules or policies are contained in the lease agreement or an attachment to the lease agreement, the title to the paragraph containing the rules or policies must read "Parking" or "Parking Rules" and be capitalized, underlined, or printed in bold print.

(c-1) As a precondition for allowing a tenant to park in a specific parking space or a common parking area that the landlord has made available for tenant use, the landlord may require a tenant to provide only the make, model, color, year, license number, and state of registration of the vehicle to be parked.

(c-2) Notwithstanding Subsection (c-1), a municipal housing authority located in a municipality that has a population of more than 500,000 and is not more than 50 miles from an international border, or a public facility corporation, affiliate, or subsidiary of the authority, may require that vehicles parked in a community of the authority, corporation, affiliate, or subsidiary be registered with the housing authority.

(d) If a landlord changes the vehicle towing or parking rules or policies during the term of the lease agreement, the landlord shall provide written notice of the change to the tenant before the tenant is required to comply with the rule or policy change. The landlord has the burden of proving that the tenant received a copy of the rule or policy change. The landlord may satisfy that burden of proof by providing evidence that the landlord:

(1) delivered the notice by certified mail, return receipt requested, addressed to the tenant at the tenant's dwelling; or

(2) made a notation in the landlord's files of the time, place, and method of providing the notice and the name of the person who delivered the notice by:

(A) hand delivery to the tenant or any occupant of the tenant's dwelling over the age of 16 years at the tenant's dwelling;

(B) facsimile to a facsimile number the tenant provided to the landlord for the purpose of receiving notices; or

(C) taping the notice to the inside of the main entry door of the tenant's dwelling.

(e) If a rule or policy change is made during the term of the lease agreement, the change:

(1) must:

(A) apply to all of the landlord's tenants in the same multiunit complex and be based on necessity, safety or security of

tenants, reasonable requirements for construction on the premises, or respect for other tenants' parking rights; or

(B) be adopted based on the tenant's written consent; and

(2) may not be effective before the 14th day after the date notice of the change is delivered to the tenant, unless the change is the result of a construction or utility emergency.

(f) A landlord who violates Subsection (b), (c), (d), or (e) is liable for a civil penalty in the amount of $100 plus any towing or storage costs that the tenant incurs as a result of the towing of the tenant's vehicle. The nonprevailing party in a suit under this section is liable to the prevailing party for reasonable attorney's fees and court costs.

(g) A landlord is liable for any damage to a tenant's vehicle resulting from the negligence of a towing service that contracts with the landlord or the landlord's agent to remove vehicles that are parked in violation of the landlord's rules and policies if the towing company that caused the damage does not carry insurance that covers the damage.

Added by Acts 2005, 79th Leg., Ch. 1060 (H.B. 1399), Sec. 2, eff. January 1, 2006.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 917 (H.B. 3101), Sec. 2, eff. January 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 969 (H.B. 1371), Sec. 1, eff. September 1, 2011.

Sec. 92.014. PERSONAL PROPERTY AND SECURITY DEPOSIT OF DECEASED TENANT. (a) Upon written request of a landlord, the landlord's tenant shall:

(1) provide the landlord with the name, address, and telephone number of a person to contact in the event of the tenant's death; and

(2) sign a statement authorizing the landlord in the event of the tenant's death to:

(A) grant to the person designated under Subdivision (1) access to the premises at a reasonable time and in the presence of the landlord or the landlord's agent;

(B) allow the person designated under Subdivision (1) to remove any of the tenant's property found at the leased premises; and

(C) refund the tenant's security deposit, less lawful deductions, to the person designated under Subdivision (1).

(b) A tenant may, without request from the landlord, provide the landlord with the information in Subsection (a).

(c) Except as provided in Subsection (d), in the event of the death of a tenant who is the sole occupant of a rental dwelling:

(1) the landlord may remove and store all property found in the tenant's leased premises;

(2) the landlord shall turn over possession of the property to the person who was designated by the tenant under Subsection (a) or (b) or to any other person lawfully entitled to the property if the request is made prior to the property being discarded under Subdivision (5);

(3) the landlord shall refund the tenant's security deposit, less lawful deductions, including the cost of removing and storing the property, to the person designated under Subsection (a) or (b) or to any other person lawfully entitled to the refund;

(4) the landlord may require any person who removes the property from the tenant's leased premises to sign an inventory of the property being removed; and

(5) the landlord may discard the property removed by the landlord from the tenant's leased premises if:

(A) the landlord has mailed a written request by certified mail, return receipt requested, to the person designated under Subsection (a) or (b), requesting that the property be removed;

(B) the person failed to remove the property by the 30th day after the postmark date of the notice; and

(C) the landlord, prior to the date of discarding the property, has not been contacted by anyone claiming the property.

(d) In a written lease or other agreement, a landlord and a tenant may agree to a procedure different than the procedure in this section for removing, storing, or disposing of property in the leased premises of a deceased tenant.

(e) If a tenant, after being furnished with a copy of this subchapter, knowingly violates Subsection (a), the landlord shall have no responsibility after the tenant's death for removal, storage, disappearance, damage, or disposition of property in the tenant's

leased premises.

(f) If a landlord, after being furnished with a copy of this subchapter, knowingly violates Subsection (c), the landlord shall be liable to the estate of the deceased tenant for actual damages.

Added by Acts 1999, 76th Leg., ch. 1439, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 92.013 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(97), eff. Sept. 1, 2001.

Sec. 92.015. TENANT'S RIGHT TO SUMMON POLICE OR EMERGENCY ASSISTANCE. (a) A landlord may not:

(1) prohibit or limit a residential tenant's right to summon police or other emergency assistance in response to family violence; or

(2) impose monetary or other penalties on a tenant who summons police or emergency assistance in response to family violence.

(b) A provision in a lease is void if the provision purports to:

(1) waive a tenant's right to summon police or other emergency assistance in response to family violence; or

(2) exempt any party from a liability or a duty under this section.

(c) In addition to other remedies provided by law, if a landlord violates this section, a tenant is entitled to recover from or against the landlord:

(1) a civil penalty in an amount equal to one month's rent;

(2) actual damages suffered by the tenant as a result of the landlord's violation of this section;

(3) court costs;

(4) injunctive relief; and

(5) reasonable attorney's fees incurred by the tenant in seeking enforcement of this section.

(d) For purposes of this section, if a tenant's rent is subsidized in whole or in part by a governmental entity, "one month's rent" means one month's fair market rent.

(e) For purposes of this section, "family violence" has the meaning assigned by Section 71.004, Family Code.

Added by Acts 2003, 78th Leg., ch. 794, Sec. 1, eff. June 20, 2003.

Sec. 92.016. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING FAMILY VIOLENCE. (a) For purposes of this section:

(1) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(2) "Occupant" means a person who has the landlord's consent to occupy a dwelling but has no obligation to pay the rent for the dwelling.

(b) A tenant may terminate the tenant's rights and obligations under a lease and may vacate the dwelling and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term if the tenant complies with Subsection (c) and provides the landlord or the landlord's agent a copy of one or more of the following orders protecting the tenant or an occupant from family violence:

(1) a temporary injunction issued under Subchapter F, Chapter 6, Family Code;

(2) a temporary ex parte order issued under Chapter 83, Family Code; or

(3) a protective order issued under Chapter 85, Family Code.

(c) A tenant may exercise the rights to terminate the lease under Subsection (b), vacate the dwelling before the end of the lease term, and avoid liability beginning on the date after all of the following events have occurred:

(1) a judge signs an order described by Subsection (b);

(2) the tenant provides a copy of the relevant documentation described by Subsection (b) to the landlord;

(3) the tenant provides written notice of termination of the lease to the landlord on or before the 30th day before the date the lease terminates;

(4) the 30th day after the date the tenant provided notice under Subdivision (3) expires; and

(5) the tenant vacates the dwelling.

(c-1) If the family violence is committed by a cotenant or occupant of the dwelling, a tenant may exercise the right to terminate the lease under the procedures provided by Subsection (b)(1) or (3) and Subsection (c), except that the tenant is not required to provide the notice described by Subsection (c)(3).

(d) Except as provided by Subsection (f), this section does not affect a tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the lease was terminated by the tenant under this section.

(e) A landlord who violates this section is liable to the tenant for actual damages, a civil penalty equal in amount to the amount of one month's rent plus $500, and attorney's fees.

(f) A tenant who terminates a lease under Subsection (b) is released from all liability for any delinquent, unpaid rent owed to the landlord by the tenant on the effective date of the lease termination if the lease does not contain language substantially equivalent to the following:

"Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or a military deployment or transfer."

(g) A tenant's right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability under this section may not be waived by a tenant.

Added by Acts 2005, 79th Leg., Ch. 348 (S.B. 1186), Sec. 1, eff. January 1, 2006.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 18 (S.B. 83), Sec. 1, eff. January 1, 2010.

Sec. 92.0161. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING CERTAIN SEX OFFENSES OR STALKING. (a) In this section, "occupant" has the meaning assigned by Section 92.016.

(b) A tenant may terminate the tenant's rights and obligations under a lease and may vacate the dwelling and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term after the tenant complies with Subsection (c) or (c-1).

(c) If the tenant is a victim or a parent or guardian of a victim of sexual assault under Section 22.011, Penal Code, aggravated sexual assault under Section 22.021, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual performance by a child under Section 43.25, Penal Code, continuous sexual abuse of a child under Section 21.02, Penal Code, or an attempt to commit any of the

foregoing offenses under Section 15.01, Penal Code, that takes place during the preceding six-month period on the premises or at any dwelling on the premises, the tenant shall provide to the landlord or the landlord's agent a copy of:

(1) documentation of the assault or abuse, or attempted assault or abuse, of the victim from a licensed health care services provider who examined the victim;

(2) documentation of the assault or abuse, or attempted assault or abuse, of the victim from a licensed mental health services provider who examined or evaluated the victim;

(3) documentation of the assault or abuse, or attempted assault or abuse, of the victim from an individual authorized under Chapter 420, Government Code, who provided services to the victim; or

(4) documentation of a protective order issued under Chapter 7A, Code of Criminal Procedure, except for a temporary ex parte order.

(c-1) If the tenant is a victim or a parent or guardian of a victim of stalking under Section 42.072, Penal Code, that takes place during the preceding six-month period on the premises or at any dwelling on the premises, the tenant shall provide to the landlord or the landlord's agent a copy of:

(1) documentation of a protective order issued under Chapter 7A or Article 6.09, Code of Criminal Procedure, except for a temporary ex parte order; or

(2) documentation of the stalking from a provider of services described by Subsection (c)(1), (2), or (3) and:

(A) a law enforcement incident report or, if a law enforcement incident report is unavailable, another record maintained in the ordinary course of business by a law enforcement agency; and

(B) if the report or record described by Paragraph (A) identifies the victim by means of a pseudonym, as defined by Article 57A.01, Code of Criminal Procedure, a copy of a pseudonym form completed and returned under Article 57A.02 of that code.

(d) A tenant may exercise the rights to terminate the lease under Subsection (b), vacate the dwelling before the end of the lease term, and avoid liability beginning on the date after all of the following events have occurred:

(1) the tenant provides a copy of the relevant documentation described by Subsection (c) or (c-1) to the landlord;

(2) the tenant provides written notice of termination of

the lease to the landlord on or before the 30th day before the date the lease terminates;

(3) the 30th day after the date the tenant provided notice under Subdivision (2) expires; and

(4) the tenant vacates the dwelling.

(e) Except as provided by Subsection (g), this section does not affect a tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the lease was terminated by the tenant under this section.

(f) A landlord who violates this section is liable to the tenant for actual damages, a civil penalty equal to the amount of one month's rent plus $500, and attorney's fees.

(g) A tenant who terminates a lease under Subsection (b) is released from all liability for any delinquent, unpaid rent owed to the landlord by the tenant on the effective date of the lease termination if the lease does not contain language substantially equivalent to the following:

"Tenants may have special statutory rights to terminate the lease early in certain situations involving certain sexual offenses or stalking."

(h) A tenant may not waive a tenant's right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability under this chapter.

(i) For purposes of Subsections (c) and (c-1), a tenant who is a parent or guardian of a victim described by those subsections must reside with the victim to exercise the rights established by this section.

(j) A person who receives information under Subsection (c), (c-1), or (d) may not disclose the information to any other person except for a legitimate or customary business purpose or as otherwise required by law.

Added by Acts 2009, 81st Leg., R.S., Ch. 18 (S.B. 83), Sec. 2, eff. January 1, 2010.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 593 (S.B. 946), Sec. 1, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 593 (S.B. 946), Sec. 2, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 394 (H.B. 1293), Sec. 2, eff.

September 1, 2015.

Sec. 92.017. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING CERTAIN DECISIONS RELATED TO MILITARY SERVICE. (a) For purposes of this section, "dependent," "military service," and "servicemember" have the meanings assigned by 50 App. U.S.C. Section 511.

(b) A tenant who is a servicemember or a dependent of a servicemember may vacate the dwelling leased by the tenant and avoid liability for future rent and all other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term if:

(1) the lease was executed by or on behalf of a person who, after executing the lease or during the term of the lease, enters military service; or

(2) a servicemember, while in military service, executes the lease and after executing the lease receives military orders:

(A) for a permanent change of station; or

(B) to deploy with a military unit for a period of 90 days or more.

(c) A tenant who terminates a lease under Subsection (b) shall deliver to the landlord or landlord's agent:

(1) a written notice of termination of the lease; and

(2) a copy of an appropriate government document providing evidence of the tenant's entrance into military service if Subsection (b)(1) applies or a copy of the servicemember's military orders if Subsection (b)(2) applies.

(d) Termination of a lease under this section is effective:

(1) in the case of a lease that provides for monthly payment of rent, on the 30th day after the first date on which the next rental payment is due after the date on which the notice under Subsection (c)(1) is delivered; or

(2) in the case of a lease other than a lease described by Subdivision (1), on the last day of the month following the month in which the notice under Subsection (c)(1) is delivered.

(e) A landlord, not later than the 30th day after the effective date of the termination of a lease under this section, shall refund to the residential tenant terminating the lease under Subsection (b) all rent or other amounts paid in advance under the lease for any period after the effective date of the termination of the lease.

(f) Except as provided by Subsection (g), this section does not affect a tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the lease was terminated by the tenant under this section.

(g) A tenant who terminates a lease under Subsection (b) is released from all liability for any delinquent, unpaid rent owed to the landlord by the tenant on the effective date of the lease termination if the lease does not contain language substantially equivalent to the following:

"Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or a military deployment or transfer."

(h) A landlord who violates this section is liable to the tenant for actual damages, a civil penalty in an amount equal to the amount of one month's rent plus $500, and attorney's fees.

(i) Except as provided by Subsection (j), a tenant's right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability under this section may not be waived by a tenant.

(j) A tenant and a landlord may agree that the tenant waives a tenant's rights under this section if the tenant or any dependent living with the tenant moves into base housing or other housing within 30 miles of the dwelling. A waiver under this section must be signed and in writing in a document separate from the lease and must comply with federal law. A waiver under this section does not apply if:

(1) the tenant or the tenant's dependent moves into housing owned or occupied by family or relatives of the tenant or the tenant's dependent; or

(2) the tenant and the tenant's dependent move, wholly or partly, because of a significant financial loss of income caused by the tenant's military service.

(k) For purposes of Subsection (j), "significant financial loss of income" means a reduction of 10 percent or more of the tenant's household income caused by the tenant's military service. A landlord is entitled to verify the significant financial loss of income in order to determine whether a tenant is entitled to terminate a lease if the tenant has signed a waiver under this section and moves within 30 miles of the dwelling into housing that is not owned or occupied by family or relatives of the tenant or the tenant's dependent. For

purposes of this subsection, a pay stub or other statement of earnings issued by the tenant's employer is sufficient verification.

Added by Acts 2005, 79th Leg., Ch. 348 (S.B. 1186), Sec. 1, eff. June 17, 2005, except Subsec. (g) eff. January 1, 2006.

Sec. 92.018. LIABILITY OF TENANT FOR GOVERNMENTAL FINES. (a) In this section, "governmental entity" means the state, an agency of the state, or a political subdivision of the state.

(b) A landlord or a landlord's manager or agent may not charge or seek reimbursement from the landlord's tenant for the amount of a fine imposed on the landlord by a governmental entity unless the tenant or another occupant of the tenant's dwelling actually caused the damage or other condition on which the fine is based.

Added by Acts 2005, 79th Leg., Ch. 1344 (S.B. 399), Sec. 1, eff. June 18, 2005.
Renumbered from Property Code, Section 92.016 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(64), eff. September 1, 2007.

Sec. 92.019. LATE PAYMENT OF RENT; FEES. (a) A landlord may not charge a tenant a late fee for failing to pay rent unless:

(1) notice of the fee is included in a written lease;

(2) the fee is a reasonable estimate of uncertain damages to the landlord that are incapable of precise calculation and result from late payment of rent; and

(3) the rent has remained unpaid one full day after the date the rent was originally due.

(b) A late fee under this section may include an initial fee and a daily fee for each day the rent continues to remain unpaid.

(c) A landlord who violates this section is liable to the tenant for an amount equal to the sum of $100, three times the amount of the late fee charged in violation of this section, and the tenant's reasonable attorney's fees.

(d) A provision of a lease that purports to waive a right or exempt a party from a liability or duty under this section is void.

(e) This section relates only to a fee, charge, or other sum of money required to be paid under the lease if rent is not paid as

provided by Subsection (a)(3), and does not affect the landlord's right to terminate the lease or take other action permitted by the lease or other law. Payment of the fee, charge, or other sum of money by a tenant does not waive the right or remedies provided by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 917 (H.B. 3101), Sec. 3, eff. January 1, 2008.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1268 (H.B. 1109), Sec. 1, eff. June 19, 2009.

Sec. 92.020. EMERGENCY PHONE NUMBER. (a) A landlord that has an on-site management or superintendent's office for a residential rental property must provide to a tenant a telephone number that will be answered 24 hours a day for the purpose of reporting emergencies related to a condition of the leased premises that materially affects the physical health or safety of an ordinary tenant.

(b) The landlord must post the phone number required by Subsection (a) prominently outside the management or superintendent's office.

(c) This section does not apply to or affect a local ordinance governing a landlord's obligation to provide a 24-hour emergency contact number to a tenant that is adopted before January 1, 2008, if the ordinance conforms with or is amended to conform with this section.

(d) A landlord to whom Subsection (a) does not apply must provide to a tenant a telephone number for the purpose of reporting emergencies described by that subsection.

Added by Acts 2007, 80th Leg., R.S., Ch. 917 (H.B. 3101), Sec. 4, eff. January 1, 2008.

Sec. 92.021. LIABILITY OF CERTAIN GUARANTORS UNDER LEASE. (a) A person other than a tenant who guarantees a lease is liable only for the original lease term except that a person may specify that the person agrees to guarantee a renewal of the lease as provided by Subsection (b).

(b) A person may specify in writing in an original lease that

the person will guarantee a renewal of the lease only if the original lease states:

(1) the last date, as specified by the guarantor, on which the renewal of the lease will renew the obligation of the guarantor;

(2) that the guarantor is liable under a renewal of the lease that occurs on or before that date; and

(3) that the guarantor is liable under a renewal of the lease only if the renewal:

(A) involves the same parties as the original lease; and

(B) does not increase the guarantor's potential financial obligation for rent that existed under the original lease.

(c) Subsection (b) does not prohibit a guarantor from voluntarily entering into an agreement at the time of the renewal of a lease, in a separate written document, to guarantee an increased amount of rent.

(d) This section does not release a guarantor from the obligations of the guarantor under the terms of the original lease or a valid renewal for costs and damages owed to the lessor that arise after the date specified by the guarantor in the original lease in accordance with Subsection (b), if the costs or damages relate to actions of the tenant before that date or arise as a result of the tenant refusing to vacate the leased premises.

Added by Acts 2009, 81st Leg., R.S., Ch. 601 (H.B. 534), Sec. 1, eff. January 1, 2010.

Sec. 92.023. TENANT'S REMEDIES REGARDING REVOCATION OF CERTIFICATE OF OCCUPANCY. If a municipality or a county revokes a certificate of occupancy for a leased premises because of the landlord's failure to maintain the premises, the landlord is liable to a tenant who is not in default under the lease for:

(1) the full amount of the tenant's security deposit;

(2) the pro rata portion of any rental payment the tenant has paid in advance;

(3) the tenant's actual damages, including any moving costs, utility connection fees, storage fees, and lost wages; and

(4) court costs and attorney's fees arising from any related cause of action by the tenant against the landlord.

Added by Acts 2011, 82nd Leg., R.S., Ch. 512 (H.B. 1862), Sec. 1, eff. September 1, 2011.

Sec. 92.024. LANDLORD'S DUTY TO PROVIDE COPY OF LEASE. (a) Not later than the third business day after the date the lease is signed by each party to the lease, a landlord shall provide at least one complete copy of the lease to at least one tenant who is a party to the lease.

(b) If more than one tenant is a party to the lease, not later than the third business day after the date a landlord receives a written request for a copy of a lease from a tenant who has not received a copy of the lease under Subsection (a), the landlord shall provide one complete copy of the lease to the requesting tenant.

(c) A landlord's failure to provide a complete copy of the lease as described by Subsection (a) or (b) does not invalidate the lease or, subject to Subsection (d), prevent the landlord from prosecuting or defending a legal action or proceeding to enforce the lease.

(d) A landlord may not continue to prosecute and a court shall abate an action to enforce the lease, other than an action for nonpayment of rent, only until the landlord provides to a tenant a complete copy of the lease if the tenant submits to the court evidence in a plea in abatement or otherwise that the landlord failed to comply with Subsection (a) or (b).

(e) A landlord may comply with this section by providing to a tenant a complete copy of the lease:

(1) in a paper format;

(2) in an electronic format if requested by the tenant; or

(3) by e-mail if the parties have communicated by e-mail regarding the lease.

Added by Acts 2013, 83rd Leg., R.S., Ch. 588 (S.B. 630), Sec. 1, eff. January 1, 2014.

Sec. 92.025. LIABILITY FOR LEASING TO PERSON WITH CRIMINAL RECORD. (a) A cause of action does not accrue against a landlord or a landlord's manager or agent solely for leasing a dwelling to a tenant convicted of, or arrested or placed on deferred adjudication

for, an offense.

(b) This section does not preclude a cause of action for negligence in leasing of a dwelling by a landlord or a landlord's manager or agent to a tenant, if:

(1) the tenant:

(A) was convicted of an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or

(B) has a reportable conviction or adjudication, as defined by Article 62.001, Code of Criminal Procedure; and

(2) the person against whom the action is filed knew or should have known of the conviction or adjudication.

(c) This section does not create a cause of action or expand an existing cause of action.

Added by Acts 2015, 84th Leg., R.S., Ch. 651 (H.B. 1510), Sec. 1, eff. January 1, 2016.

SUBCHAPTER B. REPAIR OR CLOSING OF LEASEHOLD

Sec. 92.051. APPLICATION. This subchapter applies to a lease executed, entered into, renewed, or extended on or after September 1, 1979.

Acts 1983, 68th Leg., p. 3632, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.052. LANDLORD'S DUTY TO REPAIR OR REMEDY. (a) A landlord shall make a diligent effort to repair or remedy a condition if:

(1) the tenant specifies the condition in a notice to the person to whom or to the place where rent is normally paid;

(2) the tenant is not delinquent in the payment of rent at the time notice is given; and

(3) the condition:

(A) materially affects the physical health or safety of an ordinary tenant; or

(B) arises from the landlord's failure to provide and maintain in good operating condition a device to supply hot water of a minimum temperature of 120 degrees Fahrenheit.

(b) Unless the condition was caused by normal wear and tear, the landlord does not have a duty during the lease term or a renewal

or extension to repair or remedy a condition caused by:

(1) the tenant;

(2) a lawful occupant in the tenant's dwelling;

(3) a member of the tenant's family; or

(4) a guest or invitee of the tenant.

(c) This subchapter does not require the landlord:

(1) to furnish utilities from a utility company if as a practical matter the utility lines of the company are not reasonably available; or

(2) to furnish security guards.

(d) The tenant's notice under Subsection (a) must be in writing only if the tenant's lease is in writing and requires written notice.

Acts 1983, 68th Leg., p. 3632, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 650, Sec. 3, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 48, Sec. 14, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 600 (H.B. 177), Sec. 1, eff. September 1, 2007.

Sec. 92.053. BURDEN OF PROOF. (a) Except as provided by this section, the tenant has the burden of proof in a judicial action to enforce a right resulting from the landlord's failure to repair or remedy a condition under Section 92.052.

(b) If the landlord does not provide a written explanation for delay in performing a duty to repair or remedy on or before the fifth day after receiving from the tenant a written demand for an explanation, the landlord has the burden of proving that he made a diligent effort to repair and that a reasonable time for repair did not elapse.

Acts 1983, 68th Leg., p. 3633, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.054. CASUALTY LOSS. (a) If a condition results from an insured casualty loss, such as fire, smoke, hail, explosion, or a similar cause, the period for repair does not begin until the landlord receives the insurance proceeds.

(b) If after a casualty loss the rental premises are as a practical matter totally unusable for residential purposes and if the

casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, either the landlord or the tenant may terminate the lease by giving written notice to the other any time before repairs are completed. If the lease is terminated, the tenant is entitled only to a pro rata refund of rent from the date the tenant moves out and to a refund of any security deposit otherwise required by law.

(c) If after a casualty loss the rental premises are partially unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, the tenant is entitled to reduction in the rent in an amount proportionate to the extent the premises are unusable because of the casualty, but only on judgment of a county or district court. A landlord and tenant may agree otherwise in a written lease.

Acts 1983, 68th Leg., p. 3633, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 15, eff. Sept. 1, 1993.

Sec. 92.055. CLOSING THE RENTAL PREMISES. (a) A landlord may close a rental unit at any time by giving written notice by certified mail, return receipt requested, to the tenant and to the local health officer and local building inspector, if any, stating that:

(1) the landlord is terminating the tenancy as soon as legally possible; and

(2) after the tenant moves out the landlord will either immediately demolish the rental unit or no longer use the unit for residential purposes.

(b) After a tenant receives the notice and moves out:

(1) the local health officer or building inspector may not allow occupancy of or utility service by separate meter to the rental unit until the officer certifies that he knows of no condition that materially affects the physical health or safety of an ordinary tenant; and

(2) the landlord may not allow reoccupancy or reconnection of utilities by separate meter within six months after the date the tenant moves out.

(c) If the landlord gives the tenant the notice closing the rental unit:

(1) before the tenant gives a repair notice to the landlord, the remedies of this subchapter do not apply;

(2) after the tenant gives a repair notice to the landlord but before the landlord has had a reasonable time to make repairs, the tenant is entitled only to the remedies under Subsection (d) of this section and Subdivisions (3), (4), and (5) of Subsection (a) of Section 92.0563; or

(3) after the tenant gives a repair notice to the landlord and after the landlord has had a reasonable time to make repairs, the tenant is entitled only to the remedies under Subsection (d) of this section and Subdivisions (3), (4), and (5) of Subsection (a) of Section 92.0563.

(d) If the landlord closes the rental unit after the tenant gives the landlord a notice to repair and the tenant moves out on or before the end of the rental term, the landlord must pay the tenant's actual and reasonable moving expenses, refund a pro rata portion of the tenant's rent from the date the tenant moves out, and, if otherwise required by law, return the tenant's security deposit.

(e) A landlord who violates Subsection (b) or (d) is liable to the tenant for an amount equal to the total of one month's rent plus $100 and attorney's fees.

(f) The closing of a rental unit does not prohibit the occupancy of other apartments, nor does this subchapter prohibit occupancy of or utility service by master or individual meter to other rental units in an apartment complex that have not been closed under this section. If another provision of this subchapter conflicts with this section, this section controls.

Acts 1983, 68th Leg., p. 3634, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 650, Sec. 4, eff. Aug. 28, 1989.

Sec. 92.056. LANDLORD LIABILITY AND TENANT REMEDIES; NOTICE AND TIME FOR REPAIR. (a) A landlord's liability under this section is subject to Section 92.052(b) regarding conditions that are caused by a tenant and Section 92.054 regarding conditions that are insured casualties.

(b) A landlord is liable to a tenant as provided by this subchapter if:

(1) the tenant has given the landlord notice to repair or

remedy a condition by giving that notice to the person to whom or to the place where the tenant's rent is normally paid;

(2) the condition materially affects the physical health or safety of an ordinary tenant;

(3) the tenant has given the landlord a subsequent written notice to repair or remedy the condition after a reasonable time to repair or remedy the condition following the notice given under Subdivision (1) or the tenant has given the notice under Subdivision (1) by sending that notice by certified mail, return receipt requested, by registered mail, or by another form of mail that allows tracking of delivery from the United States Postal Service or a private delivery service;

(4) the landlord has had a reasonable time to repair or remedy the condition after the landlord received the tenant's notice under Subdivision (1) and, if applicable, the tenant's subsequent notice under Subdivision (3);

(5) the landlord has not made a diligent effort to repair or remedy the condition after the landlord received the tenant's notice under Subdivision (1) and, if applicable, the tenant's notice under Subdivision (3); and

(6) the tenant was not delinquent in the payment of rent at the time any notice required by this subsection was given.

(c) For purposes of Subsection (b)(4) or (5), a landlord is considered to have received the tenant's notice when the landlord or the landlord's agent or employee has actually received the notice or when the United States Postal Service has attempted to deliver the notice to the landlord.

(d) For purposes of Subsection (b)(3) or (4), in determining whether a period of time is a reasonable time to repair or remedy a condition, there is a rebuttable presumption that seven days is a reasonable time. To rebut that presumption, the date on which the landlord received the tenant's notice, the severity and nature of the condition, and the reasonable availability of materials and labor and of utilities from a utility company must be considered.

(e) Except as provided in Subsection (f), a tenant to whom a landlord is liable under Subsection (b) of this section may:

(1) terminate the lease;

(2) have the condition repaired or remedied according to Section 92.0561;

(3) deduct from the tenant's rent, without necessity of

judicial action, the cost of the repair or remedy according to Section 92.0561; and

(4) obtain judicial remedies according to Section 92.0563.

(f) A tenant who elects to terminate the lease under Subsection (e) is:

(1) entitled to a pro rata refund of rent from the date of termination or the date the tenant moves out, whichever is later;

(2) entitled to deduct the tenant's security deposit from the tenant's rent without necessity of lawsuit or obtain a refund of the tenant's security deposit according to law; and

(3) not entitled to the other repair and deduct remedies under Section 92.0561 or the judicial remedies under Subdivisions (1) and (2) of Subsection (a) of Section 92.0563.

(g) A lease must contain language in underlined or bold print that informs the tenant of the remedies available under this section and Section 92.0561.

Acts 1983, 68th Leg., p. 3635, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 650, Sec. 5, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 1205, Sec. 11, eff. Jan. 1, 1998.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 917 (H.B. 3101), Sec. 5, eff. January 1, 2008.

Acts 2015, 84th Leg., R.S., Ch. 1198 (S.B. 1367), Sec. 4, eff. January 1, 2016.

Sec. 92.0561. TENANT'S REPAIR AND DEDUCT REMEDIES. (a) If the landlord is liable to the tenant under Section 92.056(b), the tenant may have the condition repaired or remedied and may deduct the cost from a subsequent rent payment as provided in this section.

(b) The tenant's deduction for the cost of the repair or remedy may not exceed the amount of one month's rent under the lease or $500, whichever is greater. However, if the tenant's rent is subsidized in whole or in part by a governmental agency, the deduction limitation of one month's rent shall mean the fair market rent for the dwelling and not the rent that the tenant pays. The fair market rent shall be determined by the governmental agency subsidizing the rent, or in the absence of such a determination, it shall be a reasonable amount of rent under the circumstances.

(c) Repairs and deductions under this section may be made as often as necessary so long as the total repairs and deductions in any one month do not exceed one month's rent or $500, whichever is greater.

(d) Repairs under this section may be made only if all of the following requirements are met:

(1) The landlord has a duty to repair or remedy the condition under Section 92.052, and the duty has not been waived in a written lease by the tenant under Subsection (e) or (f) of Section 92.006.

(2) The tenant has given notice to the landlord as required by Section 92.056(b)(1), and, if required, a subsequent notice under Section 92.056(b)(3), and at least one of those notices states that the tenant intends to repair or remedy the condition. The notice shall also contain a reasonable description of the intended repair or remedy.

(3) Any one of the following events has occurred:

(A) The landlord has failed to remedy the backup or overflow of raw sewage inside the tenant's dwelling or the flooding from broken pipes or natural drainage inside the dwelling.

(B) The landlord has expressly or impliedly agreed in the lease to furnish potable water to the tenant's dwelling and the water service to the dwelling has totally ceased.

(C) The landlord has expressly or impliedly agreed in the lease to furnish heating or cooling equipment; the equipment is producing inadequate heat or cooled air; and the landlord has been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the lack of heat or cooling materially affects the health or safety of an ordinary tenant.

(D) The landlord has been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the condition materially affects the health or safety of an ordinary tenant.

(e) If the requirements of Subsection (d) of this section are met, a tenant may:

(1) have the condition repaired or remedied immediately following the tenant's notice of intent to repair if the condition involves sewage or flooding as referred to in Paragraph (A) of Subdivision (3) of Subsection (d) of this section;

(2) have the condition repaired or remedied if the condition involves a cessation of potable water as referred to in Paragraph (A) of Subdivision (3) of Subsection (d) of this section and if the landlord has failed to repair or remedy the condition within three days following the tenant's delivery of notice of intent to repair;

(3) have the condition repaired or remedied if the condition involves inadequate heat or cooled air as referred to in Paragraph (C) of Subdivision (3) of Subsection (d) of this section and if the landlord has failed to repair the condition within three days after delivery of the tenant's notice of intent to repair; or

(4) have the condition repaired or remedied if the condition is not covered by Paragraph (A), (B), or (C) of Subdivision (3) of Subsection (d) of this section and involves a condition affecting the physical health or safety of the ordinary tenant as referred to in Paragraph (D) of Subdivision (3) of Subsection (d) of this section and if the landlord has failed to repair or remedy the condition within seven days after delivery of the tenant's notice of intent to repair.

(f) Repairs made pursuant to the tenant's notice must be made by a company, contractor, or repairman listed in the yellow or business pages of the telephone directory or in the classified advertising section of a newspaper of the local city, county, or adjacent county at the time of the tenant's notice of intent to repair. Unless the landlord and tenant agree otherwise under Subsection (g) of this section, repairs may not be made by the tenant, the tenant's immediate family, the tenant's employer or employees, or a company in which the tenant has an ownership interest. Repairs may not be made to the foundation or load-bearing structural elements of the building if it contains two or more dwelling units.

(g) A landlord and a tenant may mutually agree for the tenant to repair or remedy, at the landlord's expense, any condition of the dwelling regardless of whether it materially affects the health or safety of an ordinary tenant. However, the landlord's duty to repair or remedy conditions covered by this subchapter may not be waived except as provided by Subsection (e) or (f) of Section 92.006.

(h) Repairs made pursuant to the tenant's notice must be made in compliance with applicable building codes, including a building permit when required.

(i) The tenant shall not have authority to contract for labor or materials in excess of what the tenant may deduct under this section. The landlord is not liable to repairmen, contractors, or material suppliers who furnish labor or materials to repair or remedy the condition. A repairman or supplier shall not have a lien for materials or services arising out of repairs contracted for by the tenant under this section.

(j) When deducting the cost of repairs from the rent payment, the tenant shall furnish the landlord, along with payment of the balance of the rent, a copy of the repair bill and the receipt for its payment. A repair bill and receipt may be the same document.

(k) If the landlord repairs or remedies the condition or delivers an affidavit for delay under Section 92.0562 to the tenant after the tenant has contacted a repairman but before the repairman commences work, the landlord shall be liable for the cost incurred by the tenant for the repairman's trip charge, and the tenant may deduct the charge from the tenant's rent as if it were a repair cost.

Added by Acts 1989, 71st Leg., ch. 650, Sec. 6, eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 1205, Sec. 12, eff. Jan. 1, 1998.

Sec. 92.0562. LANDLORD AFFIDAVIT FOR DELAY. (a) The tenant must delay contracting for repairs under Section 92.0561 if, before the tenant contracts for the repairs, the landlord delivers to the tenant an affidavit, signed and sworn to under oath by the landlord or his authorized agent and complying with this section.

(b) The affidavit must summarize the reasons for the delay and the diligent efforts made by the landlord up to the date of the affidavit to get the repairs done. The affidavit must state facts showing that the landlord has made and is making diligent efforts to repair the condition, and it must contain dates, names, addresses, and telephone numbers of contractors, suppliers, and repairmen contacted by the owner.

(c) Affidavits under this section may delay repair by the tenant for:

(1) 15 days if the landlord's failure to repair is caused by a delay in obtaining necessary parts for which the landlord is not at fault; or

(2) 30 days if the landlord's failure to repair is caused by a general shortage of labor or materials for repair following a natural disaster such as a hurricane, tornado, flood, extended freeze, or widespread windstorm.

(d) Affidavits for delay based on grounds other than those listed in Subsection (c) of this section are unlawful, and if used, they are of no effect. The landlord may file subsequent affidavits, provided that the total delay of the repair or remedy extends no longer than six months from the date the landlord delivers the first affidavit to the tenant.

(e) The affidavit must be delivered to the tenant by any of the following methods:

(1) personal delivery to the tenant;

(2) certified mail, return receipt requested, to the tenant; or

(3) leaving the notice inside the dwelling in a conspicuous place if notice in that manner is authorized in a written lease.

(f) Affidavits for delay by a landlord under this section must be submitted in good faith. Following delivery of the affidavit, the landlord must continue diligent efforts to repair or remedy the condition. There shall be a rebuttable presumption that the landlord acted in good faith and with continued diligence for the first affidavit for delay the landlord delivers to the tenant. The landlord shall have the burden of pleading and proving good faith and continued diligence for subsequent affidavits for delay. A landlord who violates this section shall be liable to the tenant for all judicial remedies under Section 92.0563 except that the civil penalty under Subdivision (3) of Subsection (a) of Section 92.0563 shall be one month's rent plus $1,000.

(g) If the landlord is liable to the tenant under Section 92.056 and if a new landlord, in good faith and without knowledge of the tenant's notice of intent to repair, has acquired title to the tenant's dwelling by foreclosure, deed in lieu of foreclosure, or general warranty deed in a bona fide purchase, then the following shall apply:

(1) The tenant's right to terminate the lease under this subchapter shall not be affected, and the tenant shall have no duty to give additional notice to the new landlord.

(2) The tenant's right to repair and deduct for conditions involving sewage backup or overflow, flooding inside the dwelling, or

a cutoff of potable water under Subsection (e) of Section 92.0561 shall not be affected, and the tenant shall have no duty to give additional notice to the new landlord.

(3) For conditions other than those specified in Subdivision (2) of this subsection, if the new landlord acquires title as described in this subsection and has notified the tenant of the name and address of the new landlord or the new landlord's authorized agent and if the tenant has not already contracted for the repair or remedy at the time the tenant is so notified, the tenant must deliver to the new landlord a written notice of intent to repair or remedy the condition, and the new landlord shall have a reasonable time to complete the repair before the tenant may repair or remedy the condition. No further notice from the tenant is necessary in order for the tenant to repair or remedy the condition after a reasonable time has elapsed.

(4) The tenant's judicial remedies under Section 92.0563 shall be limited to recovery against the landlord to whom the tenant gave the required notices until the tenant has given the new landlord the notices required by this section and otherwise complied with Section 92.056 as to the new landlord.

(5) If the new landlord violates this subsection, the new landlord is liable to the tenant for a civil penalty of one month's rent plus $2,000, actual damages, and attorney's fees.

(6) No provision of this section shall affect any right of a foreclosing superior lienholder to terminate, according to law, any interest in the premises held by the holders of subordinate liens, encumbrances, leases, or other interests and shall not affect any right of the tenant to terminate the lease according to law.

Added by Acts 1989, 71st Leg., ch. 650, Sec. 7, eff. Aug. 28, 1989.

Sec. 92.0563. TENANT'S JUDICIAL REMEDIES. (a) A tenant's judicial remedies under Section 92.056 shall include:

(1) an order directing the landlord to take reasonable action to repair or remedy the condition;

(2) an order reducing the tenant's rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;

(3) a judgment against the landlord for a civil penalty of one month's rent plus $500;

(4) a judgment against the landlord for the amount of the tenant's actual damages; and

(5) court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

(b) A landlord who knowingly violates Section 92.006 by contracting orally or in writing with a tenant to waive the landlord's duty to repair under this subchapter shall be liable to the tenant for actual damages, a civil penalty of one month's rent plus $2,000, and reasonable attorney's fees. For purposes of this subsection, there shall be a rebuttable presumption that the landlord acted without knowledge of the violation. The tenant shall have the burden of pleading and proving a knowing violation. If the lease is in writing and is not in violation of Section 92.006, the tenant's proof of a knowing violation must be clear and convincing. A mutual agreement for tenant repair under Subsection (g) of Section 92.0561 is not a violation of Section 92.006.

(c) The justice, county, and district courts have concurrent jurisdiction in an action under Subsection (a).

(d) If a suit is filed in a justice court requesting relief under Subsection (a), the justice court shall conduct a hearing on the request not earlier than the sixth day after the date of service of citation and not later than the 10th day after that date.

(e) A justice court may not award a judgment under this section, including an order of repair, that exceeds $10,000, excluding interest and costs of court.

(f) An appeal of a judgment of a justice court under this section takes precedence in county court and may be held at any time after the eighth day after the date the transcript is filed in the county court. An owner of real property who files a notice of appeal of a judgment of a justice court to the county court perfects the owner's appeal and stays the effect of the judgment without the necessity of posting an appeal bond.

Added by Acts 1989, 71st Leg., ch. 650, Sec. 8, eff. Aug. 28, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 225 (S.B. 1448), Sec. 1, eff. January 1, 2010.

Sec. 92.058. LANDLORD REMEDY FOR TENANT VIOLATION. (a) If the tenant withholds rents, causes repairs to be performed, or makes rent deductions for repairs in violation of this subchapter, the landlord may recover actual damages from the tenant. If, after a landlord has notified a tenant in writing of (1) the illegality of the tenant's rent withholding or the tenant's proposed repair and (2) the penalties of this subchapter, the tenant withholds rent, causes repairs to be performed, or makes rent deductions for repairs in bad faith violation of this subchapter, the landlord may recover from the tenant a civil penalty of one month's rent plus $500.

(b) Notice under this section must be in writing and may be given in person, by mail, or by delivery to the premises.

(c) The landlord has the burden of pleading and proving, by clear and convincing evidence, that the landlord gave the tenant the required notice of the illegality and the penalties and that the tenant's violation was done in bad faith. In any litigation under this subsection, the prevailing party shall recover reasonable attorney's fees from the nonprevailing party.

Acts 1983, 68th Leg., p. 3638, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 650, Sec. 10, eff. Aug. 28, 1989.

Sec. 92.060. AGENTS FOR DELIVERY OF NOTICE. A managing agent, leasing agent, or resident manager is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter.

Acts 1983, 68th Leg., p. 3639, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.061. EFFECT ON OTHER RIGHTS. The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of existing common law and other statutory law warranties and duties of landlords for maintenance, repair, security, habitability, and nonretaliation, and remedies of tenants for a violation of those warranties and duties. Otherwise, this subchapter does not affect any other right of a landlord or tenant under contract, statutory

law, or common law that is consistent with the purposes of this subchapter or any right a landlord or tenant may have to bring an action for personal injury or property damage under the law of this state. This subchapter does not impose obligations on a landlord or tenant other than those expressly stated in this subchapter.

Acts 1983, 68th Leg., p. 3639, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 200, Sec. 5, eff. Aug. 26, 1985.

Sec. 92.062. LEASE TERM AFTER NATURAL DISASTER. If a rental premises is, as a practical matter, totally unusable for residential purposes as a result of a natural disaster such as a hurricane, tornado, flood, extended freeze, or widespread windstorm, a landlord that allows a tenant to move to another rental unit owned by the landlord may not require the tenant to execute a lease for a term longer than the term remaining on the tenant's lease on the date the premises was rendered unusable as a result of the natural disaster.

Added by Acts 2013, 83rd Leg., R.S., Ch. 475 (S.B. 1120), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. SECURITY DEPOSITS

Sec. 92.101. APPLICATION. This subchapter applies to all residential leases.

Acts 1983, 68th Leg., p. 3639, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 744, Sec. 1, eff. Jan. 1, 1996.

Sec. 92.102. SECURITY DEPOSIT. A security deposit is any advance of money, other than a rental application deposit or an advance payment of rent, that is intended primarily to secure performance under a lease of a dwelling that has been entered into by a landlord and a tenant.

Acts 1983, 68th Leg., p. 3639, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 744, Sec. 2, eff. Jan. 1, 1996.

Sec. 92.103. OBLIGATION TO REFUND. (a) Except as provided by Section 92.107, the landlord shall refund a security deposit to the tenant on or before the 30th day after the date the tenant surrenders the premises.

(b) A requirement that a tenant give advance notice of surrender as a condition for refunding the security deposit is effective only if the requirement is underlined or is printed in conspicuous bold print in the lease.

(c) The tenant's claim to the security deposit takes priority over the claim of any creditor of the landlord, including a trustee in bankruptcy.

Acts 1983, 68th Leg., p. 3639, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 744, Sec. 3, eff. Jan. 1, 1996.

Sec. 92.1031. CONDITIONS FOR RETENTION OF SECURITY DEPOSIT OR RENT PREPAYMENT. (a) Except as provided in Subsection (b), a landlord who receives a security deposit or rent prepayment for a dwelling from a tenant who fails to occupy the dwelling according to a lease between the landlord and the tenant may not retain the security deposit or rent prepayment if:

(1) the tenant secures a replacement tenant satisfactory to the landlord and the replacement tenant occupies the dwelling on or before the commencement date of the lease; or

(2) the landlord secures a replacement tenant satisfactory to the landlord and the replacement tenant occupies the dwelling on or before the commencement date of the lease.

(b) If the landlord secures the replacement tenant, the landlord may retain and deduct from the security deposit or rent prepayment either:

(1) a sum agreed to in the lease as a lease cancellation fee; or

(2) actual expenses incurred by the landlord in securing the replacement, including a reasonable amount for the time of the landlord in securing the replacement tenant.

Added by Acts 1995, 74th Leg., ch. 869, Sec. 13, eff. Jan. 1, 1996.

Sec. 92.104. RETENTION OF SECURITY DEPOSIT; ACCOUNTING. (a)

Before returning a security deposit, the landlord may deduct from the deposit damages and charges for which the tenant is legally liable under the lease or as a result of breaching the lease.

(b) The landlord may not retain any portion of a security deposit to cover normal wear and tear.

(c) If the landlord retains all or part of a security deposit under this section, the landlord shall give to the tenant the balance of the security deposit, if any, together with a written description and itemized list of all deductions. The landlord is not required to give the tenant a description and itemized list of deductions if:

(1) the tenant owes rent when he surrenders possession of the premises; and

(2) there is no controversy concerning the amount of rent owed.

Acts 1983, 68th Leg., p. 3640, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.1041. PRESUMPTION OF REFUND OR ACCOUNTING. A landlord is presumed to have refunded a security deposit or made an accounting of security deposit deductions if, on or before the date required under this subchapter, the refund or accounting is placed in the United States mail and postmarked on or before the required date.

Added by Acts 1995, 74th Leg., ch. 744, Sec. 4, eff. Jan. 1, 1996.

Sec. 92.105. CESSATION OF OWNER'S INTEREST. (a) If the owner's interest in the premises is terminated by sale, assignment, death, appointment of a receiver, bankruptcy, or otherwise, the new owner is liable for the return of security deposits according to this subchapter from the date title to the premises is acquired.

(b) The new owner shall deliver to the tenant a signed statement acknowledging that the new owner has acquired the property and is responsible for the tenant's security deposit and specifying the exact dollar amount of the deposit.

(b-1) The person who no longer owns an interest in the rental premises is liable for a security deposit received while the person was the owner until the new owner has received the deposit or has assumed the liability for the deposit, unless otherwise specified by the parties in a written contract.

(c) Subsection (a) does not apply to a real estate mortgage lienholder who acquires title by foreclosure.

Acts 1983, 68th Leg., p. 3640, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 305, Sec. 2, eff. Aug. 26, 1985. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1198 (S.B. 1367), Sec. 5, eff. January 1, 2016.

Sec. 92.106. RECORDS. The landlord shall keep accurate records of all security deposits.

Acts 1983, 68th Leg., p. 3641, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.107. TENANT'S FORWARDING ADDRESS. (a) The landlord is not obligated to return a tenant's security deposit or give the tenant a written description of damages and charges until the tenant gives the landlord a written statement of the tenant's forwarding address for the purpose of refunding the security deposit.

(b) The tenant does not forfeit the right to a refund of the security deposit or the right to receive a description of damages and charges merely for failing to give a forwarding address to the landlord.

Acts 1983, 68th Leg., p. 3641, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.108. LIABILITY FOR WITHHOLDING LAST MONTH'S RENT. (a) The tenant may not withhold payment of any portion of the last month's rent on grounds that the security deposit is security for unpaid rent.

(b) A tenant who violates this section is presumed to have acted in bad faith. A tenant who in bad faith violates this section is liable to the landlord for an amount equal to three times the rent wrongfully withheld and the landlord's reasonable attorney's fees in a suit to recover the rent.

Acts 1983, 68th Leg., p. 3641, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.109. LIABILITY OF LANDLORD. (a) A landlord who in bad faith retains a security deposit in violation of this subchapter is liable for an amount equal to the sum of $100, three times the portion of the deposit wrongfully withheld, and the tenant's reasonable attorney's fees in a suit to recover the deposit.

(b) A landlord who in bad faith does not provide a written description and itemized list of damages and charges in violation of this subchapter:

(1) forfeits the right to withhold any portion of the security deposit or to bring suit against the tenant for damages to the premises; and

(2) is liable for the tenant's reasonable attorney's fees in a suit to recover the deposit.

(c) In an action brought by a tenant under this subchapter, the landlord has the burden of proving that the retention of any portion of the security deposit was reasonable.

(d) A landlord who fails either to return a security deposit or to provide a written description and itemization of deductions on or before the 30th day after the date the tenant surrenders possession is presumed to have acted in bad faith.

Acts 1983, 68th Leg., p. 3641, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.110. LEASE WITHOUT SECURITY DEPOSIT; REQUIRED NOTICE. (a) If a security deposit was not required by a residential lease and the tenant is liable for damages and charges on surrender of the premises, the landlord shall notify the tenant in writing of the landlord's claim for damages and charges on or before the date the landlord reports the claim to a consumer reporting agency or third-party debt collector.

(b) A landlord is not required to provide the notice under Subsection (a) if the tenant has not given the landlord the tenant's forwarding address as provided by Section 92.107.

(c) If a landlord does not provide the tenant the notice as required by this section, the landlord forfeits the right to collect damages and charges from the tenant. Forfeiture of the right to collect damages and charges from the tenant is the exclusive remedy for the failure to provide the proper notice to the tenant.

Added by Acts 2015, 84th Leg., R.S., Ch. 1198 (S.B. 1367), Sec. 6,

eff. January 1, 2016.

SUBCHAPTER D. SECURITY DEVICES

Sec. 92.151. DEFINITIONS. In this subchapter:

(1) "Doorknob lock" means a lock in a doorknob, with the lock operated from the exterior by a key, card, or combination and from the interior without a key, card, or combination.

(2) "Door viewer" means a permanently installed device in an exterior door that allows a person inside the dwelling to view a person outside the door. The device must be:

(A) a clear glass pane or one-way mirror; or

(B) a peephole having a barrel with a one-way lens of glass or other substance providing an angle view of not less than 160 degrees.

(3) "Exterior door" means a door providing access from a dwelling interior to the exterior. The term includes a door between a living area and a garage but does not include a sliding glass door or a screen door.

(4) "French doors" means a set of two exterior doors in which each door is hinged and abuts the other door when closed. The term includes double-hinged patio doors.

(5) "Keyed dead bolt" means:

(A) a door lock not in the doorknob that:

(i) locks with a bolt into the doorjamb; and

(ii) is operated from the exterior by a key, card, or combination and from the interior by a knob or lever without a key, card, or combination; or

(B) a doorknob lock that contains a bolt with at least a one-inch throw.

(6) "Keyless bolting device" means a door lock not in the doorknob that locks:

(A) with a bolt into a strike plate screwed into the portion of the doorjamb surface that faces the edge of the door when the door is closed or into a metal doorjamb that serves as the strike plate, operable only by knob or lever from the door's interior and not in any manner from the door's exterior, and that is commonly known as a keyless dead bolt;

(B) by a drop bolt system operated by placing a central metal plate over a metal doorjamb restraint that protrudes from the

doorjamb and that is affixed to the doorjamb frame by means of three case-hardened screws at least three inches in length. One-half of the central plate must overlap the interior surface of the door and the other half of the central plate must overlap the doorjamb when the plate is placed over the doorjamb restraint. The drop bolt system must prevent the door from being opened unless the central plate is lifted off of the doorjamb restraint by a person who is on the interior side of the door.

The term "keyless bolting device" does not include a chain latch, flip latch, surface-mounted slide bolt, mortise door bolt, surface-mounted barrel bolt, surface-mounted swing bar door guard, spring-loaded nightlatch, foot bolt, or other lock or latch; or

(C) by a metal bar or metal tube that is placed across the entire interior side of the door and secured in place at each end of the bar or tube by heavy-duty metal screw hooks. The screw hooks must be at least three inches in length and must be screwed into the door frame stud or wall stud on each side of the door. The bar or tube must be capable of being secured to both of the screw hooks and must be permanently attached in some way to the door frame stud or wall stud. When secured to the screw hooks, the bar or tube must prevent the door from being opened unless the bar or tube is removed by a person who is on the interior side of the door.

(7) "Landlord" means a dwelling owner, lessor, sublessor, management company, or managing agent, including an on-site manager.

(8) "Multiunit complex" means two or more dwellings in one or more buildings that are:

(A) under common ownership;

(B) managed by the same owner, agent, or management company; and

(C) located on the same lot or tract or adjacent lots or tracts of land.

(9) "Possession of a dwelling" means occupancy by a tenant under a lease, including occupancy until the time the tenant moves out or a writ of possession is issued by a court. The term does not include occupancy before the initial occupancy date authorized under a lease.

(10) "Rekey" means to change or alter a security device that is operated by a key, card, or combination so that a different key, card, or combination is necessary to operate the security device.

(11) "Security device" means a doorknob lock, door viewer, keyed dead bolt, keyless bolting device, sliding door handle latch, sliding door pin lock, sliding door security bar, or window latch in a dwelling.

(12) "Sliding door handle latch" means a latch or lock:

(A) located near the handle on a sliding glass door;

(B) operated with or without a key; and

(C) designed to prevent the door from being opened.

(13) "Sliding door pin lock" means a lock on a sliding glass door that consists of a pin or nail inserted from the interior side of the door at the side opposite the door's handle and that is designed to prevent the door from being opened or lifted.

(14) "Sliding door security bar" means a bar or rod that can be placed at the bottom of or across the interior side of the fixed panel of a sliding glass door and that is designed to prevent the door from being opened.

(15) "Tenant turnover date" means the date a tenant moves into a dwelling under a lease after all previous occupants have moved out. The term does not include dates of entry or occupation not authorized by the landlord.

(16) "Window latch" means a device on a window that prevents the window from being opened and that is operated without a key and only from the interior.

Amended by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 16, Sec. 1, eff. Sept. 1, 1999.

Sec. 92.152. APPLICATION OF SUBCHAPTER. (a) This subchapter does not apply to:

(1) a room in a hotel, motel, or inn or to similar transient housing;

(2) residential housing owned or operated by a public or private college or university accredited by a recognized accrediting agency as defined under Section 61.003, Education Code;

(3) residential housing operated by preparatory schools accredited by the Texas Education Agency, a regional accrediting agency, or any accrediting agency recognized by the commissioner of education; or

(4) a temporary residential tenancy created by a contract

for sale in which the buyer occupies the property before closing or the seller occupies the property after closing for a specific term not to exceed 90 days.

(b) Except as provided by Subsection (a), a dwelling to which this subchapter applies includes:

(1) a room in a dormitory or rooming house;

(2) a mobile home;

(3) a single family house, duplex, or triplex; and

(4) a living unit in an apartment, condominium, cooperative, or townhome project.

Amended by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 126, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 869, Sec. 2, eff. Jan. 1, 1996.

Sec. 92.153. SECURITY DEVICES REQUIRED WITHOUT NECESSITY OF TENANT REQUEST. (a) Except as provided by Subsections (b), (e), (f), (g), and (h) and without necessity of request by the tenant, a dwelling must be equipped with:

(1) a window latch on each exterior window of the dwelling;

(2) a doorknob lock or keyed dead bolt on each exterior door;

(3) a sliding door pin lock on each exterior sliding glass door of the dwelling;

(4) a sliding door handle latch or a sliding door security bar on each exterior sliding glass door of the dwelling; and

(5) a keyless bolting device and a door viewer on each exterior door of the dwelling.

(b) If the dwelling has French doors, one door of each pair of French doors must meet the requirements of Subsection (a) and the other door must have:

(1) a keyed dead bolt or keyless bolting device capable of insertion into the doorjamb above the door and a keyless bolting device capable of insertion into the floor or threshold, each with a bolt having a throw of one inch or more; or

(2) a bolt installed inside the door and operated from the edge of the door, capable of insertion into the doorjamb above the door, and another bolt installed inside the door and operated from the edge of the door capable of insertion into the floor or

threshold, each bolt having a throw of three-fourths inch or more.

(c) A security device required by Subsection (a) or (b) must be installed at the landlord's expense.

(d) Subsections (a) and (b) apply only when a tenant is in possession of a dwelling.

(e) A keyless bolting device is not required to be installed at the landlord's expense on an exterior door if:

(1) the dwelling is part of a multiunit complex in which the majority of dwelling units are leased to tenants who are over 55 years of age or who have a physical or mental disability;

(2) a tenant or occupant in the dwelling is over 55 years of age or has a physical or mental disability; and

(3) the landlord is expressly required or permitted to periodically check on the well-being or health of the tenant as a part of a written lease or other written agreement.

(f) A keyless bolting device is not required to be installed at the landlord's expense if a tenant or occupant in the dwelling is over 55 years of age or has a physical or mental disability, the tenant requests, in writing, that the landlord deactivate or not install the keyless bolting device, and the tenant certifies in the request that the tenant or occupant is over 55 years of age or has a physical or mental disability. The request must be a separate document and may not be included as part of a lease agreement. A landlord is not exempt as provided by this subsection if the landlord knows or has reason to know that the requirements of this subsection are not fulfilled.

(g) A keyed dead bolt or a doorknob lock is not required to be installed at the landlord's expense on an exterior door if at the time the tenant agrees to lease the dwelling:

(1) at least one exterior door usable for normal entry into the dwelling has both a keyed dead bolt and a keyless bolting device, installed in accordance with the height, strike plate, and throw requirements of Section 92.154; and

(2) all other exterior doors have a keyless bolting device installed in accordance with the height, strike plate, and throw requirements of Section 92.154.

(h) A security device required by this section must be operable throughout the time a tenant is in possession of a dwelling. However, a landlord may deactivate or remove the locking mechanism of a doorknob lock or remove any device not qualifying as a keyless

bolting device if a keyed dead bolt has been installed on the same door.

(i) A landlord is subject to the tenant remedies provided by Section 92.164(a)(4) if the landlord:

(1) deactivates or does not install a keyless bolting device, claiming an exemption under Subsection (e), (f), or (g); and

(2) knows or has reason to know that the requirements of the subsection granting the exemption are not fulfilled.

Amended by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 869, Sec. 3, eff. Jan. 1, 1996.

Sec. 92.154. HEIGHT, STRIKE PLATE, AND THROW REQUIREMENTS--KEYED DEAD BOLT OR KEYLESS BOLTING DEVICE. (a) A keyed dead bolt or a keyless bolting device required by this subchapter must be installed at a height:

(1) not lower than 36 inches from the floor; and

(2) not higher than:

(A) 54 inches from the floor, if installed before September 1, 1993; or

(B) 48 inches from the floor, if installed on or after September 1, 1993.

(b) A keyed dead bolt or a keyless bolting device described in Section 92.151(6)(A) or (B) in a dwelling must:

(1) have a strike plate screwed into the portion of the doorjamb surface that faces the edge of the door when the door is closed; or

(2) be installed in a door with a metal doorjamb that serves as the strike plate.

(c) A keyed dead bolt or keyless dead bolt, as described by Section 92.151(6)(A), installed in a dwelling on or after September 1, 1993, must have a bolt with a throw of not less than one inch.

(d) The requirements of this section do not apply to a keyed dead bolt or a keyless bolting device in one door of a pair of French doors that is installed in accordance with the requirements of Section 92.153(b)(1) or (2).

Amended by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.

Sec. 92.155. HEIGHT REQUIREMENTS--SLIDING DOOR SECURITY DEVICES. A sliding door pin lock or sliding door security bar required by this subchapter must be installed at a height not higher than:

(1) 54 inches from the floor, if installed before September 1, 1993; or

(2) 48 inches from the floor, if installed on or after September 1, 1993.

Amended by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.

Sec. 92.156. REKEYING OR CHANGE OF SECURITY DEVICES. (a) Except as otherwise provided by Subsection (e), a security device operated by a key, card, or combination shall be rekeyed by the landlord at the landlord's expense not later than the seventh day after each tenant turnover date.

(b) A landlord shall perform additional rekeying or change a security device at the tenant's expense if requested by the tenant. A tenant may make an unlimited number of requests under this subsection.

(c) The expense of rekeying security devices for purposes of the use or change of the landlord's master key must be paid by the landlord.

(d) This section does not apply to locks on closet doors or other interior doors.

(e) If a tenant vacates the premises in breach of a written lease, the landlord may deduct from the tenant's security deposit the reasonable cost incurred by the landlord to rekey a security device as required by this section only if the lease includes a provision that is underlined or printed in boldface type authorizing the deduction.

Amended by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1072 (H.B. 2404), Sec. 1, eff. January 1, 2016.

Sec. 92.157. SECURITY DEVICES REQUESTED BY TENANT. (a) At a tenant's request made at any time, a landlord, at the tenant's

expense, shall install:

(1) a keyed dead bolt on an exterior door if the door has:

(A) a doorknob lock but not a keyed dead bolt; or

(B) a keyless bolting device but not a keyed dead bolt or doorknob lock; and

(2) a sliding door handle latch or sliding door security bar if the door is an exterior sliding glass door without a sliding door handle latch or sliding door security bar.

(b) At a tenant's request made before January 1, 1995, a landlord, at the tenant's expense, shall install on an exterior door of a dwelling constructed before September 1, 1993:

(1) a keyless bolting device if the door does not have a keyless bolting device; and

(2) a door viewer if the door does not have a door viewer.

(c) If a security device required by Section 92.153 to be installed on or after January 1, 1995, without necessity of a tenant's request has not been installed by the landlord, the tenant may request the landlord to immediately install it, and the landlord shall immediately install it at the landlord's expense.

Amended by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1072 (H.B. 2404), Sec. 2, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1198 (S.B. 1367), Sec. 7, eff. January 1, 2016.

Sec. 92.158. LANDLORD'S DUTY TO REPAIR OR REPLACE SECURITY DEVICE. During the lease term and any renewal period, a landlord shall repair or replace a security device on request or notification by the tenant that the security device is inoperable or in need of repair or replacement.

Amended by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.

Sec. 92.159. WHEN TENANT'S REQUEST OR NOTICE MUST BE IN WRITING. A tenant's request or notice under this subchapter may be given orally unless the tenant has a written lease that requires the request or notice to be in writing and that requirement is underlined

or in boldfaced print in the lease.

Amended by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.

Sec. 92.160. TYPE, BRAND, AND MANNER OF INSTALLATION. Except as otherwise required by this subchapter, a landlord may select the type, brand, and manner of installation, including placement, of a security device installed under this subchapter. This section does not apply to a security device installed, repaired, changed, replaced, or rekeyed by a tenant under Section 92.164(a)(1) or 92.165(1).

Amended by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.

Sec. 92.161. COMPLIANCE WITH TENANT REQUEST REQUIRED WITHIN REASONABLE TIME. (a) Except as provided by Subsections (b) and (c), a landlord must comply with a tenant's request for rekeying, changing, installing, repairing, or replacing a security device under Section 92.156, 92.157, or 92.158 within a reasonable time. A reasonable time for purposes of this subsection is presumed to be not later than the seventh day after the date the request is received by the landlord.

(b) If within the time allowed under Section 92.162(c) a landlord requests advance payment of charges that the landlord is entitled to collect under that section, the landlord shall comply with a tenant's request under Section 92.156(b), 92.157(a), or 92.157(b) within a reasonable time. A reasonable time for purposes of this subsection is presumed to be not later than the seventh day after the date a tenant's advance payment is received by the landlord, except as provided by Subsection (c).

(c) A reasonable time for purposes of Subsections (a) and (b) is presumed to be not later than 72 hours after the time of receipt of the tenant's request and any required advance payment if at the time of making the request the tenant informed the landlord that:

(1) an unauthorized entry occurred or was attempted in the tenant's dwelling;

(2) an unauthorized entry occurred or was attempted in another unit in the multiunit complex in which the tenant's dwelling is located during the two months preceding the date of the request;

or

(3) a crime of personal violence occurred in the multiunit complex in which the tenant's dwelling is located during the two months preceding the date of the request.

(d) A landlord may rebut the presumption provided by Subsection (a) or (b) if despite the diligence of the landlord:

(1) the landlord did not know of the tenant's request, without the fault of the landlord;

(2) materials, labor, or utilities were unavailable; or

(3) a delay was caused by circumstances beyond the landlord's control, including the illness or death of the landlord or a member of the landlord's immediate family.

(e) This section does not apply to a landlord's duty to install or rekey, without necessity of a tenant's request, a security device under Section 92.153 or 92.156(a).

Added by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.

Sec. 92.162. PAYMENT OF CHARGES; LIMITS ON AMOUNT CHARGED. (a) A landlord may not require a tenant to pay for repair or replacement of a security device due to normal wear and tear. A landlord may not require a tenant to pay for other repairs or replacements of a security device except as provided by Subsections (b), (c), and (d).

(b) A landlord may require a tenant to pay for repair or replacement of a security device if an underlined provision in a written lease authorizes the landlord to do so and the repair or replacement is necessitated by misuse or damage by the tenant, a member of the tenant's family, an occupant, or a guest, and not by normal wear and tear. Misuse of or damage to a security device that occurs during the tenant's occupancy is presumed to be caused by the tenant, a family member, an occupant, or a guest. The tenant has the burden of proving that the misuse or damage was caused by another party.

(c) A landlord may require a tenant to pay in advance charges for which the tenant is liable under this subchapter if a written lease authorizes the landlord to require advance payment, and the landlord notifies the tenant within a reasonable time after the tenant's request that advance payment is required, and:

(1) the tenant is more than 30 days delinquent in reimbursing the landlord for charges to which the landlord is entitled under Subsection (b); or

(2) the tenant requested that the landlord repair, install, change, or rekey the same security device during the 30 days preceding the tenant's request, and the landlord complied with the request.

(d) A landlord authorized by this subchapter to charge a tenant for repairing, installing, changing, or rekeying a security device under this subchapter may not require the tenant to pay more than the total cost charged by a third-party contractor for material, labor, taxes, and extra keys. If the landlord's employees perform the work, the charge may include a reasonable amount for overhead but may not include a profit to the landlord. If management company employees perform the work, the charge may include reasonable overhead and profit but may not exceed the cost charged to the owner by the management company for comparable security devices installed by management company employees at the owner's request and expense.

(e) The owner of a dwelling shall reimburse a management company, managing agent, or on-site manager for costs expended by that person in complying with this subchapter. A management company, managing agent, or on-site manager may reimburse itself for the costs from the owner's funds in its possession or control.

Added by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.

Sec. 92.163. REMOVAL OR ALTERATION OF SECURITY DEVICE BY TENANT. A security device that is installed, changed, or rekeyed under this subchapter becomes a fixture of the dwelling. Except as provided by Section 92.164(a)(1) or 92.165(1) regarding the remedy of repair-and-deduct, a tenant may not remove, change, rekey, replace, or alter a security device or have it removed, changed, rekeyed, replaced, or altered without permission of the landlord.

Added by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.

Sec. 92.164. TENANT REMEDIES FOR LANDLORD'S FAILURE TO INSTALL OR REKEY CERTAIN SECURITY DEVICES. (a) If a landlord does not comply with Section 92.153 or 92.156(a) regarding installation or

rekeying of a security device, the tenant may:

(1) install or rekey the security device as required by this subchapter and deduct the reasonable cost of material, labor, taxes, and extra keys from the tenant's next rent payment, in accordance with Section 92.166;

(2) serve a written request for compliance on the landlord, and, except as provided by Subsections (b) and (c), if the landlord does not comply on or before the third day after the date the notice is received, unilaterally terminate the lease without court proceedings;

(3) file suit against the landlord without serving a request for compliance and obtain a judgment for:

(A) a court order directing the landlord to comply, if the tenant is in possession of the dwelling;

(B) the tenant's actual damages;

(C) court costs; and

(D) attorney's fees except in suits for recovery of property damages, personal injuries, or wrongful death; and

(4) serve a written request for compliance on the landlord, and, except as provided by Subsections (b) and (c), if the landlord does not comply on or before the third day after the date the notice is received, file suit against the landlord and obtain a judgment for:

(A) a court order directing the landlord to comply and bring all dwellings owned by the landlord into compliance, if the tenant serving the written request is in possession of the dwelling;

(B) the tenant's actual damages;

(C) punitive damages if the tenant suffers actual damages;

(D) a civil penalty of one month's rent plus $500;

(E) court costs; and

(F) attorney's fees except in suits for recovery of property damages, personal injuries, or wrongful death.

(b) A tenant may not unilaterally terminate the lease under Subsection (a)(2) or file suit against the landlord to obtain a judgment under Subsection (a)(4) unless the landlord does not comply on or before the seventh day after the date the written request for compliance is received if the lease includes language underlined or in boldface print that in substance provides the tenant with notice that:

(1) the landlord at the landlord's expense is required to equip the dwelling, when the tenant takes possession, with the security devices described by Sections 92.153(a)(1)-(4) and (6);

(2) the landlord is not required to install a doorknob lock or keyed dead bolt at the landlord's expense if the exterior doors meet the requirements of Section 92.153(f);

(3) the landlord is not required to install a keyless bolting device at the landlord's expense on an exterior door if the landlord is expressly required or permitted to periodically check on the well-being or health of the tenant as provided by Section 92.153(e)(3); and

(4) the tenant has the right to install or rekey a security device required by this subchapter and deduct the reasonable cost from the tenant's next rent payment, as provided by Subsection (a)(1).

(c) Regardless of whether the lease contains language complying with the requirements of Subsection (b), the additional time for landlord compliance provided by Subsection (b) does not apply if at the time the tenant served the written request for compliance on the landlord the tenant informed the landlord that an unauthorized entry occurred or was attempted in the tenant's dwelling, an unauthorized entry occurred or was attempted in another unit in the multiunit complex in which the tenant's dwelling is located during the two months preceding the date of the request, or a crime of personal violence occurred in the multiunit complex in which the tenant's dwelling is located during the two months preceding the date of the request, unless despite the diligence of the landlord:

(1) the landlord did not know of the tenant's request, without the fault of the landlord;

(2) materials, labor, or utilities were unavailable; or

(3) a delay was caused by circumstances beyond the landlord's control, including the illness or death of the landlord or a member of the landlord's immediate family.

Added by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.

Sec. 92.1641. LANDLORD'S DEFENSES RELATING TO INSTALLING OR REKEYING CERTAIN SECURITY DEVICES. The landlord has a defense to liability under Section 92.164 if:

(1) the tenant has not fully paid all rent then due from the tenant on the date the tenant gives a request under Section 92.157(c) or the notice required by Section 92.164; or

(2) on the date the tenant terminates the lease or files suit the tenant has not fully paid costs requested by the landlord and authorized by Section 92.162.

Acts 1983, 68th Leg., p. 3645, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 17, eff. Sept. 1, 1993. Renumbered from Sec. 92.158 and amended 2001, 77th Leg., ch. 1420, Sec. 17.001(a), eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1072 (H.B. 2404), Sec. 3, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1198 (S.B. 1367), Sec. 8, eff. January 1, 2016.

Sec. 92.165. TENANT REMEDIES FOR OTHER LANDLORD VIOLATIONS. If a landlord does not comply with a tenant's request regarding rekeying, changing, adding, repairing, or replacing a security device under Section 92.156(b), 92.157, or 92.158 in accordance with the time limits and other requirements of this subchapter, the tenant may:

(1) install, repair, change, replace, or rekey the security devices as required by this subchapter and deduct the reasonable cost of material, labor, taxes, and extra keys from the tenant's next rent payment in accordance with Section 92.166;

(2) unilaterally terminate the lease without court proceedings; and

(3) file suit against the landlord and obtain a judgment for:

(A) a court order directing the landlord to comply, if the tenant is in possession of the dwelling;

(B) the tenant's actual damages;

(C) punitive damages if the tenant suffers actual damages and the landlord's failure to comply is intentional, malicious, or grossly negligent;

(D) a civil penalty of one month's rent plus $500;

(E) court costs; and

(F) attorney's fees except in suits for recovery of property damages, personal injuries, or wrongful death.

Added by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.

Sec. 92.166. NOTICE OF TENANT'S DEDUCTION OF REPAIR COSTS FROM RENT. (a) A tenant shall notify the landlord of a rent deduction attributable to the tenant's installing, repairing, changing, replacing, or rekeying of a security device under Section 92.164(a)(1) or 92.165(1) after the landlord's failure to comply with this subchapter. The notice must be given at the time of the reduced rent payment.

(b) Unless otherwise provided in a written lease, a tenant shall provide one duplicate of the key to any key-operated security device installed or rekeyed by the tenant under Section 92.164(a)(1) or 92.165(1) within a reasonable time after the landlord's written request for the key.

Added by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.

Sec. 92.167. LANDLORD'S DEFENSES RELATING TO COMPLIANCE WITH TENANT'S REQUEST. (a) A landlord has a defense to liability under Section 92.165 if on the date the tenant terminates the lease or files suit the tenant has not fully paid costs requested by the landlord and authorized by this subchapter.

(b) A management company or managing agent who is not the owner of a dwelling and who has not purported to be the owner in the lease has a defense to liability under Sections 92.164 and 92.165 if before the date the tenant is in possession of the dwelling or the date of the tenant's request for installation, repair, replacement, change, or rekeying and before any property damage or personal injury to the tenant, the management company or managing agent:

(1) did not have funds of the dwelling owner in its possession or control with which to comply with this subchapter;

(2) made written request to the dwelling owner that the owner fund and allow installation, repair, change, replacement, or rekeying of security devices as required under this subchapter and mailed the request, certified mail return receipt requested, to the dwelling owner; and

(3) not later than the third day after the date of receipt of the tenant's request, provided the tenant with a written notice:

(A) stating that the management company or managing agent has taken the actions in Subdivisions (1) and (2);

(B) stating that the owner has not provided or will not provide the necessary funds; and

(C) explaining the remedies available to the tenant for the landlord's failure to comply.

Added by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 17.00(b), eff. Sept. 1, 2001.

Sec. 92.168. TENANT'S REMEDY ON NOTICE FROM MANAGEMENT COMPANY. The tenant may unilaterally terminate the lease or exercise other remedies under Sections 92.164 and 92.165 after receiving written notice from a management company that the owner of the dwelling has not provided or will not provide funds to repair, install, change, replace, or rekey a security device as required by this subchapter.

Added by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.

Sec. 92.169. AGENT FOR DELIVERY OF NOTICE. A managing agent or an agent to whom rent is regularly paid, whether residing or maintaining an office on-site or off-site, is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter.

Added by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.

Sec. 92.170. EFFECT ON OTHER LANDLORD DUTIES AND TENANT REMEDIES. The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of common law, other statutory law, and local ordinances relating to a residential landlord's duty to install, change, rekey, repair, or replace security devices and a tenant's remedies for the landlord's failure to install, change, rekey, repair, or replace security devices, except that a municipal ordinance adopted before January 1, 1993, may require installation of

security devices at the landlord's expense by an earlier date than a date required by this subchapter. This subchapter does not affect a duty of a landlord or a remedy of a tenant under Subchapter B regarding habitability.

Added by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993.

SUBCHAPTER E. DISCLOSURE OF OWNERSHIP AND MANAGEMENT

Sec. 92.201. DISCLOSURE OF OWNERSHIP AND MANAGEMENT. (a) A landlord shall disclose to a tenant, or to any government official or employee acting in an official capacity, according to this subchapter:

(1) the name and either a street or post office box address of the holder of record title, according to the deed records in the county clerk's office, of the dwelling rented by the tenant or inquired about by the government official or employee acting in an official capacity; and

(2) if an entity located off-site from the dwelling is primarily responsible for managing the dwelling, the name and street address of the management company.

(b) Disclosure to a tenant under Subsection (a) must be made by:

(1) giving the information in writing to the tenant on or before the seventh day after the day the landlord receives the tenant's request for the information;

(2) continuously posting the information in a conspicuous place in the dwelling or the office of the on-site manager or on the outside of the entry door to the office of the on-site manager on or before the seventh day after the date the landlord receives the tenant's request for the information; or

(3) including the information in a copy of the tenant's lease or in written rules given to the tenant before the tenant requests the information.

(c) Disclosure of information to a tenant may be made under Subdivision (1) or (2) of Subsection (b) before the tenant requests the information.

(d) Disclosure of information to a government official or employee must be made by giving the information in writing to the official or employee on or before the seventh day after the date the

landlord receives the request from the official or employee for the information.

(e) A correction to the information may be made by any of the methods authorized for providing the information.

(f) For the purposes of this section, an owner or property manager may disclose either an actual name or names or an assumed name if an assumed name certificate has been recorded with the county clerk.

Acts 1983, 68th Leg., p. 3646, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 869, Sec. 4, eff. Jan. 1, 1996.

Sec. 92.202. LANDLORD'S FAILURE TO DISCLOSE INFORMATION. (a) A landlord is liable to a tenant or a governmental body according to this subchapter if:

(1) after the tenant or government official or employee makes a request for information under Section 92.201, the landlord does not provide the information; and

(2) the landlord does not give the information to the tenant or government official or employee before the eighth day after the date the tenant, official, or employee gives the landlord written notice that the tenant, official, or employee may exercise remedies under this subchapter if the landlord does not comply with the request by the tenant, official, or employee for the information within seven days.

(b) If the tenant's lease is in writing, the lease may require the tenant's initial request for information to be written. A request by a government official or employee for information must be in writing.

Acts 1983, 68th Leg., p. 3647, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 869, Sec. 4, eff. Jan. 1, 1996.

Sec. 92.203. LANDLORD'S FAILURE TO CORRECT INFORMATION. A landlord who has provided information under Subdivision (2) or (3) of Subsection (b) of Section 92.201 is liable to a tenant according to this subchapter if:

(1) the information becomes incorrect because a name or address changes; and

(2) the landlord fails to correct the information on or before the seventh day after the date the tenant gives the landlord written notice that the tenant may exercise the remedies under this subchapter if the corrected information is not provided within seven days.

Acts 1983, 68th Leg., p. 3647, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 869, Sec. 4, eff. Jan. 1, 1996.

Sec. 92.204. BAD FAITH VIOLATION. A landlord acts in bad faith and is liable according to this subchapter if the landlord gives an incorrect name or address under Subsection (a) of Section 92.201 by wilfully:

(1) disclosing incorrect information under Section 92.201(b)(1) or (2) or Section 92.201(d); or

(2) failing to correct information given under Section 92.201(b)(1) or (2) or Section 92.201(d) that the landlord knows is incorrect.

Acts 1983, 68th Leg., p. 3647, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 18, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 869, Sec. 4, eff. Jan. 1, 1996.

Sec. 92.205. REMEDIES. (a) A tenant of a landlord who is liable under Section 92.202, 92.203, or 92.204 may obtain or exercise one or more of the following remedies:

(1) a court order directing the landlord to make a disclosure required by this subchapter;

(2) a judgment against the landlord for an amount equal to the tenant's actual costs in discovering the information required to be disclosed by this subchapter;

(3) a judgment against the landlord for one month's rent plus $100;

(4) a judgment against the landlord for court costs and attorney's fees; and

(5) unilateral termination of the lease without a court proceeding.

(b) A governmental body whose official or employee has requested information from a landlord who is liable under Section

92.202 or 92.204 may obtain or exercise one or more of the following remedies:

(1) a court order directing the landlord to make a disclosure required by this subchapter;

(2) a judgment against the landlord for an amount equal to the governmental body's actual costs in discovering the information required to be disclosed by this subchapter;

(3) a judgment against the landlord for $500; and

(4) a judgment against the landlord for court costs and attorney's fees.

Acts 1983, 68th Leg., p. 3648, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 869, Sec. 4, eff. Jan. 1, 1996.

Sec. 92.206. LANDLORD'S DEFENSE. A landlord has a defense to liability under Section 92.202 or 92.203 if the tenant owes rent on the date the tenant gives a notice required by either of those sections. Rent delinquency is not a defense for a violation of Section 92.204.

Acts 1983, 68th Leg., p. 3648, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.207. AGENTS FOR DELIVERY OF NOTICE. (a) A managing or leasing agent, whether residing or maintaining an office on-site or off-site, is the agent of the landlord for purposes of:

(1) notice and other communications required or permitted by this subchapter;

(2) notice and other communications from a governmental body relating to a violation of health, sanitation, safety, or nuisance laws on the landlord's property where the dwelling is located, including notices of:

(A) demands for abatement of nuisances;

(B) repair of a substandard dwelling;

(C) remedy of dangerous conditions;

(D) reimbursement of costs incurred by the governmental body in curing the violation;

(E) fines; and

(F) service of process.

(b) If the landlord's name and business street address in this

state have not been furnished in writing to the tenant or government official or employee, the person who collects the rent from a tenant is the landlord's authorized agent for purposes of Subsection (a).

Acts 1983, 68th Leg., p. 3648, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 869, Sec. 4, eff. Jan. 1, 1996.

Sec. 92.208. ADDITIONAL ENFORCEMENT BY LOCAL ORDINANCE. The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of the common law, other statutory law, and local ordinances relating to the disclosure of ownership and management of a dwelling by a landlord to a tenant. However, this subchapter does not prohibit the adoption of a local ordinance that conforms to this subchapter but which contains additional enforcement provisions.

Acts 1983, 68th Leg., p. 3648, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER F. SMOKE ALARMS AND FIRE EXTINGUISHERS

Sec. 92.251. DEFINITIONS. In this subchapter:

(1) "Bedroom" means a room designed with the intent that it be used for sleeping purposes.

(2) "Dwelling unit" means a home, mobile home, duplex unit, apartment unit, condominium unit, or any dwelling unit in a multiunit residential structure. It also means a "dwelling" as defined by Section 92.001.

(3) "Smoke alarm" means a device designed to detect and to alert occupants of a dwelling unit to the visible and invisible products of combustion by means of an audible alarm.

Acts 1983, 68th Leg., p. 3649, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 3, eff. September 1, 2011.

Sec. 92.252. APPLICATION OF OTHER LAW; MUNICIPAL REGULATION. (a) The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of common law, other statutory law, and local

ordinances regarding a residential landlord's duty to install, inspect, or repair a fire extinguisher or smoke alarm in a dwelling unit. However, this subchapter does not:

(1) affect a local ordinance adopted before September 1, 1981, that requires landlords to install smoke alarms in new or remodeled dwelling units before September 1, 1981, if the ordinance conforms with or is amended to conform with this subchapter;

(2) limit or prevent adoption or enforcement of a local ordinance relating to fire safety as a part of a building, fire, or housing code, including any requirements relating to the installation of smoke alarms or the type of smoke alarms;

(3) otherwise limit or prevent the adoption of a local ordinance that conforms to this subchapter but which contains additional enforcement provisions, except as provided by Subsection (b); or

(4) affect a local ordinance that requires regular inspections by local officials of smoke alarms in dwelling units and that requires smoke alarms to be operational at the time of inspection.

(b) If a smoke alarm powered by battery has been installed in a dwelling unit built before September 1, 1987, in compliance with this subchapter and local ordinances, a local ordinance may not require that a smoke alarm powered by alternating current be installed in the unit unless:

(1) the interior of the unit is repaired, remodeled, or rebuilt at a projected cost of more than $5,000 and:

(A) the repair, remodeling, or rebuilding requires a municipal building permit; and

(B) either:

(i) the repair, remodeling, or rebuilding results in the removal of interior walls or ceiling finishes exposing the structure; or

(ii) the interior of the unit provides access for building wiring through an attic, crawl space, or basement without the removal of interior walls or ceiling finishes;

(2) an addition occurs to the unit at a projected cost of more than $5,000;

(3) a smoke alarm powered by alternating current was actually installed in the unit at any time prior to September 1, 1987; or

(4) a smoke alarm powered by alternating current was required by lawful city ordinance at the time of initial construction of the unit.

Acts 1983, 68th Leg., p. 3649, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1205, Sec. 13, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 3, eff. September 1, 2011.

Sec. 92.253. EXEMPTIONS. (a) This subchapter does not apply to:

(1) a dwelling unit that is occupied by its owner, no part of which is leased to a tenant;

(2) a dwelling unit in a building five or more stories in height in which smoke alarms are required or regulated by local ordinance; or

(3) a nursing or convalescent home licensed by the Department of State Health Services and certified to meet the Life Safety Code under federal law and regulations.

(b) Notwithstanding this subchapter, a person licensed to install fire alarms or fire detection devices under Chapter 6002, Insurance Code, shall comply with that chapter when installing smoke alarms.

Acts 1983, 68th Leg., p. 3649, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 3, eff. September 1, 2011.

Sec. 92.254. SMOKE ALARM. (a) A smoke alarm must be:

(1) designed to detect both the visible and invisible products of combustion;

(2) designed with an alarm audible to a person in the bedrooms it serves; and

(3) tested and listed for use as a smoke alarm by Underwriters Laboratories, Inc., Factory Mutual Research Corporation, or United States Testing Company, Inc.

(a-1) If requested by a tenant as an accommodation for a person with a hearing-impairment disability or as required by law as a reasonable accommodation for a person with a hearing-impairment disability, a smoke alarm must, in addition to complying with Subsection (a), be capable of alerting a hearing-impaired person in the bedrooms it serves.

(b) Except as provided by Section 92.255(b), a smoke alarm may be powered by battery, alternating current, or other power source as required by local ordinance. The power system and installation procedure of a security device that is electrically operated rather than battery operated must comply with applicable local ordinances.

Acts 1983, 68th Leg., p. 3650, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 475, Sec. 2, eff. Sept. 1, 1987. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 824 (S.B. 1715), Sec. 2, eff. January 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 3, eff. September 1, 2011.

Sec. 92.255. INSTALLATION AND LOCATION. (a) A landlord shall install at least one smoke alarm in each separate bedroom in a dwelling unit. In addition:

(1) if the dwelling unit is designed to use a single room for dining, living, and sleeping, the smoke alarm must be located inside the room;

(2) if multiple bedrooms are served by the same corridor, at least one smoke alarm must be installed in the corridor in the immediate vicinity of the bedrooms; and

(3) if the dwelling unit has multiple levels, at least one smoke alarm must be located on each level.

(b) If a dwelling unit was occupied as a residence before September 1, 2011, or a certificate of occupancy was issued for the dwelling unit before that date, a smoke alarm installed in accordance with Subsection (a) may be powered by battery and is not required to be interconnected with other smoke alarms, except that a smoke alarm that is installed to replace a smoke alarm that was in place on the date the dwelling unit was first occupied as a residence must comply with residential building code standards that applied to the dwelling

unit on that date or Section 92.252(b).

Acts 1983, 68th Leg., p. 3650, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 3, eff. September 1, 2011.

Sec. 92.257. INSTALLATION PROCEDURE. (a) Subject to Subsections (b) and (c), a smoke alarm must be installed according to the manufacturer's recommended procedures.

(b) A smoke alarm must be installed on a ceiling or wall. If on a ceiling, it must be no closer than six inches to a wall or otherwise located in accordance with the manufacturer's installation instructions. If on a wall, it must be no closer than six inches and no farther than 12 inches from the ceiling or otherwise located in accordance with the manufacturer's installation instructions.

(c) A smoke alarm may be located other than as required by Subsection (a) or (b) if a local ordinance or a local or state fire marshal approves.

Acts 1983, 68th Leg., p. 3651, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 3, eff. September 1, 2011.

Sec. 92.2571. ALTERNATIVE COMPLIANCE. A landlord complies with the requirements of this subchapter relating to the provision of smoke alarms in the dwelling unit if the landlord:

(1) has a fire detection device, as defined by Section 6002.002, Insurance Code, that includes a fire alarm device, as defined by Section 6002.002, Insurance Code, installed in a dwelling unit; or

(2) for a dwelling unit that is a one-family or two-family dwelling unit, installs smoke detectors in compliance with Chapter 766, Health and Safety Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 12, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 3, eff. September 1, 2011.

Sec. 92.258. INSPECTION AND REPAIR. (a) The landlord shall inspect and repair a smoke alarm according to this section.

(b) The landlord shall determine that the smoke alarm is in good working order at the beginning of the tenant's possession by testing the smoke alarm with smoke, by operating the testing button on the smoke alarm, or by following other recommended test procedures of the manufacturer for the particular model.

(c) During the term of a lease or during a renewal or extension, the landlord has a duty to inspect and repair a smoke alarm, but only if the tenant gives the landlord notice of a malfunction or requests to the landlord that the smoke alarm be inspected or repaired. This duty does not exist with respect to damage or a malfunction caused by the tenant, the tenant's family, or the tenant's guests or invitees during the term of the lease or a renewal or extension, except that the landlord has a duty to repair or replace the smoke alarm if the tenant pays in advance the reasonable repair or replacement cost, including labor, materials, taxes, and overhead.

(d) The landlord must comply with the tenant's request for inspection or repair of a smoke alarm within a reasonable time, considering the availability of material, labor, and utilities.

(e) The landlord has met the duty to inspect and repair if the smoke alarm is in good working order after the landlord tests the smoke alarm with smoke, operates the testing button on the smoke alarm, or follows other recommended test procedures of the manufacturer for the particular model.

(f) The landlord is not obligated to provide batteries for a battery-operated smoke alarm after a tenant takes possession if the smoke alarm was in good working order at the time the tenant took possession.

(g) A smoke alarm that is in good working order at the beginning of a tenant's possession is presumed to be in good working order until the tenant requests repair of the smoke alarm as provided by this subchapter.

Acts 1983, 68th Leg., p. 3651, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 19, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 869, Sec. 7, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 918, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 3, eff. September 1, 2011.

Sec. 92.259. LANDLORD'S FAILURE TO INSTALL, INSPECT, OR REPAIR. (a) A landlord is liable according to this subchapter if:

(1) the landlord did not install a smoke alarm at the time of initial occupancy by the tenant as required by this subchapter or a municipal ordinance permitted by this subchapter; or

(2) the landlord does not install, inspect, or repair the smoke alarm on or before the seventh day after the date the tenant gives the landlord written notice that the tenant may exercise his remedies under this subchapter if the landlord does not comply with the request within seven days.

(b) If the tenant gives notice under Subsection (a)(2) and the tenant's lease is in writing, the lease may require the tenant to make the initial request for installation, inspection, or repair of a smoke alarm in writing.

Acts 1983, 68th Leg., p. 3652, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 869, Sec. 8, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 918, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 3, eff. September 1, 2011.

Sec. 92.260. TENANT REMEDIES. A tenant of a landlord who is liable under Section 92.259 may obtain or exercise one or more of the following remedies:

(1) a court order directing the landlord to comply with the tenant's request if the tenant is in possession of the dwelling unit;

(2) a judgment against the landlord for damages suffered by the tenant because of the landlord's violation;

(3) a judgment against the landlord for a civil penalty of one month's rent plus $100 if the landlord violates Section

92.259(a)(2);

(4) a judgment against the landlord for court costs;

(5) a judgment against the landlord for attorney's fees in an action under Subdivision (1) or (3); and

(6) unilateral termination of the lease without a court proceeding if the landlord violates Section 92.259(a)(2).

Acts 1983, 68th Leg., p. 3653, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 869, Sec. 9, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 918, Sec. 3, eff. Sept. 1, 1995.

Sec. 92.261. LANDLORD'S DEFENSES. The landlord has a defense to liability under Section 92.259 if:

(1) on the date the tenant gives the notice required by Section 92.259 the tenant has not paid all rent due from the tenant; or

(2) on the date the tenant terminates the lease or files suit the tenant has not fully paid costs requested by the landlord and authorized by Section 92.258.

Acts 1983, 68th Leg., p. 3653, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.2611. TENANT'S DISABLING OF A SMOKE ALARM. (a) A tenant is liable according to this subchapter if the tenant removes a battery from a smoke alarm without immediately replacing it with a working battery or knowingly disconnects or intentionally damages a smoke alarm, causing it to malfunction.

(b) Except as provided in Subsection (c), a landlord of a tenant who is liable under Subsection (a) may obtain a judgment against the tenant for damages suffered by the landlord because the tenant removed a battery from a smoke alarm without immediately replacing it with a working battery or knowingly disconnected or intentionally damaged the smoke alarm, causing it to malfunction.

(c) A tenant is not liable for damages suffered by the landlord if the damage is caused by the landlord's failure to repair the smoke alarm within a reasonable time after the tenant requests it to be repaired, considering the availability of material, labor, and utilities.

(d) A landlord of a tenant who is liable under Subsection (a)

may obtain or exercise one or more of the remedies in Subsection (e) if:

(1) a lease between the landlord and tenant contains a notice, in underlined or boldfaced print, which states in substance that the tenant must not disconnect or intentionally damage a smoke alarm or remove the battery without immediately replacing it with a working battery and that the tenant may be subject to damages, civil penalties, and attorney's fees under Section 92.2611 of the Property Code for not complying with the notice; and

(2) the landlord has given notice to the tenant that the landlord intends to exercise the landlord's remedies under this subchapter if the tenant does not reconnect, repair, or replace the smoke alarm or replace the removed battery within seven days after being notified by the landlord to do so.

(d-1) The notice in Subsection (d)(2) must be in a separate document furnished to the tenant after the landlord has discovered that the tenant has disconnected or damaged the smoke alarm or removed a battery from it.

(e) If a tenant is liable under Subsection (a) and the tenant does not comply with the landlord's notice under Subsection (d), the landlord shall have the following remedies against the tenant:

(1) a court order directing the tenant to comply with the landlord's notice;

(2) a judgment against the tenant for a civil penalty of one month's rent plus $100;

(3) a judgment against the tenant for court costs; and

(4) a judgment against the tenant for reasonable attorney's fees.

(f) A tenant's guest or invitee who suffers damage because of a landlord's failure to install, inspect, or repair a smoke alarm as required by this subchapter may recover a judgment against the landlord for the damage. A tenant's guest or invitee who suffers damage because the tenant removed a battery without immediately replacing it with a working battery or because the tenant knowingly disconnected or intentionally damaged the smoke alarm, causing it to malfunction, may recover a judgment against the tenant for the damage.

Added by Acts 1995, 74th Leg., ch. 869, Sec. 10, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 918, Sec. 4, eff. Sept. 1, 1995; Acts

1997, 75th Leg., ch. 165, Sec. 28.01, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 4, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 5, eff. September 1, 2011.

Sec. 92.262. AGENTS FOR DELIVERY OF NOTICE. A managing or leasing agent, whether residing or maintaining an office on-site or off-site, is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter.

Acts 1983, 68th Leg., p. 3653, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.263. INSPECTION OF RESIDENTIAL FIRE EXTINGUISHER. (a) If a landlord has installed a 1A10BC residential fire extinguisher as defined by the National Fire Protection Association or other non-rechargeable fire extinguisher in accordance with a local ordinance or other law, the landlord or the landlord's agent shall inspect the fire extinguisher:

(1) at the beginning of a tenant's possession; and

(2) within a reasonable time after receiving a written request by a tenant.

(b) At a minimum, an inspection under this section must include:

(1) checking to ensure the fire extinguisher is present; and

(2) checking to ensure the fire extinguisher gauge or pressure indicator indicates the correct pressure as recommended by the manufacturer of the fire extinguisher.

(c) A fire extinguisher that satisfies the inspection requirements of Subsection (b) at the beginning of a tenant's possession is presumed to be in good working order until the tenant requests an inspection in writing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 6, eff. September 1, 2011.

Sec. 92.264. DUTY TO REPAIR OR REPLACE. (a) The landlord shall repair or replace a fire extinguisher at the landlord's expense if:

(1) on inspection, the fire extinguisher is found:

(A) not to be functioning; or

(B) not to have the correct pressure indicated on the gauge or pressure indicator as recommended by the manufacturer of the fire extinguisher; or

(2) a tenant has notified the landlord that the tenant has used the fire extinguisher for a legitimate purpose.

(b) If the tenant or the tenant's invited guest removes, misuses, damages, or otherwise disables a fire extinguisher:

(1) the landlord is not required to repair or replace the fire extinguisher at the landlord's expense; and

(2) the landlord is required to repair or replace the fire extinguisher within a reasonable time if the tenant pays in advance the reasonable repair or replacement cost, including labor, materials, taxes, and overhead.

Added by Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 6, eff. September 1, 2011.

SUBCHAPTER G. UTILITY CUTOFF

Sec. 92.301. LANDLORD LIABILITY TO TENANT FOR UTILITY CUTOFF. (a) A landlord who has expressly or impliedly agreed in the lease to furnish and pay for water, gas, or electric service to the tenant's dwelling is liable to the tenant if the utility company has cut off utility service to the tenant's dwelling or has given written notice to the tenant that such utility service is about to be cut off because of the landlord's nonpayment of the utility bill.

(b) If a landlord is liable to the tenant under Subsection (a) of this section, the tenant may:

(1) pay the utility company money to reconnect or avert the cutoff of utilities according to this section;

(2) terminate the lease if the termination notice is in writing and move-out is to be within 30 days from the date the tenant has notice from the utility company of a future cutoff or notice of an actual cutoff, whichever is sooner;

(3) deduct from the tenant's rent, without necessity of

judicial action, the amounts paid to the utility company to reconnect or avert a cutoff;

(4) if the lease is terminated by the tenant, deduct the tenant's security deposit from the tenant's rent without necessity of lawsuit or obtain a refund of the tenant's security deposit pursuant to law;

(5) if the lease is terminated by the tenant, recover a pro rata refund of any advance rentals paid from the date of termination or the date the tenant moves out, whichever is later;

(6) recover actual damages, including but not limited to moving costs, utility connection fees, storage fees, and lost wages from work; and

(7) recover court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

(c) When deducting for the tenant's payment of the landlord's utility bill under this section, the tenant shall submit to the landlord a copy of a receipt from the utility company which evidences the amount of payment made by the tenant to reconnect or avert cutoff of utilities.

(d) The tenant remedies under this section are effective on the date the tenant has notice from the utility company of a future cutoff or notice of an actual cutoff, whichever is sooner. However, the tenant's remedies under this section shall cease if:

(1) the landlord provides the tenant with written evidence from the utility that all delinquent sums due the utility have been paid in full; and

(2) at the time the tenant receives such evidence, the tenant has not yet terminated the lease or filed suit under this section.

Added by Acts 1989, 71st Leg., ch. 650, Sec. 12, eff. Aug. 28, 1989.

Sec. 92.302. NOTICE OF UTILITY DISCONNECTION OF NONSUBMETERED MASTER METERED MULTIFAMILY PROPERTY TO MUNICIPALITIES, OWNERS, AND TENANTS. (a) In this section:

(1) "Customer" means a person who is responsible for bills received for electric utility service or gas utility service provided to nonsubmetered master metered multifamily property.

(2) "Nonsubmetered master metered multifamily property" means an apartment, a leased or owner-occupied condominium, or one or more buildings containing at least 10 dwellings that receive electric utility service or gas utility service that is master metered but not submetered.

(b) A customer shall provide written notice of a service disconnection to each tenant or owner at a nonsubmetered master metered multifamily property not later than the fifth day after the date the customer receives a notice of service disconnection from an electric service provider or a gas utility. The customer must provide the notice by mail to the tenant's or owner's preferred mailing address or hand deliver the notice to the tenant or owner. The written notice must include the customer's contact information and the tenant's remedies under Section 92.301. The notice must include the following text in both English and Spanish:

"Notice to residents of (name and address of nonsubmetered master metered multifamily property): Electric (or gas) service to this property is scheduled for disconnection on (date) because (reason for disconnection)."

(c) If the property is located in a municipality, the customer shall provide the same notice described by Subsection (b) to the governing body of that municipality by certified mail. The governing body of the municipality may provide additional notice to the property's tenants and owners after receipt of the service disconnection notice under this subsection.

(d) A customer is not required to provide the notices described by this section if the customer avoids the disconnection by paying the bill.

Added by Acts 2013, 83rd Leg., R.S., Ch. 322 (H.B. 1772), Sec. 1, eff. January 1, 2014.

SUBCHAPTER H. RETALIATION

Sec. 92.331. RETALIATION BY LANDLORD. (a) A landlord may not retaliate against a tenant by taking an action described by Subsection (b) because the tenant:

(1) in good faith exercises or attempts to exercise against a landlord a right or remedy granted to the tenant by lease, municipal ordinance, or federal or state statute;

(2) gives a landlord a notice to repair or exercise a remedy under this chapter;

(3) complains to a governmental entity responsible for enforcing building or housing codes, a public utility, or a civic or nonprofit agency, and the tenant:

(A) claims a building or housing code violation or utility problem; and

(B) believes in good faith that the complaint is valid and that the violation or problem occurred; or

(4) establishes, attempts to establish, or participates in a tenant organization.

(b) A landlord may not, within six months after the date of the tenant's action under Subsection (a), retaliate against the tenant by:

(1) filing an eviction proceeding, except for the grounds stated by Section 92.332;

(2) depriving the tenant of the use of the premises, except for reasons authorized by law;

(3) decreasing services to the tenant;

(4) increasing the tenant's rent or terminating the tenant's lease; or

(5) engaging, in bad faith, in a course of conduct that materially interferes with the tenant's rights under the tenant's lease.

Acts 1983, 68th Leg., p. 3637, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 650, Sec. 9, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 48, Sec. 16, eff. Sept. 1, 1993. Redesignated from Property Code Sec. 92.057(a) and amended by Acts 1995, 74th Leg., ch. 869, Sec. 5, eff. Jan. 1, 1996.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 588 (S.B. 630), Sec. 2, eff. January 1, 2014.

Sec. 92.332. NONRETALIATION. (a) The landlord is not liable for retaliation under this subchapter if the landlord proves that the action was not made for purposes of retaliation, nor is the landlord liable, unless the action violates a prior court order under Section 92.0563, for:

(1) increasing rent under an escalation clause in a written lease for utilities, taxes, or insurance; or

(2) increasing rent or reducing services as part of a pattern of rent increases or service reductions for an entire multidwelling project.

(b) An eviction or lease termination based on the following circumstances, which are valid grounds for eviction or lease termination in any event, does not constitute retaliation:

(1) the tenant is delinquent in rent when the landlord gives notice to vacate or files an eviction action;

(2) the tenant, a member of the tenant's family, or a guest or invitee of the tenant intentionally damages property on the premises or by word or conduct threatens the personal safety of the landlord, the landlord's employees, or another tenant;

(3) the tenant has materially breached the lease, other than by holding over, by an action such as violating written lease provisions prohibiting serious misconduct or criminal acts, except as provided by this section;

(4) the tenant holds over after giving notice of termination or intent to vacate;

(5) the tenant holds over after the landlord gives notice of termination at the end of the rental term and the tenant does not take action under Section 92.331 until after the landlord gives notice of termination; or

(6) the tenant holds over and the landlord's notice of termination is motivated by a good faith belief that the tenant, a member of the tenant's family, or a guest or invitee of the tenant might:

(A) adversely affect the quiet enjoyment by other tenants or neighbors;

(B) materially affect the health or safety of the landlord, other tenants, or neighbors; or

(C) damage the property of the landlord, other tenants, or neighbors.

Acts 1983, 68th Leg., p. 3637, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 650, Sec. 9, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 48, Sec. 16, eff. Sept. 1, 1993. Redesignated from Property Code Sec. 92.057(b), (c) and amended by Acts 1995, 74th Leg., ch. 869, Sec. 5, eff. Jan. 1, 1996.

Sec. 92.333. TENANT REMEDIES. In addition to other remedies provided by law, if a landlord retaliates against a tenant under this subchapter, the tenant may recover from the landlord a civil penalty of one month's rent plus $500, actual damages, court costs, and reasonable attorney's fees in an action for recovery of property damages, moving costs, actual expenses, civil penalties, or declaratory or injunctive relief, less any delinquent rents or other sums for which the tenant is liable to the landlord. If the tenant's rent payment to the landlord is subsidized in whole or in part by a governmental entity, the civil penalty granted under this section shall reflect the fair market rent of the dwelling plus $500.

Acts 1983, 68th Leg., p. 3637, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 650, Sec. 9, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 48, Sec. 16, eff. Sept. 1, 1993. Redesignated from Property Code Sec. 92.057(d) and amended by Acts 1995, 74th Leg., ch. 869, Sec. 5, eff. Jan. 1, 1996.

Sec. 92.334. INVALID COMPLAINTS. (a) If a tenant files or prosecutes a suit for retaliatory action based on a complaint asserted under Section 92.331(a)(3), and the government building or housing inspector or utility company representative visits the premises and determines in writing that a violation of a building or housing code does not exist or that a utility problem does not exist, there is a rebuttable presumption that the tenant acted in bad faith.

(b) If a tenant files or prosecutes a suit under this subchapter in bad faith, the landlord may recover possession of the dwelling unit and may recover from the tenant a civil penalty of one month's rent plus $500, court costs, and reasonable attorney's fees. If the tenant's rent payment to the landlord is subsidized in whole or in part by a governmental entity, the civil penalty granted under this section shall reflect the fair market rent of the dwelling plus $500.

Added by Acts 1995, 74th Leg., ch. 869, Sec. 5, eff. Jan. 1, 1996.

Sec. 92.335. EVICTION SUITS. In an eviction suit, retaliation

by the landlord under Section 92.331 is a defense and a rent deduction lawfully made by the tenant under this chapter is a defense for nonpayment of the rent to the extent allowed by this chapter. Other judicial actions under this chapter may not be joined with an eviction suit or asserted as a defense or crossclaim in an eviction suit.

Acts 1983, 68th Leg., p. 3638, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 650, Sec. 11, eff. Aug. 28, 1989. Renumbered from Property Code Sec. 92.059 and amended by Acts 1995, 74th Leg., ch. 869, Sec. 5, eff. Jan. 1, 1996.

SUBCHAPTER I. RENTAL APPLICATION

Sec. 92.351. DEFINITIONS. For purposes of this subchapter:

(1) "Application deposit" means a sum of money that is given to the landlord in connection with a rental application and that is refundable to the applicant if the applicant is rejected as a tenant.

(1-a) "Application fee" means a nonrefundable sum of money that is given to the landlord to offset the costs of screening an applicant for acceptance as a tenant.

(2) "Applicant" or "rental applicant" means a person who makes an application to a landlord for rental of a dwelling.

(3) "Co-applicant" means a person who makes an application for rental of a dwelling with other applicants and who plans to live in the dwelling with other applicants.

(4) "Deposited" means deposited in an account of the landlord or the landlord's agent in a bank or other financial institution.

(5) "Landlord" means a prospective landlord to whom a person makes application for rental of a dwelling.

(5-a) "Rental application" means a written request made by an applicant to a landlord to lease premises from the landlord.

(6) "Required date" means the required date for any acceptance of the applicant under Section 92.352.

Added by Acts 1995, 74th Leg., ch. 744, Sec. 5, eff. Jan. 1, 1996. Renumbered from Property Code Sec. 92.331 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(71), eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 917 (H.B. 3101), Sec. 7, eff. January 1, 2008.

Sec. 92.3515. NOTICE OF ELIGIBILITY REQUIREMENTS. (a) At the time an applicant is provided with a rental application, the landlord shall make available to the applicant printed notice of the landlord's tenant selection criteria and the grounds for which the rental application may be denied, including the applicant's:

(1) criminal history;

(2) previous rental history;

(3) current income;

(4) credit history; or

(5) failure to provide accurate or complete information on the application form.

(b) If the landlord makes the notice available under Subsection (a), the applicant shall sign an acknowledgment indicating the notice was made available. If the acknowledgment is not signed, there is a rebuttable presumption that the notice was not made available to the applicant.

(c) The acknowledgment required by Subsection (b) must include a statement substantively equivalent to the following: "Signing this acknowledgment indicates that you have had the opportunity to review the landlord's tenant selection criteria. The tenant selection criteria may include factors such as criminal history, credit history, current income, and rental history. If you do not meet the selection criteria, or if you provide inaccurate or incomplete information, your application may be rejected and your application fee will not be refunded."

(d) The acknowledgment may be part of the rental application if the notice is underlined or in bold print.

(e) If the landlord rejects an applicant and the landlord has not made the notice required by Subsection (a) available, the landlord shall return the application fee and any application deposit.

(f) If an applicant requests a landlord to mail a refund of the applicant's application fee to the applicant, the landlord shall mail the refund check to the applicant at the address furnished by the applicant.

Added by Acts 2007, 80th Leg., R.S., Ch. 917 (H.B. 3101), Sec. 8, eff. January 1, 2008.

Sec. 92.352. REJECTION OF APPLICANT. (a) The applicant is deemed rejected by the landlord if the landlord does not give notice of acceptance of the applicant on or before the seventh day after the:

(1) date the applicant submits a completed rental application to the landlord on an application form furnished by the landlord; or

(2) date the landlord accepts an application deposit if the landlord does not furnish the applicant an application form.

(b) A landlord's rejection of one co-applicant shall be deemed as a rejection of all co-applicants.

Added by Acts 1995, 74th Leg., ch. 744, Sec. 5, eff. Jan. 1, 1996. Renumbered from Property Code Sec. 92.332 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(71), eff. Sept. 1, 1997.

Sec. 92.353. PROCEDURES FOR NOTICE OR REFUND. (a) Except as provided in Subsection (b), a landlord is presumed to have given notice of an applicant's acceptance or rejection if the notice is by:

(1) telephone to the applicant, co-applicant, or a person living with the applicant or co-applicant on or before the required date; or

(2) United States mail, addressed to the applicant and postmarked on or before the required date.

(b) If a rental applicant requests that any acceptance of the applicant or any refund of the applicant's application deposit be mailed to the applicant, the landlord must mail the refund check to the applicant at the address furnished by the applicant.

(c) If the date of required notice of acceptance or required refund of an application deposit is a Saturday, Sunday, or state or federal holiday, the required date shall be extended to the end of the next day following the Saturday, Sunday, or holiday.

Added by Acts 1995, 74th Leg., ch. 744, Sec. 5, eff. Jan. 1, 1996. Renumbered from Property Code Sec. 92.333 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(71), eff. Sept. 1, 1997.

Sec. 92.354. LIABILITY OF LANDLORD. A landlord who in bad faith fails to refund an application fee or deposit in violation of this subchapter is liable for an amount equal to the sum of $100, three times the amount wrongfully retained, and the applicant's reasonable attorney's fees.

Added by Acts 1995, 74th Leg., ch. 744, Sec. 5, eff. Jan. 1, 1996. Renumbered from Property Code Sec. 92.334 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(71), eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 917 (H.B. 3101), Sec. 9, eff. January 1, 2008.

Sec. 92.355. WAIVER. A provision of a rental application that purports to waive a right or exempt a party from a liability or duty under this subchapter is void.

Added by Acts 2007, 80th Leg., R.S., Ch. 917 (H.B. 3101), Sec. 10, eff. January 1, 2008.

CHAPTER 93. COMMERCIAL TENANCIES

Sec. 93.001. APPLICABILITY OF CHAPTER. (a) This chapter applies only to the relationship between landlords and tenants of commercial rental property.

(b) For purposes of this chapter, "commercial rental property" means rental property that is not covered by Chapter 92.

Added by Acts 1989, 71st Leg., ch. 687, Sec. 2, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 689, Sec. 2, eff. Sept. 1, 1989.

Sec. 93.002. INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND EXCLUSION OF COMMERCIAL TENANT. (a) A landlord or a landlord's agent may not interrupt or cause the interruption of utility service paid for directly to the utility company by a tenant unless the interruption results from bona fide repairs, construction, or an emergency.

(b) A landlord may not remove a door, window, or attic hatchway cover or a lock, latch, hinge, hinge pin, doorknob, or other mechanism connected to a door, window, or attic hatchway cover from premises leased to a tenant or remove furniture, fixtures, or appliances furnished by the landlord from premises leased to a tenant unless the landlord removes the item for a bona fide repair or replacement. If a landlord removes any of the items listed in this subsection for a bona fide repair or replacement, the repair or replacement must be promptly performed.

(c) A landlord may not intentionally prevent a tenant from entering the leased premises except by judicial process unless the exclusion results from:

(1) bona fide repairs, construction, or an emergency;

(2) removing the contents of premises abandoned by a tenant; or

(3) changing the door locks of a tenant who is delinquent in paying at least part of the rent.

(d) A tenant is presumed to have abandoned the premises if goods, equipment, or other property, in an amount substantial enough to indicate a probable intent to abandon the premises, is being or has been removed from the premises and the removal is not within the normal course of the tenant's business.

(e) A landlord may remove and store any property of a tenant that remains on premises that are abandoned. In addition to the landlord's other rights, the landlord may dispose of the stored property if the tenant does not claim the property within 60 days after the date the property is stored. The landlord shall deliver by certified mail to the tenant at the tenant's last known address a notice stating that the landlord may dispose of the tenant's property if the tenant does not claim the property within 60 days after the date the property is stored.

(f) If a landlord or a landlord's agent changes the door lock of a tenant who is delinquent in paying rent, the landlord or agent must place a written notice on the tenant's front door stating the name and the address or telephone number of the individual or company from which the new key may be obtained. The new key is required to be provided only during the tenant's regular business hours and only if the tenant pays the delinquent rent.

(g) If a landlord or a landlord's agent violates this section, the tenant may:

(1) either recover possession of the premises or terminate the lease; and

(2) recover from the landlord an amount equal to the sum of the tenant's actual damages, one month's rent or $500, whichever is greater, reasonable attorney's fees, and court costs, less any delinquent rents or other sums for which the tenant is liable to the landlord.

(h) A lease supersedes this section to the extent of any conflict.

Added by Acts 1989, 71st Leg., ch. 689, Sec. 2, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 44, Sec. 1, eff. Sept. 1, 1993.

Sec. 93.003. COMMERCIAL TENANT'S RIGHT OF REENTRY AFTER UNLAWFUL LOCKOUT. (a) If a landlord has locked a tenant out of leased premises in violation of Section 93.002, the tenant may recover possession of the premises as provided by this section.

(b) The tenant must file with the justice court in the precinct in which the rental premises are located a sworn complaint for reentry, specifying the facts of the alleged unlawful lockout by the landlord or the landlord's agent. The tenant must also state orally under oath to the justice the facts of the alleged unlawful lockout.

(c) If the tenant has complied with Subsection (b) and if the justice reasonably believes an unlawful lockout has likely occurred, the justice may issue, ex parte, a writ of reentry that entitles the tenant to immediate and temporary possession of the premises, pending a final hearing on the tenant's sworn complaint for reentry.

(d) The writ of reentry must be served on either the landlord or the landlord's management company, on-premises manager, or rent collector in the same manner as a writ of possession in a forcible detainer action. A sheriff or constable may use reasonable force in executing a writ of reentry under this section.

(e) The landlord is entitled to a hearing on the tenant's sworn complaint for reentry. The writ of reentry must notify the landlord of the right to a hearing. The hearing shall be held not earlier than the first day and not later than the seventh day after the date the landlord requests a hearing.

(f) If the landlord fails to request a hearing on the tenant's sworn complaint for reentry before the eighth day after the date of

service of the writ of reentry on the landlord under Subsection (d), a judgment for court costs may be rendered against the landlord.

(g) A party may appeal from the court's judgment at the hearing on the sworn complaint for reentry in the same manner as a party may appeal a judgment in a forcible detainer suit.

(h) If a writ of possession is issued, it supersedes a writ of reentry.

(i) If the landlord or the person on whom a writ of reentry is served fails to immediately comply with the writ or later disobeys the writ, the failure is grounds for contempt of court against the landlord or the person on whom the writ was served, under Section 21.002, Government Code. If the writ is disobeyed, the tenant or the tenant's attorney may file in the court in which the reentry action is pending an affidavit stating the name of the person who has disobeyed the writ and describing the acts or omissions constituting the disobedience. On receipt of an affidavit, the justice shall issue a show cause order, directing the person to appear on a designated date and show cause why he should not be adjudged in contempt of court. If the justice finds, after considering the evidence at the hearing, that the person has directly or indirectly disobeyed the writ, the justice may commit the person to jail without bail until the person purges himself of the contempt in a manner and form as the justice may direct. If the person disobeyed the writ before receiving the show cause order but has complied with the writ after receiving the order, the justice may find the person in contempt and assess punishment under Section 21.002(c), Government Code.

(j) This section does not affect a tenant's right to pursue a separate cause of action under Section 93.002.

(k) If a tenant in bad faith files a sworn complaint for reentry resulting in a writ of reentry being served on the landlord or landlord's agent, the landlord may in a separate cause of action recover from the tenant an amount equal to actual damages, one month's rent or $500, whichever is greater, reasonable attorney's fees, and costs of court, less any sums for which the landlord is liable to the tenant.

(l) The fee for filing a sworn complaint for reentry is the same as that for filing a civil action in justice court. The fee for service of a writ of reentry is the same as that for service of a writ of possession. The fee for service of a show cause order is the

same as that for service of a civil citation. The justice may defer payment of the tenant's filing fees and service costs for the sworn complaint for reentry and writ of reentry. Court costs may be waived only if the tenant executes a pauper's affidavit.

(m) This section does not affect the rights of a landlord or tenant in a forcible detainer or forcible entry and detainer action.

Added by Acts 1989, 71st Leg., ch. 687, Sec. 2, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 595, Sec. 1, eff. June 11, 2001.

Sec. 93.004. SECURITY DEPOSIT. A security deposit is any advance of money, other than a rental application deposit or an advance payment of rent, that is intended primarily to secure performance under a lease of commercial rental property.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001.

Sec. 93.005. OBLIGATION TO REFUND SECURITY DEPOSIT. (a) The landlord shall refund the security deposit to the tenant not later than the 60th day after the date the tenant surrenders the premises and provides notice to the landlord or the landlord's agent of the tenant's forwarding address under Section 93.009.

(b) The tenant's claim to the security deposit takes priority over the claim of any creditor of the landlord, including a trustee in bankruptcy.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1143, Sec. 1, eff. Sept. 1, 2003.

Sec. 93.006. RETENTION OF SECURITY DEPOSIT; ACCOUNTING. (a) Before returning a security deposit, the landlord may deduct from the deposit damages and charges for which the tenant is legally liable under the lease or damages and charges that result from a breach of the lease.

(b) The landlord may not retain any portion of a security deposit to cover normal wear and tear. In this subsection, "normal wear and tear" means deterioration that results from the intended use

of the commercial premises, including breakage or malfunction due to age or deteriorated condition, but the term does not include deterioration that results from negligence, carelessness, accident, or abuse of the premises, equipment, or chattels by the tenant or by a guest or invitee of the tenant.

(c) If the landlord retains all or part of a security deposit under this section, the landlord shall give to the tenant the balance of the security deposit, if any, together with a written description and itemized list of all deductions. The landlord is not required to give the tenant a description and itemized list of deductions if:

(1) the tenant owes rent when the tenant surrenders possession of the premises; and

(2) no controversy exists concerning the amount of rent owed.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001.

Sec. 93.007. CESSATION OF OWNER'S INTEREST. (a) If the owner's interest in the premises is terminated by sale, assignment, death, appointment of a receiver, bankruptcy, or otherwise, the new owner is liable for the return of the security deposit according to this chapter from the date title to the premises is acquired, regardless of whether an acknowledgement is given to the tenant under Subsection (b).

(b) The person who no longer owns an interest in the rental premises remains liable for a security deposit received while the person was the owner until the new owner delivers to the tenant a signed statement acknowledging that the new owner has received and is responsible for the tenant's security deposit and specifying the exact dollar amount of the deposit. The amount of the security deposit is the greater of:

(1) the amount provided in the tenant's lease; or

(2) the amount provided in an estoppel certificate prepared by the owner at the time the lease was executed or prepared by the new owner at the time the commercial property is transferred.

(c) Subsection (a) does not apply to a real estate mortgage lienholder who acquires title by foreclosure.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001.

Sec. 93.008. RECORDS. The landlord shall keep accurate records of all security deposits.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001.

Sec. 93.009. TENANT'S FORWARDING ADDRESS. (a) The landlord is not obligated to return a tenant's security deposit or give the tenant a written description of damages and charges until the tenant gives the landlord a written statement of the tenant's forwarding address for the purpose of refunding the security deposit.

(b) The tenant does not forfeit the right to a refund of the security deposit or the right to receive a description of damages and charges for failing to give a forwarding address to the landlord.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001.

Sec. 93.010. LIABILITY FOR WITHHOLDING LAST MONTH'S RENT. (a) The tenant may not withhold payment of any portion of the last month's rent on grounds that the security deposit is security for unpaid rent.

(b) A tenant who violates this section is presumed to have acted in bad faith. A tenant who in bad faith violates this section is liable to the landlord for an amount equal to three times the rent wrongfully withheld and the landlord's reasonable attorney's fees in a suit to recover the rent.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001.

Sec. 93.011. LIABILITY OF LANDLORD. (a) A landlord who in bad faith retains a security deposit in violation of this chapter is liable for an amount equal to the sum of $100, three times the portion of the deposit wrongfully withheld, and the tenant's reasonable attorney's fees incurred in a suit to recover the deposit after the period prescribed for returning the deposit expires.

(b) A landlord who in bad faith does not provide a written description and itemized list of damages and charges in violation of this chapter:

(1) forfeits the right to withhold any portion of the

security deposit or to bring suit against the tenant for damages to the premises; and

(2) is liable for the tenant's reasonable attorney's fees in a suit to recover the deposit.

(c) In a suit brought by a tenant under this chapter, the landlord has the burden of proving that the retention of any portion of the security deposit was reasonable.

(d) A landlord who fails to return a security deposit or to provide a written description and itemized list of deductions on or before the 60th day after the date the tenant surrenders possession is presumed to have acted in bad faith.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1143, Sec. 2, eff. Sept. 1, 2003.

Sec. 93.012. ASSESSMENT OF CHARGES. (a) A landlord may not assess a charge, excluding a charge for rent or physical damage to the leased premises, to a tenant unless the amount of the charge or the method by which the charge is to be computed is stated in the lease, an exhibit or attachment that is part of the lease, or an amendment to the lease.

(b) This section does not affect a landlord's right to assess a charge or obtain a remedy allowed under a statute or common law.

(c) This section does not affect the contractual right of a landlord that is a governmental entity created under Subchapter D, Chapter 22, Transportation Code, whose constituent municipalities are populous home-rule municipalities to assess charges under a lease to fully compensate the governmental entity for the governmental entity's operating costs.

Added by Acts 2001, 77th Leg., ch. 1397, Sec. 1, eff. Sept. 1, 2002. Renumbered from Property Code Sec. 93.004 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(119), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 71 (H.B. 1382), Sec. 1, eff. May 20, 2009.

CHAPTER 94. MANUFACTURED HOME TENANCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 94.001. DEFINITIONS. In this chapter:

(1) "Landlord" means the owner or manager of a manufactured home community and includes an employee or agent of the landlord.

(2) "Lease agreement" means a written agreement between a landlord and a tenant that establishes the terms, conditions, and other provisions for placing a manufactured home on the premises of a manufactured home community.

(3) "Manufactured home" has the meaning assigned by Section 1201.003, Occupations Code.

(4) "Manufactured home community" means a parcel of land on which four or more lots are offered for lease for installing and occupying manufactured homes.

(5) "Manufactured home community rules" means the rules provided in a written document that establish the policies and regulations of the manufactured home community, including regulations relating to the use, occupancy, and quiet enjoyment of and the health, safety, and welfare of tenants of the manufactured home community.

(6) "Manufactured home lot" means the space allocated in the lease agreement for the placement of the tenant's manufactured home and the area adjacent to that space designated in the lease agreement for the tenant's exclusive use.

(7) "Normal wear and tear" means deterioration that results from intended use of the premises, including breakage or malfunction due to age or deteriorated condition, but the term does not include deterioration that results from negligence, carelessness, accident, or abuse of the premises, equipment, or chattels by the tenant, a member of the tenant's household, or a guest or invitee of the tenant.

(8) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 613, Sec. 8, eff. September 1, 2013.

(9) "Premises" means a tenant's manufactured home lot, any area or facility the lease authorizes the tenant to use, and the appurtenances, grounds, and facilities held out for the use of tenants generally.

(10) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 613, Sec. 8, eff. September 1, 2013.

(11) "Tenant" means a person who is:

(A) authorized by a lease agreement to occupy a lot to

the exclusion of others in a manufactured home community; and

(B) obligated under the lease agreement to pay rent, fees, and other charges.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.
Amended by Acts 2003, 78th Leg., ch. 75, Sec. 1, eff. May 16, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.808, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 613 (S.B. 1268), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 613 (S.B. 1268), Sec. 8, eff. September 1, 2013.

Sec. 94.002. APPLICABILITY. (a) This chapter applies only to the relationship between a landlord who leases property in a manufactured home community and a tenant leasing property in the manufactured home community for the purpose of situating a manufactured home on the property.

(b) This chapter does not apply to the relationship between:

(1) a landlord who owns a manufactured home and a tenant who leases the manufactured home from the landlord;

(2) a landlord who leases property in a manufactured home community and a tenant leasing property in the manufactured home community for the placement of personal property to be used for human habitation, excluding a manufactured home; or

(3) a landlord and an employee or an agent of the landlord.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 613 (S.B. 1268), Sec. 3, eff. September 1, 2013.

Sec. 94.003. WAIVER OF RIGHTS AND DUTIES. A provision in a lease agreement or a manufactured home community rule that purports to waive a right or to exempt a landlord or a tenant from a duty or from liability under this chapter is void.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.004. LANDLORD'S RIGHT OF ENTRY. (a) Except as provided by this chapter, the landlord may not enter a tenant's manufactured home unless:

(1) the tenant is present and gives consent; or

(2) the tenant has previously given written consent.

(b) The written consent under Subsection (a)(2) must specify the date and time entry is permitted and is valid only for the date and time specified. The tenant may revoke the consent without penalty at any time by notifying the landlord in writing that the consent has been revoked.

(c) The landlord may enter the tenant's manufactured home in a reasonable manner and at a reasonable time if:

(1) an emergency exists; or

(2) the tenant abandons the manufactured home.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.005. COMMON AREA FACILITIES. Each common area facility, if any, must be open or available to tenants. The landlord shall post the hours of operation or availability of the facility in a conspicuous place at the facility.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.006. TENANT MEETINGS. (a) Except as provided by Subsection (b), a landlord may not interfere with meetings by tenants of the manufactured home community related to manufactured home living.

(b) Any limitations on meetings by tenants in the common area facilities must be included in the manufactured home community rules.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.007. CASH RENTAL PAYMENTS. (a) A landlord shall accept a tenant's cash rental payment unless the lease agreement requires the tenant to make rental payments by check, money order, or other traceable or negotiable instrument.

(b) A landlord who receives a cash rental payment shall:

(1) provide the tenant with a written receipt; and

(2) enter the payment date and amount in a record book maintained by the landlord.

(c) A tenant or a governmental entity or civic association acting on the tenant's behalf may file suit against a landlord to enjoin a violation of this section.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.008. MANUFACTURED HOME COMMUNITY RULES. (a) A landlord may adopt manufactured home community rules that are not arbitrary or capricious.

(b) Manufactured home community rules are considered part of the lease agreement.

(c) The landlord may add to or amend manufactured home community rules. If the landlord adds or amends a rule:

(1) the rule is not effective until the 30th day after the date each tenant is provided with a written copy of the added or amended rule; and

(2) if a tenant is required to take any action that requires the expenditure of funds in excess of $25 to comply with the rule, the landlord shall give the tenant at least 90 days after the date each tenant is provided with a written copy of the added or amended rule to comply with the rule.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.009. NOTICE TO TENANT AT PRIMARY RESIDENCE. (a) If, at the time of signing a lease agreement or lease renewal, a tenant gives written notice to the tenant's landlord that the tenant does not occupy the manufactured home lot as a primary residence and requests in writing that the landlord send notices to the tenant at the tenant's primary residence and provides to the landlord the address of the tenant's primary residence, the landlord shall mail to the tenant's primary residence all notices required by the lease agreement, by this chapter, or by Chapter 24.

(b) The tenant shall notify the landlord in writing of any change in the tenant's primary residence address. Oral notices of change are insufficient.

(c) A notice to a tenant's primary residence under Subsection (a) may be sent by regular United States mail and is considered as having been given on the date of postmark of the notice.

(d) If there is more than one tenant on a lease agreement, the landlord is not required under this section to send notices to the primary residence of more than one tenant.

(e) This section does not apply if notice is actually hand delivered to and received by a person 16 years of age or older occupying the leased premises.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.010. DISCLOSURE OF OWNERSHIP AND MANAGEMENT. (a) A landlord shall disclose to a tenant, or to any governmental official or employee acting in an official capacity, according to this section:

(1) the name and either a street or post office box address of the holder of record title, according to the deed records in the county clerk's office, of the premises leased by the tenant or inquired about by the governmental official or employee acting in an official capacity; and

(2) if an entity located off-site from the manufactured home community is primarily responsible for managing the leased premises, the name and street address of that entity.

(b) Disclosure to a tenant under Subsection (a) must be made by:

(1) giving the information in writing to the tenant on or before the seventh day after the date the landlord receives the tenant's written request for the information;

(2) continuously posting the information in a conspicuous place in the manufactured home community or the office of the on-site manager or on the outside of the entry door to the office of the on-site manager on or before the seventh day after the date the landlord receives the tenant's written request for the information; or

(3) including the information in a copy of the tenant's lease or in written manufactured home community rules given to the tenant before the tenant requests the information.

(c) Disclosure of information to a tenant may be made under Subsection (b)(1) or (2) before the tenant requests the information.

(d) Disclosure of information to a governmental official or employee must be made by giving the information in writing to the official or employee on or before the seventh day after the date the landlord receives a written request for the information from the official or employee.

(e) A correction to the information may be made by any of the methods authorized and must be made within the period prescribed by this section for providing the information.

(f) For the purposes of this section, an owner or property manager may disclose either an actual name or an assumed name if an assumed name certificate has been recorded with the county clerk.

(g) A landlord who provides information under this section violates this section if:

(1) the information becomes incorrect because a name or address changes; and

(2) the landlord fails to correct the information given to a tenant on or before the 15th day after the date the information becomes incorrect.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.011. LANDLORD'S AGENT FOR SERVICE OF PROCESS. (a) In a lawsuit by a tenant to enforce a legal obligation of the owner as landlord of the manufactured home community, the owner's agent for service of process is determined according to this section.

(b) The owner's management company, on-site manager, or rent collector for the manufactured home community is the owner's authorized agent for service of process unless the owner's name and business street address have been furnished in writing to the tenant.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.012. VENUE. Venue for an action under this chapter is governed by Section 15.0115, Civil Practice and Remedies Code.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

SUBCHAPTER B. LEASE AGREEMENT

Sec. 94.051. INFORMATION TO BE PROVIDED TO PROSPECTIVE TENANT. At the time the landlord receives an application from a prospective tenant, the landlord shall give the tenant a copy of:

(1) the proposed lease agreement for the manufactured home community;

(2) any manufactured home community rules; and

(3) a separate disclosure statement with the following prominently printed in at least 10-point type:

"You have the legal right to an initial lease term of six months. If you prefer a different lease period, you and your landlord may negotiate a shorter or longer lease period. After the initial lease period expires, you and your landlord may negotiate a new lease term by mutual agreement. Regardless of the term of the lease, the landlord must give you at least 60 days' notice of a nonrenewal of the lease, except that if the manufactured home community's land use will change, the landlord must give you at least 180 days' notice. During the applicable period, you must continue to pay all rent and other amounts due under the lease agreement, including late charges, if any, after receiving notice of the nonrenewal."

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002. Amended by Acts 2003, 78th Leg., ch. 75, Sec. 2, eff. May 16, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 65, eff. January 1, 2008.

Sec. 94.052. TERM OF LEASE. (a) A landlord shall offer the tenant a lease agreement with an initial lease term of at least six months. If the tenant requests a lease agreement with a different lease period, the landlord and the tenant may mutually agree to a shorter or longer lease period. The landlord and the tenant may mutually agree to subsequent lease periods of any length for each renewal of the lease agreement.

(b) Except as provided by Section 94.204, regardless of the term of the lease, the landlord must provide notice to the tenant not later than the 60th day before the date of the expiration of the lease if the landlord chooses not to renew the lease. During the applicable period, the tenant must pay all rent and other amounts due

under the lease agreement, including late charges, if any, after receiving notice of the nonrenewal.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 66, eff. January 1, 2008.

Sec. 94.053. LEASE REQUIREMENTS AND DISCLOSURES. (a) A lease agreement must be:

(1) typed or printed in legible handwriting; and

(2) signed by the landlord and the tenant.

(b) The landlord shall provide the tenant with a copy of the lease agreement and a current copy of the manufactured home community rules after the lease has been signed.

(c) A lease agreement must contain the following information:

(1) the address or number of the manufactured home lot and the number and location of any accompanying parking spaces;

(2) the lease term;

(3) the rental amount;

(4) the interval at which rent must be paid and the date on which periodic rental payments are due;

(5) any late charge or fee or charge for any service or facility;

(6) the amount of any security deposit;

(7) a description of the landlord's maintenance responsibilities;

(8) the telephone number of the person who may be contacted for emergency maintenance;

(9) the name and address of the person designated to accept official notices for the landlord;

(10) the penalty the landlord may impose for the tenant's early termination as provided by Section 94.201;

(11) the grounds for eviction as provided by Subchapter E;

(12) a disclosure of the landlord's right to choose not to renew the lease agreement if there is a change in the land use of the manufactured home community during the lease term as provided by Section 94.204;

(13) a disclosure of any incorporation by reference of an

addendum relating to submetering of utility services;

(14) a prominent disclosure informing the tenant that Chapter 94, Property Code, governs certain rights granted to the tenant and obligations imposed on the landlord by law;

(15) if there is a temporary zoning permit for the land use of the manufactured home community, the date the zoning permit expires; and

(16) any other terms or conditions of occupancy not expressly included in the manufactured home community rules.

(d) A lease provision requiring an increase in rent or in fees or charges during the lease term must be initialed by the tenant or the provision is void.

(e) Any illegal or unconscionable provision in a lease is void. If a lease provision is determined void, the invalidity of the provision does not affect other provisions of the lease that can be given effect without reference to the invalid provision.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 67, eff. January 1, 2008.

Sec. 94.054. DISCLOSURE BY TENANT REQUIRED. A tenant shall disclose to the landlord before the lease agreement is signed the name and address of any person who holds a lien on the tenant's manufactured home.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.055. NOTICE OF LEASE RENEWAL. (a) The landlord shall provide a tenant a notice to vacate the leased premises or an offer of lease renewal:

(1) not later than the 60th day before the date the current lease term expires; or

(2) if the lease is a month-to-month lease, not later than the 60th day before the date the landlord intends to terminate the current term of the lease.

(b) If the landlord offers to renew the lease, the landlord shall notify the tenant of the proposed rent amount and any change in

the lease terms. The notice must also include a statement informing the tenant that the tenant's failure to reject the landlord's offer to renew the lease within the 30-day period prescribed by Subsection (c) will result in the renewal of the lease under the modified terms as provided by Subsection (c).

(c) If the landlord offers to renew the lease, the tenant must notify the landlord not later than the 30th day before the date the current lease expires whether the tenant rejects the terms of the offer and intends to vacate the leased premises on the date the current lease term expires. If the tenant fails to provide the notice within the period prescribed by this subsection, the lease is renewed under the modified terms beginning on the first day after the date of the expiration of the current lease term.

(d) Notwithstanding Subsection (a), the landlord may request a tenant to vacate the leased premises before the end of the notice period prescribed by Subsection (a) only if the landlord compensates the tenant in advance for relocation expenses, including the cost of moving and installing the manufactured home at a new location.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.056. PENALTY FOR LATE PAYMENT. A landlord may assess a penalty for late payment of rent or another fee or charge if the payment is not remitted on or before the date stipulated in the lease agreement.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.057. ASSIGNMENT OF LEASE AND SUBLEASE. (a) A landlord may prohibit a tenant from assigning a lease agreement or subleasing the leased premises if the prohibition is included in the lease agreement.

(b) If the landlord permits a tenant to assign a lease agreement or sublease the leased premises, the lease agreement must specify the conditions under which the tenant may enter into an assignment or sublease agreement.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

SUBCHAPTER C. SECURITY DEPOSIT

Sec. 94.101. SECURITY DEPOSIT. In this chapter, "security deposit" means any advance of money, other than a rental application deposit or an advance payment of rent, that is intended primarily to secure performance under a lease of a lot in a manufactured home community that has been entered into by a landlord and a tenant.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.102. SECURITY DEPOSIT PERMITTED. (a) At the time the tenant executes the initial lease agreement, the landlord may require a security deposit.

(b) The landlord shall keep accurate records relating to security deposits.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.103. OBLIGATION TO REFUND. (a) Except as provided by this subchapter, the landlord shall refund the security deposit not later than the 30th day after the date the tenant surrenders the manufactured home lot.

(b) A requirement that a tenant give advance notice of surrender as a condition for refunding the security deposit is effective only if the requirement is underlined or is printed in conspicuous bold print in the lease.

(c) The tenant's claim to the security deposit takes priority over the claim of any creditor of the landlord, including a trustee in bankruptcy.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.104. CONDITIONS FOR RETENTION OF SECURITY DEPOSIT OR RENT PREPAYMENT. (a) Except as provided by Subsection (b), a landlord who receives a security deposit or rent prepayment for a manufactured home lot from a tenant who fails to occupy the lot according to a lease agreement between the landlord and the tenant may not retain the security deposit or rent prepayment if:

(1) the tenant secures a replacement tenant satisfactory to

the landlord and the replacement tenant occupies the lot on or before the commencement date of the lease; or

(2) the landlord secures a replacement tenant satisfactory to the landlord and the replacement tenant occupies the lot on or before the commencement date of the lease.

(b) If the landlord secures the replacement tenant, the landlord may retain and deduct from the security deposit or rent prepayment either:

(1) an amount agreed to in the lease agreement as a lease cancellation fee; or

(2) actual expenses incurred by the landlord in securing the replacement tenant, including a reasonable amount for the time spent by the landlord in securing the replacement tenant.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.105. RETENTION OF SECURITY DEPOSIT; ACCOUNTING. (a) Before returning a security deposit, the landlord may deduct from the deposit damages and charges for which the tenant is legally liable under the lease agreement or as a result of breaching the lease.

(b) The landlord may not retain any portion of a security deposit to cover normal wear and tear.

(c) If the landlord retains all or part of a security deposit under this section, the landlord shall give to the tenant the balance of the security deposit, if any, together with a written description and itemized list of all deductions. The landlord is not required to give the tenant a description and itemized list of deductions if:

(1) the tenant owes rent when the tenant surrenders possession of the manufactured home lot; and

(2) no controversy exists concerning the amount of rent owed.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.106. CESSATION OF OWNER'S INTEREST. (a) If the owner's interest in the premises is terminated by sale, assignment, death, appointment of a receiver, bankruptcy, or otherwise, the new owner is liable for the return of security deposits according to this subchapter from the date title to the premises is acquired,

regardless of whether notice is given to the tenant under Subsection (b).

(b) The person who no longer owns an interest in the leased premises remains liable for a security deposit received while the person was the owner until the new owner delivers to the tenant a signed statement acknowledging that the new owner has received and is responsible for the tenant's security deposit and specifying the exact dollar amount of the deposit.

(c) Subsection (a) does not apply to a real estate mortgage lienholder who acquires title by foreclosure.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.107. TENANT'S FORWARDING ADDRESS. (a) A landlord is not obligated to return a tenant's security deposit or give the tenant a written description of damages and charges until the tenant gives the landlord a written statement of the tenant's forwarding address for the purpose of refunding the security deposit.

(b) The tenant does not forfeit the right to a refund of the security deposit or the right to receive a description of damages and charges merely for failing to give a forwarding address to the landlord.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.108. LIABILITY FOR WITHHOLDING LAST MONTH'S RENT. (a) A tenant may not withhold payment of any portion of the last month's rent on grounds that the security deposit is security for unpaid rent.

(b) A tenant who violates this section is presumed to have acted in bad faith. A tenant who in bad faith violates this section is liable to the landlord for an amount equal to three times the rent wrongfully withheld and the landlord's reasonable attorney's fees in a suit to recover the rent.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.109. LIABILITY OF LANDLORD. (a) A landlord who in bad

faith retains a security deposit in violation of this subchapter is liable for an amount equal to the sum of $100, three times the portion of the deposit wrongfully withheld, and the tenant's reasonable attorney's fees in a suit to recover the deposit.

(b) A landlord who in bad faith does not provide a written description and itemized list of damages and charges in violation of this subchapter:

(1) forfeits the right to withhold any portion of the security deposit or to bring suit against the tenant for damages to the premises; and

(2) is liable for the tenant's reasonable attorney's fees in a suit to recover the deposit.

(c) In an action brought by a tenant under this subchapter, the landlord has the burden of proving that the retention of any portion of the security deposit was reasonable.

(d) A landlord who fails either to return a security deposit or to provide a written description and itemization of deductions on or before the 30th day after the date the tenant surrenders possession is presumed to have acted in bad faith.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

SUBCHAPTER D. PREMISES CONDITION, MAINTENANCE, AND REPAIRS

Sec. 94.151. WARRANTY OF SUITABILITY. By executing a lease agreement, the landlord warrants that the manufactured home lot is suitable for the installation of a manufactured home during the term of the lease agreement.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.152. LANDLORD'S MAINTENANCE OBLIGATIONS. The landlord shall:

(1) comply with any code, statute, ordinance, and administrative rule applicable to the manufactured home community;

(2) maintain all common areas, if any, of the manufactured home community in a clean and useable condition;

(3) maintain all utility lines installed in the manufactured home community by the landlord unless the utility lines are maintained by a public utility or political subdivision,

including a municipality;

(4) maintain individual mailboxes for the tenants in accordance with United States Postal Service regulations unless mailboxes are permitted to be located on the tenant's manufactured home lot;

(5) maintain roads in the manufactured home community to the extent necessary to provide access to each tenant's manufactured home lot;

(6) provide services for the common collection and removal of garbage and solid waste from within the manufactured home community; and

(7) repair or remedy conditions on the premises that materially affect the physical health or safety of an ordinary tenant of the manufactured home community.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.153. LANDLORD'S REPAIR OBLIGATIONS. (a) This section does not apply to a condition present in or on a tenant's manufactured home.

(b) A landlord shall make a diligent effort to repair or remedy a condition if:

(1) the tenant specifies the condition in a notice to the person to whom or to the place at which rent is normally paid;

(2) the tenant is not delinquent in the payment of rent at the time notice is given; and

(3) the condition materially affects the physical health or safety of an ordinary tenant.

(c) Unless the condition was caused by normal wear and tear, the landlord does not have a duty during the lease term or a renewal or extension to repair or remedy a condition caused by:

(1) the tenant;

(2) a lawful occupant of the tenant's manufactured home lot;

(3) a member of the tenant's family; or

(4) a guest or invitee of the tenant.

(d) This subchapter does not require the landlord:

(1) to furnish utilities from a utility company if as a practical matter the utility lines of the company are not reasonably

available; or

(2) to furnish security guards.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.154. BURDEN OF PROOF. (a) Except as provided by this section, the tenant has the burden of proof in a judicial action to enforce a right resulting from the landlord's failure to repair or remedy a condition under Section 94.153.

(b) If the landlord does not provide a written explanation for delay in performing a duty to repair or remedy on or before the fifth day after receiving from the tenant a written demand for an explanation, the landlord has the burden of proving that the landlord made a diligent effort to repair and that a reasonable time for repair did not elapse.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.155. CASUALTY LOSS. (a) If a condition results from an insured casualty loss, such as fire, smoke, hail, explosion, or a similar cause, the period for repair does not begin until the landlord receives the insurance proceeds.

(b) If after a casualty loss the leased premises are as a practical matter totally unusable for the purposes for which the premises were leased and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, either the landlord or the tenant may terminate the lease by giving written notice to the other any time before repairs are completed. If the lease is terminated, the tenant is entitled only to a pro rata refund of rent from the date the tenant moves out and to a refund of any security deposit otherwise required by law.

(c) If after a casualty loss the leased premises are partially unusable for the purposes for which the premises were leased and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, the tenant is entitled to reduction in the rent in an amount proportionate to the extent the premises are unusable because of the casualty, but only on judgment of a county or district court. A

landlord and tenant may agree otherwise in a written lease.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.156. LANDLORD LIABILITY AND TENANT REMEDIES; NOTICE AND TIME FOR REPAIR. (a) A landlord's liability under this section is subject to Section 94.153(c) regarding conditions that are caused by a tenant.

(b) A landlord is liable to a tenant as provided by this subchapter if:

(1) the tenant has given the landlord notice to repair or remedy a condition by giving that notice to the person to whom or to the place where the tenant's rent is normally paid;

(2) the condition materially affects the physical health or safety of an ordinary tenant;

(3) the tenant has given the landlord a subsequent written notice to repair or remedy the condition after a reasonable time to repair or remedy the condition following the notice given under Subdivision (1) or the tenant has given the notice under Subdivision (1) by sending that notice by certified mail, return receipt requested, or by registered mail;

(4) the landlord has had a reasonable time to repair or remedy the condition after the landlord received the tenant's notice under Subdivision (1) and, if applicable, the tenant's subsequent notice under Subdivision (3);

(5) the landlord has not made a diligent effort to repair or remedy the condition after the landlord received the tenant's notice under Subdivision (1) and, if applicable, the tenant's notice under Subdivision (3); and

(6) the tenant was not delinquent in the payment of rent at the time any notice required by this subsection was given.

(c) For purposes of Subsection (b)(4) or (5), a landlord is considered to have received the tenant's notice when the landlord or the landlord's agent or employee has actually received the notice or when the United States Postal Service has attempted to deliver the notice to the landlord.

(d) For purposes of Subsection (b)(3) or (4), in determining whether a period of time is a reasonable time to repair or remedy a condition, there is a rebuttable presumption that seven days is a

reasonable time. To rebut that presumption, the date on which the landlord received the tenant's notice, the severity and nature of the condition, and the reasonable availability of materials and labor and of utilities from a utility company must be considered.

(e) Except as provided by Subsection (f), a tenant to whom a landlord is liable under Subsection (b) may:

(1) terminate the lease;

(2) have the condition repaired or remedied according to Section 94.157;

(3) deduct from the tenant's rent, without necessity of judicial action, the cost of the repair or remedy according to Section 94.157; and

(4) obtain judicial remedies according to Section 94.159.

(f) A tenant who elects to terminate the lease under Subsection (e) is:

(1) entitled to a pro rata refund of rent from the date of termination or the date the tenant moves out, whichever is later;

(2) entitled to deduct the tenant's security deposit from the tenant's rent without necessity of lawsuit or to obtain a refund of the tenant's security deposit according to law; and

(3) not entitled to the other repair and deduct remedies under Section 94.157 or the judicial remedies under Sections 94.159(a)(1) and (2).

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.157. TENANT'S REPAIR AND DEDUCT REMEDIES. (a) If the landlord is liable to the tenant under Section 94.156(b), the tenant may have the condition repaired or remedied and may deduct the cost from a subsequent rent payment as provided by this section.

(b) Except as provided by this subsection, the tenant's deduction for the cost of the repair or remedy may not exceed the amount of one month's rent under the lease agreement or $500, whichever is greater. If the tenant's rent is subsidized in whole or in part by a governmental agency, the deduction limitation of one month's rent means the fair market rent for the manufactured home lot and not the rent that the tenant pays. The governmental agency subsidizing the rent shall determine the fair market rent. If the governmental agency does not make a determination, the fair market

rent means a reasonable amount of rent under the circumstances.

(c) Repairs and deductions under this section may be made as often as necessary provided that the total repairs and deductions in any one month may not exceed one month's rent or $500, whichever is greater.

(d) Repairs under this section may be made only if all of the following requirements are met:

(1) the landlord has a duty to repair or remedy the condition under Section 94.153;

(2) the tenant has given notice to the landlord in the same manner as prescribed by Section 92.056(b)(1) and, if required under Section 92.056(b)(3), a subsequent notice in the same manner as prescribed by that subsection; and

(3) any one of the following events has occurred:

(A) the landlord has failed to remedy the backup or overflow of raw sewage inside the tenant's manufactured home that results from a condition in the utility lines installed in the manufactured home community by the landlord;

(B) the landlord has expressly or impliedly agreed in the lease agreement to furnish potable water to the tenant's manufactured home lot and the water service to the lot has totally ceased; or

(C) the landlord has been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that a condition existing on the manufactured home lot materially affects the health or safety of an ordinary tenant.

(e) At least one of the notices given under Subsection (d)(2) must state that the tenant intends to repair or remedy the condition. The notice must also contain a reasonable description of the intended repair or remedy.

(f) If the requirements prescribed by Subsections (d) and (e) are met, a tenant may:

(1) have the condition repaired or remedied immediately following the tenant's notice of intent to repair if the condition involves the backup or overflow of sewage;

(2) have the condition repaired or remedied if the condition involves a cessation of potable water if the landlord has failed to repair or remedy the condition before the fourth day after the date the tenant delivers a notice of intent to repair; or

(3) have the condition repaired or remedied if the condition is not covered by Subsection (d)(3)(A) or (B) and involves a condition affecting the physical health or safety of the ordinary tenant if the landlord has failed to repair or remedy the condition before the eighth day after the date the tenant delivers a notice of intent to repair.

(g) Repairs made based on a tenant's notice must be made by a company, contractor, or repairman listed at the time of the tenant's notice of intent to repair in the yellow or business pages of the telephone directory or in the classified advertising section of a newspaper of the municipality or county in which the manufactured home community is located or in an adjacent county. Unless the landlord and tenant agree otherwise under Subsection (i), repairs may not be made by the tenant, the tenant's immediate family, the tenant's employer or employees, or a company in which the tenant has an ownership interest. Repairs may not be made to the foundation or load-bearing structural elements of the manufactured home lot.

(h) Repairs made based on a tenant's notice must comply with applicable building codes, including any required building permit.

(i) A landlord and a tenant may mutually agree for the tenant to repair or remedy, at the landlord's expense, any condition on the manufactured home lot regardless of whether it materially affects the health or safety of an ordinary tenant.

(j) The tenant may not contract for labor or materials in excess of the amount the tenant may deduct under this section. The landlord is not liable to repairmen, contractors, or material suppliers who furnish labor or materials to repair or remedy the condition. A repairman or supplier does not have a lien for materials or services arising out of repairs contracted for by the tenant under this section.

(k) When deducting the cost of repairs from the rent payment, the tenant shall furnish the landlord, along with payment of the balance of the rent, a copy of the repair bill and the receipt for its payment. A repair bill and receipt may be the same document.

(l) If the landlord repairs or remedies the condition after the tenant has contacted a repairman but before the repairman commences work, the landlord is liable for the cost incurred by the tenant for the repairman's charge for traveling to the premises, and the tenant may deduct the charge from the tenant's rent as if it were a repair cost.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.158. LANDLORD AFFIDAVIT FOR DELAY. (a) The tenant must delay contracting for repairs under Section 94.157 if, before the tenant contracts for the repairs, the landlord delivers to the tenant an affidavit signed and sworn to under oath by the landlord or the landlord's authorized agent and complying with this section.

(b) The affidavit must summarize the reasons for the delay and the diligent efforts made by the landlord up to the date of the affidavit to get the repairs done. The affidavit must state facts showing that the landlord has made and is making diligent efforts to repair the condition, and it must contain dates, names, addresses, and telephone numbers of contractors, suppliers, and repairers contacted by the owner.

(c) Affidavits under this section may delay repair by the tenant for:

(1) 15 days if the landlord's failure to repair is caused by a delay in obtaining necessary parts for which the landlord is not at fault; or

(2) 30 days if the landlord's failure to repair is caused by a general shortage of labor or materials for repair following a natural disaster such as a hurricane, tornado, flood, extended freeze, or widespread windstorm.

(d) Affidavits for delay based on grounds other than those listed in Subsection (c) are unlawful and, if used, are of no effect. The landlord may file subsequent affidavits, provided that the total delay of the repair or remedy extends no longer than six months from the date the landlord delivers the first affidavit to the tenant.

(e) The affidavit must be delivered to the tenant by any of the following methods:

(1) personal delivery to the tenant;

(2) certified mail, return receipt requested, to the tenant; or

(3) leaving the notice securely fixed on the outside of the main entry door of the manufactured home if notice in that manner is authorized in a written lease.

(f) Affidavits for delay by a landlord under this section must be submitted in good faith. Following delivery of the affidavit, the landlord must continue diligent efforts to repair or remedy the

condition. There shall be a rebuttable presumption that the landlord acted in good faith and with continued diligence for the first affidavit for delay the landlord delivers to the tenant. The landlord shall have the burden of pleading and proving good faith and continued diligence for subsequent affidavits for delay. A landlord who violates this section shall be liable to the tenant for all judicial remedies under Section 94.159, except that the civil penalty under Section 94.159(a)(3) shall be one month's rent plus $1,000.

(g) If the landlord is liable to the tenant under Section 94.156 and if a new landlord, in good faith and without knowledge of the tenant's notice of intent to repair, has acquired title to the tenant's dwelling by foreclosure, deed in lieu of foreclosure, or general warranty deed in a bona fide purchase, then the following shall apply:

(1) The tenant's right to terminate the lease under this subchapter shall not be affected, and the tenant shall have no duty to give additional notice to the new landlord.

(2) The tenant's right to repair and deduct for conditions involving sewage backup or overflow or a cutoff of potable water under Section 94.157(f) shall not be affected, and the tenant shall have no duty to give additional notice to the new landlord.

(3) For conditions other than those specified in Subdivision (2), if the new landlord acquires title as described by this subsection and has notified the tenant of the name and address of the new landlord or the new landlord's authorized agent and if the tenant has not already contracted for the repair or remedy at the time the tenant is so notified, the tenant must deliver to the new landlord a written notice of intent to repair or remedy the condition, and the new landlord shall have a reasonable time to complete the repair before the tenant may repair or remedy the condition. No further notice from the tenant is necessary in order for the tenant to repair or remedy the condition after a reasonable time has elapsed.

(4) The tenant's judicial remedies under Section 94.159 shall be limited to recovery against the landlord to whom the tenant gave the required notices until the tenant has given the new landlord the notices required by this section and otherwise complied with Section 94.156 as to the new landlord.

(5) If the new landlord violates this subsection, the new landlord is liable to the tenant for a civil penalty of one month's

rent plus $2,000, actual damages, and attorney's fees.

(6) No provision of this section shall affect any right of a foreclosing superior lienholder to terminate, according to law, any interest in the premises held by the holders of subordinate liens, encumbrances, leases, or other interests and shall not affect any right of the tenant to terminate the lease according to law.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.159. TENANT'S JUDICIAL REMEDIES. (a) A tenant's judicial remedies under Section 94.156 shall include:

(1) an order directing the landlord to take reasonable action to repair or remedy the condition;

(2) an order reducing the tenant's rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;

(3) a judgment against the landlord for a civil penalty of one month's rent plus $500;

(4) a judgment against the landlord for the amount of the tenant's actual damages; and

(5) court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

(b) A landlord who knowingly violates Section 94.003 by contracting with a tenant to waive the landlord's duty to repair under this subchapter shall be liable to the tenant for actual damages, a civil penalty of one month's rent plus $2,000, and reasonable attorney's fees. For purposes of this subsection, there shall be a rebuttable presumption that the landlord acted without knowledge of the violation. The tenant shall have the burden of pleading and proving a knowing violation. If the lease is not in violation of Section 94.003, the tenant's proof of a knowing violation must be clear and convincing. A mutual agreement for tenant repair under Section 94.157(i) is not a violation of Section 94.003.

(c) The justice, county, and district courts have concurrent jurisdiction of an action under Subsection (a), except that the justice court may not order repairs under Subsection (a)(1).

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.160. LANDLORD REMEDY FOR TENANT VIOLATION. (a) If a tenant withholds rent, causes repairs to be performed, or makes rent deductions for repairs in violation of this subchapter, the landlord may recover actual damages from the tenant. If, after a landlord has notified a tenant in writing of the illegality of the tenant's rent withholding or the tenant's proposed repair and the penalties of this subchapter, the tenant withholds rent, causes repairs to be performed, or makes rent deductions for repairs in bad faith violation of this subchapter, the landlord may recover from the tenant a civil penalty of one month's rent plus $500.

(b) Notice under this section must be in writing and may be given in person, by mail, or by delivery to the premises.

(c) The landlord has the burden of pleading and proving, by clear and convincing evidence, that the landlord gave the tenant the required notice of the illegality and the penalties and that the tenant's violation was done in bad faith. In any litigation under this subsection, the prevailing party shall recover reasonable attorney's fees from the nonprevailing party.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.161. AGENTS FOR DELIVERY OF NOTICE. A managing agent, leasing agent, or resident manager is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.162. EFFECT ON OTHER RIGHTS. The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of existing common law and other statutory law warranties and duties of landlords for maintenance, repair, security, suitability, and nonretaliation, and remedies of tenants for a violation of those warranties and duties. Otherwise, this subchapter does not affect any other right of a landlord or tenant under contract, statutory law, or common law that is consistent with the purposes of this

subchapter or any right a landlord or tenant may have to bring an action for personal injury or property damage under the law of this state. This subchapter does not impose obligations on a landlord or tenant other than those expressly stated in this subchapter.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

SUBCHAPTER E. TERMINATION, EVICTION, AND FORECLOSURE

Sec. 94.201. LANDLORD'S REMEDY FOR EARLY TERMINATION. (a) Except as provided by Subsection (b), the maximum amount a landlord may recover as damages for a tenant's early termination of a lease agreement is an amount equal to the amount of rent that remains outstanding for the term of the lease and any other amounts owed for the remainder of the lease under the terms of the lease.

(b) If the tenant's manufactured home lot is reoccupied before the 21st day after the date the tenant surrenders the lot, the maximum amount the landlord may obtain as damages is an amount equal to one month's rent.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.202. LANDLORD'S DUTY TO MITIGATE DAMAGES. (a) A landlord has a duty to mitigate damages if a tenant vacates the manufactured home lot before the end of the lease term.

(b) A provision of a lease agreement that purports to waive a right or to exempt a landlord from a liability or duty under this section is void.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.203. EVICTION PROCEDURES GENERALLY. (a) A landlord may prevent a tenant from entering the manufactured home lot, evict a tenant, or require the removal of a manufactured home from the manufactured home lot only after obtaining a writ of possession under Chapter 24.

(b) If the tenant has disclosed the name of a lienholder as provided by Section 94.054, the landlord shall give written notice of eviction proceedings to the lienholder of the manufactured home not

later than the third day after the date the landlord files an application or petition for a judgment for possession.

(c) If the court finds that the landlord initiated the eviction proceeding to retaliate against the tenant in violation of Section 94.251, the court may not approve the eviction of the tenant.

(d) Notwithstanding other law, a court may not issue a writ of possession in favor of a landlord before the 30th day after the date the judgment for possession is rendered if the tenant has paid the rent amount due under the lease for that 30-day period.

(e) The court shall notify a tenant in writing of a default judgment for possession by sending a copy of the judgment to the leased premises by first class mail not later than 48 hours after the entry of the judgment. In addition, the court shall send a copy of the judgment to the owner of the manufactured home if the tenant is not the owner and to any person who holds a lien on the manufactured home if the court has been notified in writing of the name and address of the owner and lienholder.

(f) If, after executing a writ of possession for the manufactured home lot, the landlord removes the manufactured home from the lot, the landlord not later than the 10th day after the date the manufactured home is removed shall send a written notice regarding the location of the manufactured home to the tenant at the tenant's most recent mailing address as reflected in the landlord's records and, if different, to the owner if the landlord is given written notice of the owner's name and address.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.204. NONRENEWAL OF LEASE FOR CHANGE IN LAND USE. (a) A landlord may choose not to renew a lease agreement to change the manufactured home community's land use only if not later than the 180th day before the date the land use will change:

(1) the landlord sends notice to the tenant, to the owner of the manufactured home if the owner is not the tenant, and to the holder of any lien on the manufactured home:

(A) specifying the date that the land use will change; and

(B) informing the tenant, owner, and lienholder, if any, that the owner must relocate the manufactured home; and

(2) the landlord posts in a conspicuous place in the manufactured home community a notice stating that the land use will change and specifying the date that the land use will change.

(b) The landlord is required to give the owner and lienholder, if any, of the manufactured home notice under Subsection (a)(1) only if the landlord is given written notice of the name and address of the owner and lienholder.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 68, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 69, eff. January 1, 2008.

Sec. 94.205. TERMINATION AND EVICTION FOR VIOLATION OF LEASE. A landlord may terminate the lease agreement and evict a tenant for a violation of a lease provision, including a manufactured home community rule incorporated in the lease.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.206. TERMINATION AND EVICTION FOR NONPAYMENT OF RENT. A landlord may terminate the lease agreement and evict a tenant if:

(1) the tenant fails to timely pay rent or other amounts due under the lease that in the aggregate equal the amount of at least one month's rent;

(2) the landlord notifies the tenant in writing that the payment is delinquent; and

(3) the tenant has not tendered the delinquent payment in full to the landlord before the 10th day after the date the tenant receives the notice.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

SUBCHAPTER F. PROHIBITED ACTS

Sec. 94.251. RETALIATION BY LANDLORD. (a) A landlord may not retaliate against a tenant by taking an action described by

Subsection (b) because the tenant:

(1) in good faith exercises or attempts to exercise against a landlord a right or remedy granted to the tenant by the lease agreement, a municipal ordinance, or a federal or state statute;

(2) gives the landlord a notice to repair or exercise a remedy under this chapter; or

(3) complains to a governmental entity responsible for enforcing building or housing codes, a public utility, or a civic or nonprofit agency, and the tenant:

(A) claims a building or housing code violation or utility problem; and

(B) believes in good faith that the complaint is valid and that the violation or problem occurred.

(b) A landlord may not, within six months after the date of the tenant's action under Subsection (a), retaliate against the tenant by:

(1) filing an eviction proceeding, except for the grounds stated by Subchapter E;

(2) depriving the tenant of the use of the premises, except for reasons authorized by law;

(3) decreasing services to the tenant;

(4) increasing the tenant's rent;

(5) terminating the tenant's lease agreement; or

(6) engaging, in bad faith, in a course of conduct that materially interferes with the tenant's rights under the tenant's lease agreement.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.252. RESTRICTION ON SALE OF MANUFACTURED HOME. (a) The owner of a manufactured home may sell a home located on the leased premises if:

(1) the purchaser is approved in writing by the landlord; and

(2) a lease agreement is signed by the purchaser.

(b) Unless the owner of a manufactured home has agreed in writing, the landlord may not:

(1) require the owner to contract with the landlord to act as an agent or broker in selling the home; or

(2) require the owner to pay a commission or fee from the sale of the home.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.253. NONRETALIATION. (a) A landlord is not liable for retaliation under this subchapter if the landlord proves that the action was not made for purposes of retaliation, nor is the landlord liable, unless the action violates a prior court order under Section 94.159, for:

(1) increasing rent under an escalation clause in a written lease for utilities, taxes, or insurance; or

(2) increasing rent or reducing services as part of a pattern of rent increases or service reductions for an entire manufactured home community.

(b) An eviction or lease termination based on the following circumstances, which are valid grounds for eviction or lease termination in any event, does not constitute retaliation:

(1) the tenant is delinquent in rent or other amounts due under the lease that in the aggregate equal the amount of at least one month's rent when the landlord gives notice to vacate or files an eviction action;

(2) the tenant, a member of the tenant's family, or a guest or invitee of the tenant intentionally damages property on the premises or by word or conduct threatens the personal safety of the landlord, the landlord's employees, or another tenant;

(3) the tenant has materially breached the lease, other than by holding over, by an action such as violating written lease provisions prohibiting serious misconduct or criminal acts, except as provided by this section;

(4) the tenant holds over after giving notice of termination or intent to vacate;

(5) the tenant holds over after the landlord gives notice of termination at the end of the rental term and the tenant does not take action under Section 94.251 until after the landlord gives notice of termination; or

(6) the tenant holds over and the landlord's notice of termination is motivated by a good faith belief that the tenant, a member of the tenant's family, or a guest or invitee of the tenant

might:

(A) adversely affect the quiet enjoyment by other tenants or neighbors;

(B) materially affect the health or safety of the landlord, other tenants, or neighbors; or

(C) damage the property of the landlord, other tenants, or neighbors.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.254. TENANT REMEDIES. In addition to other remedies provided by law, if a landlord retaliates against a tenant under this subchapter, the tenant may recover from the landlord a civil penalty of one month's rent plus $500, actual damages, court costs, and reasonable attorney's fees in an action for recovery of property damages, moving costs, actual expenses, civil penalties, or declaratory or injunctive relief, less any delinquent rents or other sums for which the tenant is liable to the landlord. If the tenant's rent payment to the landlord is subsidized in whole or in part by a governmental entity, the civil penalty granted under this section shall reflect the fair market rent of the leased premises plus $500.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.255. INVALID COMPLAINTS. (a) If a tenant files or prosecutes a suit for retaliatory action based on a complaint asserted under Section 94.251(a)(3), and a government building or housing inspector or utility company representative visits the manufactured home community and determines in writing that a violation of a building or housing code does not exist or that a utility problem does not exist, there is a rebuttable presumption that the tenant acted in bad faith.

(b) If a tenant files or prosecutes a suit under this subchapter in bad faith, the landlord may recover possession of the leased premises and may recover from the tenant a civil penalty of one month's rent plus $500, court costs, and reasonable attorney's fees. If the tenant's rent payment to the landlord is subsidized in whole or in part by a governmental entity, the civil penalty granted under this subsection shall reflect the fair market rent of the

leased premises plus $500.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.256. EVICTION SUITS. In an eviction suit, retaliation by the landlord under Section 94.251 is a defense and a rent deduction lawfully made by the tenant under this chapter is a defense for nonpayment of the rent to the extent allowed by this chapter. Other judicial actions under this chapter, excluding an action that would be permitted under Chapter 24, may not be joined with an eviction suit or asserted as a defense or cross-claim in an eviction suit.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

SUBCHAPTER G. REMEDIES

Sec. 94.301. TENANT'S REMEDIES. A person may recover from a landlord who violates this chapter:

(1) actual damages;

(2) a civil penalty in an amount equal to two months' rent and $500; and

(3) reasonable attorney's fees and costs.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.302. LANDLORD'S REMEDIES. If the court finds that a tenant filed or prosecuted a suit under this chapter in bad faith or for purposes of harassment, the court shall award the landlord:

(1) an amount equal to two months' rent and $500; and

(2) reasonable attorney's fees and costs.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

Sec. 94.303. CUMULATIVE REMEDIES. (a) The provisions of this chapter are not exclusive and are in addition to any other remedy provided by other law.

(b) A specific remedy provided by this chapter supersedes the

general remedy provided by this subchapter and is in addition to any other remedy provided by other law.

Added by Acts 2001, 77th Leg., ch. 801, Sec. 1, eff. April 1, 2002.

TITLE 9. TRUSTS

SUBTITLE A. PROVISIONS GENERALLY APPLICABLE TO TRUSTS

CHAPTER 101. PROVISIONS GENERALLY APPLICABLE TO TRUSTS

Sec. 101.001. CONVEYANCE BY PERSON DESIGNATED AS TRUSTEE. If property is conveyed or transferred to a person designated as a trustee but the conveyance or transfer does not identify a trust or disclose the name of any beneficiary, the person designated as trustee may convey, transfer, or encumber the title of the property without subsequent question by a person who claims to be a beneficiary under a trust or who claims by, through, or under any undisclosed beneficiary or by, through, or under the person designated as trustee in that person's individual capacity.

Acts 1983, 68th Leg., p. 3654, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 683, Sec. 3, eff. Aug. 31, 1987.

Sec. 101.002. LIABILITY OF TRUST PROPERTY. Although trust property is held by the trustee without identifying the trust or its beneficiaries, the trust property is not liable to satisfy the personal obligations of the trustee.

Acts 1983, 68th Leg., p. 3654, ch. 576, Sec. 1, eff. Jan. 1, 1984. Renumbered from Sec. 101.001(b) by Acts 1987, 70th Leg., ch. 683, Sec. 3, eff. Aug. 31, 1987.

SUBTITLE B. TEXAS TRUST CODE: CREATION, OPERATION, AND TERMINATION OF TRUSTS

CHAPTER 111. GENERAL PROVISIONS

Sec. 111.001. SHORT TITLE. This subtitle may be cited as the Texas Trust Code.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 111.002. CONSTRUCTION OF SUBTITLE. This subtitle and the Texas Trust Act, as amended (Articles 7425b-1 through 7425b-48, Vernon's Texas Civil Statutes), shall be considered one continuous statute, and for the purposes of any statute or of any instrument creating a trust that refers to the Texas Trust Act, this subtitle shall be considered an amendment to the Texas Trust Act.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.
Amended by:
Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 1, eff. January 1, 2006.

Sec. 111.003. TRUSTS SUBJECT TO THIS SUBTITLE. For the purposes of this subtitle, a "trust" is an express trust only and does not include:

(1) a resulting trust;

(2) a constructive trust;

(3) a business trust; or

(4) a security instrument such as a deed of trust, mortgage, or security interest as defined by the Business & Commerce Code.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 111.0035. DEFAULT AND MANDATORY RULES; CONFLICT BETWEEN TERMS AND STATUTE. (a) Except as provided by the terms of a trust and Subsection (b), this subtitle governs:

(1) the duties and powers of a trustee;

(2) relations among trustees; and

(3) the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this subtitle, except that the terms of a trust may not limit:

(1) the requirements imposed under Section 112.031;

(2) the applicability of Section 114.007 to an exculpation term of a trust;

(3) the periods of limitation for commencing a judicial proceeding regarding a trust;

(4) a trustee's duty:

(A) with regard to an irrevocable trust, to respond to a demand for accounting made under Section 113.151 if the demand is from a beneficiary who, at the time of the demand:

(i) is entitled or permitted to receive distributions from the trust; or

(ii) would receive a distribution from the trust if the trust terminated at the time of the demand; and

(B) to act in good faith and in accordance with the purposes of the trust;

(5) the power of a court, in the interest of justice, to take action or exercise jurisdiction, including the power to:

(A) modify or terminate a trust or take other action under Section 112.054;

(B) remove a trustee under Section 113.082;

(C) exercise jurisdiction under Section 115.001;

(D) require, dispense with, modify, or terminate a trustee's bond; or

(E) adjust or deny a trustee's compensation if the trustee commits a breach of trust; or

(6) the applicability of Section 112.038.

(c) The terms of a trust may not limit any common-law duty to keep a beneficiary of an irrevocable trust who is 25 years of age or older informed at any time during which the beneficiary:

(1) is entitled or permitted to receive distributions from the trust; or

(2) would receive a distribution from the trust if the trust were terminated.

Added by Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 2, eff. January 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 2, eff. June 16, 2007.

Acts 2009, 81st Leg., R.S., Ch. 414 (H.B. 1969), Sec. 2, eff. June 19, 2009.

Sec. 111.004. DEFINITIONS. In this subtitle:

(1) "Affiliate" includes:

(A) a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person; or

(B) any officer, director, partner, employee, or relative of a person, and any corporation or partnership of which a person is an officer, director, or partner.

(2) "Beneficiary" means a person for whose benefit property is held in trust, regardless of the nature of the interest.

(3) "Court" means a court of appropriate jurisdiction.

(4) "Express trust" means a fiduciary relationship with respect to property which arises as a manifestation by the settlor of an intention to create the relationship and which subjects the person holding title to the property to equitable duties to deal with the property for the benefit of another person.

(5) "Income" is defined in Section 116.002.

(6) "Interest" means any interest, whether legal or equitable or both, present or future, vested or contingent, defeasible or indefeasible.

(7) "Interested person" means a trustee, beneficiary, or any other person having an interest in or a claim against the trust or any person who is affected by the administration of the trust. Whether a person, excluding a trustee or named beneficiary, is an interested person may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(8) "Internal Revenue Code" means the Internal Revenue Code of 1954, as amended, or any corresponding statute subsequently in effect.

(9) "Inventory value" means the cost of property purchased by a trustee, the market value of property at the time it became subject to the trust, or, in the case of a testamentary trust, any value used by the trustee that is finally determined for the purposes of an estate or inheritance tax.

(10) "Person" means:

(A) an individual;

(B) a corporation;

(C) a limited liability company;

(D) a partnership;

(E) a joint venture;

(F) an association;

(G) a joint-stock company;

(H) a business trust;

(I) an unincorporated organization;

(J) two or more persons having a joint or common interest, including an individual or a corporation acting as a personal representative or in any other fiduciary capacity;

(K) a government;

(L) a governmental subdivision, agency, or instrumentality;

(M) a public corporation; or

(N) any other legal or commercial entity.

(11) "Principal" is defined in Section 116.002.

(12) "Property" means any type of property, whether real, tangible or intangible, legal, or equitable, including property held in any digital or electronic medium. The term also includes choses in action, claims, and contract rights, including a contractual right to receive death benefits as designated beneficiary under a policy of insurance, contract, employees' trust, retirement account, or other arrangement.

(13) "Relative" means a spouse or, whether by blood or adoption, an ancestor, descendant, brother, sister, or spouse of any of them.

(14) "Settlor" means a person who creates a trust or contributes property to a trustee of a trust. If more than one person contributes property to a trustee of a trust, each person is a settlor of the portion of the property in the trust attributable to that person's contribution to the trust. The terms "grantor" and "trustor" mean the same as "settlor."

(15) "Terms of the trust" means the manifestation of intention of the settlor with respect to the trust expressed in a manner that admits of its proof in judicial proceedings.

(16) "Transaction" means any act performed by a settlor, trustee, or beneficiary in relation to a trust, including the creation or termination of a trust, the investment of trust property, a breach of duty, the receipt of trust property, the receipt of income or the incurring of expense, a distribution of trust property, an entry in the books and records of the trust, and an accounting by a trustee to any person entitled to receive an accounting.

(17) "Trust property" means property placed in trust by one of the methods specified in Section 112.001 or property otherwise transferred to or acquired or retained by the trustee for the trust.

(18) "Trustee" means the person holding the property in trust, including an original, additional, or successor trustee, whether or not the person is appointed or confirmed by a court.

(19) "Employees' trust" means:

(A) a trust that forms a part of a stock-bonus, pension, or profit-sharing plan under Section 401, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 401 (1986));

(B) a pension trust under Chapter 111; and

(C) an employer-sponsored benefit plan or program, or any other retirement savings arrangement, including a pension plan created under Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C.A. Sec. 1002 (1986)), regardless of whether the plan, program, or arrangement is funded through a trust.

(20) "Individual retirement account" means a trust, custodial arrangement, or annuity under Section 408(a) or (b), Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).

(21) "Retirement account" means a retirement-annuity contract, an individual retirement account, a simplified employee pension, or any other retirement savings arrangement.

(22) "Retirement-annuity contract" means an annuity contract under Section 403, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 403 (1986)).

(23) "Simplified employee pension" means a trust, custodial arrangement, or annuity under Section 408, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).

(24) "Environmental law" means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(25) "Breach of trust" means a violation by a trustee of a duty the trustee owes to a beneficiary.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 741, Sec. 1, 2, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 846, Sec. 28, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 642, Sec. 14, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 659, Sec. 2, eff. Jan. 1, 2004; Acts 2003, 78th Leg., ch. 1103, Sec. 2, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 3, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 3, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 1, eff. September 1, 2013.

Sec. 111.005. REENACTMENT OF COMMON LAW. If the law codified in this subtitle repealed a statute that abrogated or restated a common law rule, that common law rule is reestablished, except as the contents of the rule are changed by this subtitle.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 111.006. APPLICATION. This subtitle applies:

(1) to all trusts created on or after January 1, 1984, and to all transactions relating to such trusts; and

(2) to all transactions occurring on or after January 1, 1984, relating to trusts created before January 1, 1984; provided that transactions entered into before January 1, 1984, and which were subject to the Texas Trust Act, as amended (Articles 7425b-1 through 7425b-48, Vernon's Texas Civil Statutes), and the rights, duties, and interests flowing from such transactions remain valid on and after January 1, 1984, and must be terminated, consummated, or enforced as required or permitted by this subtitle.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

CHAPTER 112. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUSTS

SUBCHAPTER A. CREATION

Sec. 112.001. METHODS OF CREATING TRUST. A trust may be created by:

(1) a property owner's declaration that the owner holds the property as trustee for another person;

(2) a property owner's inter vivos transfer of the property to another person as trustee for the transferor or a third person;

(3) a property owner's testamentary transfer to another person as trustee for a third person;

(4) an appointment under a power of appointment to another person as trustee for the donee of the power or for a third person; or

(5) a promise to another person whose rights under the promise are to be held in trust for a third person.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.002. INTENTION TO CREATE TRUST. A trust is created only if the settlor manifests an intention to create a trust.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.003. CONSIDERATION. Consideration is not required for the creation of a trust. A promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are present.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.004. STATUTE OF FRAUDS. A trust in either real or personal property is enforceable only if there is written evidence of the trust's terms bearing the signature of the settlor or the settlor's authorized agent. A trust consisting of personal property, however, is enforceable if created by:

(1) a transfer of the trust property to a trustee who is neither settlor nor beneficiary if the transferor expresses simultaneously with or prior to the transfer the intention to create a trust; or

(2) a declaration in writing by the owner of property that the owner holds the property as trustee for another person or for the

owner and another person as a beneficiary.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.005. TRUST PROPERTY. A trust cannot be created unless there is trust property.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.006. ADDITIONS TO TRUST PROPERTY. Property may be added to an existing trust from any source in any manner unless the addition is prohibited by the terms of the trust or the property is unacceptable to the trustee.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.007. CAPACITY OF SETTLOR. A person has the same capacity to create a trust by declaration, inter vivos or testamentary transfer, or appointment that the person has to transfer, will, or appoint free of trust.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.008. CAPACITY OF TRUSTEE. (a) The trustee must have the legal capacity to take, hold, and transfer the trust property. If the trustee is a corporation, it must have the power to act as a trustee in this state.

(b) Except as provided by Section 112.034, the fact that the person named as trustee is also a beneficiary does not disqualify the person from acting as trustee if he is otherwise qualified.

(c) The settlor of a trust may be the trustee of the trust.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff.

Jan. 1, 1984.

Sec. 112.009. ACCEPTANCE BY TRUSTEE. (a) The signature of the person named as trustee on the writing evidencing the trust or on a separate written acceptance is conclusive evidence that the person accepted the trust. A person named as trustee who exercises power or performs duties under the trust is presumed to have accepted the trust, except that a person named as trustee may engage in the following conduct without accepting the trust:

(1) acting to preserve the trust property if, within a reasonable time after acting, the person gives notice of the rejection of the trust to:

(A) the settlor; or

(B) if the settlor is deceased or incapacitated, all beneficiaries then entitled to receive trust distributions from the trust; and

(2) inspecting or investigating trust property for any purpose, including determining the potential liability of the trust under environmental or other law.

(b) A person named as trustee who does not accept the trust incurs no liability with respect to the trust.

(c) If the person named as the original trustee does not accept the trust or if the person is dead or does not have capacity to act as trustee, the person named as the alternate trustee under the terms of the trust or the person selected as alternate trustee according to a method prescribed in the terms of the trust may accept the trust. If a trustee is not named or if there is no alternate trustee designated or selected in the manner prescribed in the terms of the trust, the court shall appoint a trustee on a petition of any interested person.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.
Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 4, eff. January 1, 2006.

Sec. 112.010. PRESUMED ACCEPTANCE BY BENEFICIARY; DISCLAIMER.

(a) Acceptance by a beneficiary of an interest in a trust is presumed.

(b) A disclaimer of an interest in or power over trust property is governed by Chapter 240.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 562 , Sec. 16(4), eff. September 1, 2015.

(c-1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 562 , Sec. 16(4), eff. September 1, 2015.

(c-2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 562 , Sec. 16(4), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 562 , Sec. 16(4), eff. September 1, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 562 , Sec. 16(4), eff. September 1, 2015.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 467, Sec. 3, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 846, Sec. 3, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 672 (H.B. 2368), Sec. 2, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 13, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 14, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 16(4), eff. September 1, 2015.

SUBCHAPTER B. VALIDITY

Sec. 112.031. TRUST PURPOSES. A trust may be created for any purpose that is not illegal. The terms of the trust may not require the trustee to commit a criminal or tortious act or an act that is contrary to public policy.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.032. ACTIVE AND PASSIVE TRUSTS; STATUTE OF USES. (a)

Except as provided by Subsection (b), title to real property held in trust vests directly in the beneficiary if the trustee has neither a power nor a duty related to the administration of the trust.

(b) The title of a trustee in real property is not divested if the trustee's title is not merely nominal but is subject to a power or duty in relation to the property.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.033. RESERVATION OF INTERESTS AND POWERS BY SETTLOR. If during the life of the settlor an interest in a trust or the trust property is created in a beneficiary other than the settlor, the disposition is not invalid as an attempted testamentary disposition merely because the settlor reserves or retains, either in himself or another person who is not the trustee, any or all of the other interests in or powers over the trust or trust property, such as:

(1) a beneficial life interest for himself;

(2) the power to revoke, modify, or terminate the trust in whole or in part;

(3) the power to designate the person to whom or on whose behalf the income or principal is to be paid or applied;

(4) the power to control the administration of the trust in whole or in part;

(5) the right to exercise a power or option over property in the trust or over interests made payable to the trust under an employee benefit plan, life insurance policy, or otherwise; or

(6) the power to add property or cause additional employee benefits, life insurance, or other interests to be made payable to the trust at any time.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.034. MERGER. (a) If a settlor transfers both the legal title and all equitable interests in property to the same person or retains both the legal title and all equitable interests in property in himself as both the sole trustee and the sole beneficiary, a trust is not created and the transferee holds the

property as his own. This subtitle does not invalidate a trust account validly created and in effect under Chapter XI, Texas Probate Code.

(b) Except as provided by Subsection (c) of this section, a trust terminates if the legal title to the trust property and all equitable interests in the trust become united in one person.

(c) The title to trust property and all equitable interests in the trust property may not become united in a beneficiary, other than the settlor, whose interest is protected under a spendthrift trust, and in that case the court shall appoint a new trustee or cotrustee to administer the trust for the benefit of the beneficiary.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.035. SPENDTHRIFT TRUSTS. (a) A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

(b) A declaration in a trust instrument that the interest of a beneficiary shall be held subject to a "spendthrift trust" is sufficient to restrain voluntary or involuntary alienation of the interest by a beneficiary to the maximum extent permitted by this subtitle.

(c) A trust containing terms authorized under Subsection (a) or (b) of this section may be referred to as a spendthrift trust.

(d) If the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate. A settlor is not considered a beneficiary of a trust solely because:

(1) a trustee who is not the settlor is authorized under the trust instrument to pay or reimburse the settlor for, or pay directly to the taxing authorities, any tax on trust income or principal that is payable by the settlor under the law imposing the tax; or

(2) the settlor's interest in the trust was created by the

exercise of a power of appointment by a third party.

(e) A beneficiary of the trust may not be considered a settlor merely because of a lapse, waiver, or release of:

(1) a power described by Subsection (f); or

(2) the beneficiary's right to withdraw a part of the trust property to the extent that the value of the property affected by the lapse, waiver, or release in any calendar year does not exceed the greater of the amount specified in:

(A) Section 2041(b)(2) or 2514(e), Internal Revenue Code of 1986; or

(B) Section 2503(b), Internal Revenue Code of 1986.

(f) A beneficiary of the trust may not be considered to be a settlor, to have made a voluntary or involuntary transfer of the beneficiary's interest in the trust, or to have the power to make a voluntary or involuntary transfer of the beneficiary's interest in the trust, merely because the beneficiary, in any capacity, holds or exercises:

(1) a presently exercisable power to:

(A) consume, invade, appropriate, or distribute property to or for the benefit of the beneficiary, if the power is:

(i) exercisable only on consent of another person holding an interest adverse to the beneficiary's interest; or

(ii) limited by an ascertainable standard, including health, education, support, or maintenance of the beneficiary; or

(B) appoint any property of the trust to or for the benefit of a person other than the beneficiary, a creditor of the beneficiary, the beneficiary's estate, or a creditor of the beneficiary's estate;

(2) a testamentary power of appointment; or

(3) a presently exercisable right described by Subsection (e)(2).

(g) For the purposes of this section, property contributed to the following trusts is not considered to have been contributed by the settlor, and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts may not be treated as a settlor:

(1) an irrevocable inter vivos marital trust if:

(A) the settlor is a beneficiary of the trust after the death of the settlor's spouse; and

(B) the trust is treated as:

(i) qualified terminable interest property under Section 2523(f), Internal Revenue Code of 1986; or

(ii) a general power of appointment trust under Section 2523(e), Internal Revenue Code of 1986;

(2) an irrevocable inter vivos trust for the settlor's spouse if the settlor is a beneficiary of the trust after the death of the settlor's spouse; or

(3) an irrevocable trust for the benefit of a person:

(A) if the settlor is the person's spouse, regardless of whether or when the person was the settlor of an irrevocable trust for the benefit of that spouse; or

(B) to the extent that the property of the trust was subject to a general power of appointment in another person.

(h) For the purposes of Subsection (g), a person is a beneficiary whether named a beneficiary:

(1) under the initial trust instrument; or

(2) through the exercise of a limited or general power of appointment by:

(A) that person's spouse; or

(B) another person.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 109, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 5, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 4, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 2, eff. September 1, 2013.

Sec. 112.036. RULE AGAINST PERPETUITIES. The rule against perpetuities applies to trusts other than charitable trusts. Accordingly, an interest is not good unless it must vest, if at all, not later than 21 years after some life in being at the time of the creation of the interest, plus a period of gestation. Any interest in a trust may, however, be reformed or construed to the extent and

as provided by Section 5.043.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 10, eff. Oct. 2, 1984.

Sec. 112.037. TRUST FOR CARE OF ANIMAL. (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates on the death of the animal or, if the trust is created to provide for the care of more than one animal alive during the settlor's lifetime, on the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if a person is not appointed in the terms of the trust, by a person appointed by the court. A person having an interest in the welfare of an animal that is the subject of a trust authorized by this section may request the court to appoint a person to enforce the trust or to remove a person appointed to enforce the trust.

(c) Except as provided by Subsections (d) and (e), property of a trust authorized by this section may be applied only to the property's intended use under the trust.

(d) Property of a trust authorized by this section may be applied to a use other than the property's intended use under the trust to the extent the court determines that the value of the trust property exceeds the amount required for the intended use.

(e) Except as otherwise provided by the terms of the trust, property not required for the trust's intended use must be distributed to:

(1) if the settlor is living at the time the trust property is distributed, the settlor; or

(2) if the settlor is not living at the time the trust property is distributed:

(A) if the settlor has a will, beneficiaries under the settlor's will; or

(B) in the absence of an effective provision in a will, the settlor's heirs.

(f) For purposes of Section 112.036, the lives in being used to determine the maximum duration of a trust authorized by this section

are:

(1) the individual beneficiaries of the trust;

(2) the individuals named in the instrument creating the trust; and

(3) if the settlor or settlors are living at the time the trust becomes irrevocable, the settlor or settlors of the trust or, if the settlor or settlors are not living at the time the trust becomes irrevocable, the individuals who would inherit the settlor or settlors' property under the law of this state had the settlor or settlors died intestate at the time the trust becomes irrevocable.

Added by Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 6, eff. January 1, 2006.

Sec. 112.038. FORFEITURE CLAUSE. A provision in a trust that would cause a forfeiture of or void an interest for bringing any court action, including contesting a trust, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that:

(1) just cause existed for bringing the action; and

(2) the action was brought and maintained in good faith.

Added by Acts 2009, 81st Leg., R.S., Ch. 414 (H.B. 1969), Sec. 3, eff. June 19, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 657 (S.B. 1197), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 351 (H.B. 2380), Sec. 3.01, eff. September 1, 2013.

SUBCHAPTER C. REVOCATION, MODIFICATION, AND TERMINATION OF TRUSTS

Sec. 112.051. REVOCATION, MODIFICATION, OR AMENDMENT BY SETTLOR. (a) A settlor may revoke the trust unless it is irrevocable by the express terms of the instrument creating it or of an instrument modifying it.

(b) The settlor may modify or amend a trust that is revocable, but the settlor may not enlarge the duties of the trustee without the

trustee's express consent.

(c) If the trust was created by a written instrument, a revocation, modification, or amendment of the trust must be in writing.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.052. TERMINATION. A trust terminates if by its terms the trust is to continue only until the expiration of a certain period or until the happening of a certain event and the period of time has elapsed or the event has occurred. If an event of termination occurs, the trustee may continue to exercise the powers of the trustee for the reasonable period of time required to wind up the affairs of the trust and to make distribution of its assets to the appropriate beneficiaries. The continued exercise of the trustee's powers after an event of termination does not affect the vested rights of beneficiaries of the trust.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.053. DISPOSITION OF TRUST PROPERTY ON FAILURE OF TRUST. The settlor may provide in the trust instrument how property may or may not be disposed of in the event of failure, termination, or revocation of the trust.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 895, Sec. 17, eff. Sept. 1, 1991.

Sec. 112.054. JUDICIAL MODIFICATION OR TERMINATION OF TRUSTS. (a) On the petition of a trustee or a beneficiary, a court may order that the trustee be changed, that the terms of the trust be modified, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, that the trustee be prohibited from performing acts required by the terms of the trust, or that the trust be terminated in whole or in part, if:

(1) the purposes of the trust have been fulfilled or have become illegal or impossible to fulfill;

(2) because of circumstances not known to or anticipated by the settlor, the order will further the purposes of the trust;

(3) modification of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or avoid impairment of the trust's administration;

(4) the order is necessary or appropriate to achieve the settlor's tax objectives and is not contrary to the settlor's intentions; or

(5) subject to Subsection (d):

(A) continuance of the trust is not necessary to achieve any material purpose of the trust; or

(B) the order is not inconsistent with a material purpose of the trust.

(b) The court shall exercise its discretion to order a modification or termination under Subsection (a) in the manner that conforms as nearly as possible to the probable intention of the settlor. The court shall consider spendthrift provisions as a factor in making its decision whether to modify or terminate, but the court is not precluded from exercising its discretion to modify or terminate solely because the trust is a spendthrift trust.

(c) The court may direct that an order described by Subsection (a)(4) has retroactive effect.

(d) The court may not take the action permitted by Subsection (a)(5) unless all beneficiaries of the trust have consented to the order or are deemed to have consented to the order. A minor, incapacitated, unborn, or unascertained beneficiary is deemed to have consented if a person representing the beneficiary's interest under Section 115.013(c) has consented or if a guardian ad litem appointed to represent the beneficiary's interest under Section 115.014 consents on the beneficiary's behalf.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 149, Sec. 1, eff. May 24, 1985.

Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 7, eff. January 1, 2006.

Sec. 112.055. AMENDMENT OF CHARITABLE TRUSTS BY OPERATION OF LAW. (a) Except as provided by Section 112.056 and Subsection (b) of this section, the governing instrument of a trust that is a private foundation under Section 509, Internal Revenue Code, as amended, a nonexempt charitable trust that is treated as a private foundation under Section 4947(a)(1), Internal Revenue Code, as amended, or, to the extent that Section 508(e), Internal Revenue Code, is applicable to it, a nonexempt split-interest trust under Section 4947(a)(2), Internal Revenue Code, as amended, is considered to contain provisions stating that the trust:

(1) shall make distributions at times and in a manner as not to subject the trust to tax under Section 4942, Internal Revenue Code;

(2) may not engage in an act of self-dealing that would be subject to tax under Section 4941, Internal Revenue Code;

(3) may not retain excess business holdings that would subject it to tax under Section 4943, Internal Revenue Code;

(4) may not make an investment that would subject it to tax under Section 4944, Internal Revenue Code; and

(5) may not make a taxable expenditure that would subject it to tax under Section 4945, Internal Revenue Code.

(b) If a trust was created before January 1, 1970, this section applies to it only for its taxable years that begin on or after January 1, 1972.

(c) This section applies regardless of any provision in a trust's governing instrument and regardless of any other law of this state, including the provisions of this title.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.056. PERMISSIVE AMENDMENT BY TRUSTEE OF CHARITABLE TRUST. (a) If the settlor of a trust that is described under Subsection (a) of Section 112.055 of this Act is living and competent and consents, the trustee may, without judicial proceedings, amend the trust to expressly include or exclude the provisions required by Subsection (a) of Section 112.055 of this Act.

(b) The amendment must be in writing, and it is effective when a duplicate original is filed with the attorney general's office.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.057. DIVISION AND COMBINATION OF TRUSTS. (a) The trustee may, unless expressly prohibited by the terms of the instrument establishing the trust, divide a trust into two or more separate trusts without a judicial proceeding if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the original trust. The trustee may make a division under this subsection by:

(1) giving written notice of the division, not later than the 30th day before the date of a division under this subsection, to each beneficiary who might then be entitled to receive distributions from the trust or may be entitled to receive distributions from the trust once it is funded; and

(2) executing a written instrument, acknowledged before a notary public or other person authorized to take acknowledgements of conveyances of real estate stating that the trust has been divided pursuant to this section and that the notice requirements of this subsection have been satisfied.

(b) A trustee, in the written instrument dividing a trust, shall allocate trust property among the separate trusts on a fractional basis, by identifying the assets and liabilities passing to each separate trust, or in any other reasonable manner. The trustee shall allocate undesignated trust property received after the trustee has divided the trust into separate trusts in the manner provided by the written instrument dividing the trust or, in the absence of a provision in the written instrument, in a manner determined by the trustee.

(c) The trustee may, unless expressly prohibited by the terms of the instrument establishing a trust, combine two or more trusts into a single trust without a judicial proceeding if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of one of the separate trusts. The trustee shall complete the trust combination by:

(1) giving a written notice of the combination, not later than the 30th day before the effective date of the combination, to each beneficiary who might then be entitled to receive distributions from the separate trusts being combined or to each beneficiary who

might be entitled to receive distributions from the separate trusts once the trusts are funded; and

(2) executing a written instrument, acknowledged before a notary public or other person authorized to take acknowledgments of conveyances of real estate stating that the trust has been combined pursuant to this section and that the notice requirements of this subsection have been satisfied.

(d) The trustee may divide or combine a testamentary trust after the will establishing the trust has been admitted to probate, even if the trust will not be funded until a later date. The trustee may divide or combine any other trust before it is funded.

(e) A beneficiary to whom written notice is required to be given under this section may waive the notice requirement in a writing delivered to the trustee. If all beneficiaries to whom notice would otherwise be required to be given under this section waive the notice requirement, notice is not required.

(f) Notice required under this section shall be given to a guardian of the estate, guardian ad litem, or parent of a minor or incapacitated beneficiary. A guardian of the estate, guardian ad litem, or parent of a minor or incapacitated beneficiary may waive the notice requirement in accordance with this section on behalf of the minor or incapacitated beneficiary.

Added by Acts 1991, 72nd Leg., ch. 895, Sec. 18, eff. Sept. 1, 1991. Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 8, eff. January 1, 2006.

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 9, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 657 (S.B. 1197), Sec. 3, eff. September 1, 2011.

Sec. 112.058. CONVERSION OF COMMUNITY TRUST TO NONPROFIT CORPORATION. (a) In this section:

(1) "Assets" means the assets of the component trust funds of a community trust.

(2) "Community trust" means a community trust as described by 26 C.F.R. Section 1.170A-9(e)(11) (1999), including subsequent amendments.

(b) A community trust with court approval may transfer the assets of the trust to a nonprofit corporation and terminate the trust as provided by this section.

(c) The community trust may transfer assets of the trust to a nonprofit corporation only if the nonprofit corporation is organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and organized for the same purpose as the community trust. The charter of the nonprofit corporation must describe the purpose of the corporation and the proposed use of the assets transferred using language substantially similar to the language used in the instrument creating the community trust.

(d) To transfer the assets of and terminate a community trust under this section, the governing body of the community trust must:

(1) file a petition in a probate court, county court, or district court requesting:

(A) the transfer of the assets of the trust to a nonprofit corporation established for the purpose of receiving and administering the assets of the trust; and

(B) the termination of the trust;

(2) send by first class mail to each trust settlor and each trustee of each component trust of the community trust who can be located by the exercise of reasonable diligence a copy of the governing body's petition and a notice specifying the time and place of the court-scheduled hearing on the petition; and

(3) publish once in a newspaper of general circulation in the county in which the proceeding is pending a notice that reads substantially similar to the following:

TO ALL INTERESTED PERSONS:

(NAME OF COMMUNITY TRUST) HAS FILED A PETITION IN (NAME OF COURT) OF (NAME OF COUNTY), TEXAS, REQUESTING PERMISSION TO CONVERT TO A NONPROFIT CORPORATION. IF PERMITTED TO CONVERT:

(1) THE (NAME OF COMMUNITY TRUST) WILL BE TERMINATED; AND

(2) THE ASSETS OF THE TRUST WILL BE:

(A) TRANSFERRED TO A NONPROFIT CORPORATION WITH THE SAME NAME AND CREATED FOR THE SAME PURPOSE AS THE (NAME OF COMMUNITY TRUST); AND

(B) HELD AND ADMINISTERED BY THE CORPORATION AS PROVIDED BY THE TEXAS NON-PROFIT CORPORATION ACT (ARTICLE 1396-1.01 ET SEQ., VERNON'S TEXAS CIVIL STATUTES).

(1) THE (NAME OF COMMUNITY TRUST) WILL BE TERMINATED; AND

(2) THE ASSETS OF THE TRUST WILL BE:

(A) TRANSFERRED TO A NONPROFIT CORPORATION WITH THE SAME NAME AND CREATED FOR THE SAME PURPOSE AS THE (NAME OF COMMUNITY TRUST); AND

(B) HELD AND ADMINISTERED BY THE CORPORATION AS PROVIDED BY THE TEXAS NON-PROFIT CORPORATION ACT (ARTICLE 1396-1.01 ET SEQ., VERNON'S TEXAS CIVIL STATUTES).

THE PURPOSE OF THE CONVERSION IS TO ACHIEVE SAVINGS AND USE THE MONEY SAVED TO FURTHER THE PURPOSES FOR WHICH THE (NAME OF COMMUNITY TRUST) WAS CREATED.

A HEARING ON THE PETITION IS SCHEDULED ON (DATE AND TIME) AT (LOCATION OF COURT).

FOR ADDITIONAL INFORMATION, YOU MAY CONTACT THE GOVERNING BODY OF THE (NAME OF COMMUNITY TRUST) AT (ADDRESS AND TELEPHONE NUMBER) OR THE COURT.

(e) The court shall schedule a hearing on the petition to be held after the 10th day after the date the notices required by Subsection (d)(2) are deposited in the mail or the date the notice required by Subsection (d)(3) is published, whichever is later. The hearing must be held at the time and place stated in the notices unless the court, for good cause, postpones the hearing. If the hearing is postponed, a notice of the rescheduled hearing date and time must be posted at the courthouse of the county in which the proceeding is pending or at the place in or near the courthouse where public notices are customarily posted.

(f) The court, on a request from the governing body of the community trust, may by order require approval from the Internal Revenue Service for an asset transfer under this section. If the court orders approval from the Internal Revenue Service, the asset transfer may occur on the date the governing body of the community trust files a notice with the court indicating that the Internal Revenue Service has approved the asset transfer. The notice required by this subsection must be filed on or before the first anniversary of the date the court's order approving the asset transfer is signed. If the notice is not filed within the period prescribed by this subsection, the court's order is dissolved.

(g) A court order transferring the assets of and terminating a community trust must provide that the duties of each trustee of each component trust fund of the community trust are terminated on the

date the assets are transferred. This subsection does not affect the liability of a trustee for acts or omissions that occurred before the duties of the trustee are terminated.

Added by Acts 1999, 76th Leg., ch. 1035, Sec. 1, eff. Sept. 1, 1999.

Sec. 112.059. TERMINATION OF UNECONOMIC TRUST. (a) After notice to beneficiaries who are distributees or permissible distributees of trust income or principal or who would be distributees or permissible distributees if the interests of the distributees or the trust were to terminate and no powers of appointment were exercised, the trustee of a trust consisting of trust property having a total value of less than $50,000 may terminate the trust if the trustee concludes after considering the purpose of the trust and the nature of the trust assets that the value of the trust property is insufficient to justify the continued cost of administration.

(b) On termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(c) A trustee may not exercise a power described by Subsection (a) if the trustee's possession of the power would cause the assets of the trust to be included in the trustee's estate for federal estate tax purposes.

(d) This section does not apply to an easement for conservation or preservation.

Added by Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 5, eff. September 1, 2007.

SUBCHAPTER D. DISTRIBUTION OF TRUST PRINCIPAL IN FURTHER TRUST

Sec. 112.071. DEFINITIONS. In this subchapter:

(1) "Authorized trustee" means a person, other than the settlor, who has authority under the terms of a first trust to distribute the principal of the trust to or for the benefit of one or more current beneficiaries.

(2) "Charity" means a charitable entity or a charitable trust, as those terms are defined by Section 123.001.

(3) "Current beneficiary," with respect to a particular

date, means a person who is receiving or is eligible to receive a distribution of income or principal from a trust on that date.

(4) "First trust" means an existing irrevocable inter vivos or testamentary trust all or part of the principal of which is distributed in further trust under Section 112.072 or 112.073.

(5) "Full discretion" means the power to distribute principal to or for the benefit of one or more of the beneficiaries of a trust that is not limited or modified by the terms of the trust in any way, including by restrictions that limit distributions to purposes such as the best interests, welfare, or happiness of the beneficiaries.

(6) "Limited discretion" means a limited or modified power to distribute principal to or for the benefit of one or more beneficiaries of a trust.

(7) "Presumptive remainder beneficiary," with respect to a particular date, means a beneficiary of a trust on that date who, in the absence of notice to the trustee of the exercise of the power of appointment and assuming that any other powers of appointment under the trust are not exercised, would be eligible to receive a distribution from the trust if:

(A) the trust terminated on that date; or

(B) the interests of all beneficiaries currently eligible to receive income or principal from the trust ended on that date without causing the trust to terminate.

(8) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates and includes income of the trust that, at the time of the exercise of a power of distribution under Section 112.072 or 112.073, is not currently required to be distributed.

(9) "Second trust" means any irrevocable trust to which principal is distributed under Section 112.072 or 112.073.

(10) "Successor beneficiary" means a beneficiary other than a current or presumptive remainder beneficiary. The term does not include a potential appointee under a power of appointment held by a beneficiary.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.072. DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH FULL DISCRETION. (a) An authorized trustee who has the full discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust for the benefit of one or more current beneficiaries of the first trust who are eligible to receive income or principal from the trust and for the benefit of one or more successor or presumptive remainder beneficiaries of the first trust who are eligible to receive income or principal from the trust.

(b) The authorized trustee may, in connection with the exercise of a power of distribution under this section, grant a power of appointment, including a currently exercisable power of appointment, in the second trust to one or more of the current beneficiaries of the first trust who, at the time the power of appointment is granted, is eligible to receive the principal outright under the terms of the first trust.

(c) If the authorized trustee grants a power of appointment to a beneficiary under Subsection (b), the class of permissible appointees in whose favor the beneficiary may appoint under that power may be broader or different than the current, successor, and presumptive remainder beneficiaries of the first trust.

(d) If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust may include one or more persons who become members of that class after the distribution to the second trust.

(e) The authorized trustee shall exercise a power to distribute under this section in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.073. DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH LIMITED DISCRETION. (a) An authorized trustee who has limited discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust as provided by this section.

(b) The current beneficiaries of the second trust must be the same as the current beneficiaries of the first trust, and the

successor and presumptive remainder beneficiaries of the second trust must be the same as the successor and presumptive remainder beneficiaries of the first trust.

(c) The second trust must include the same language authorizing the trustee to distribute the income or principal of the trust that was included in the first trust.

(d) If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust must include all persons who become members of that class after the distribution to the second trust.

(e) If the first trust grants a power of appointment to a beneficiary of the trust, the second trust must grant the power of appointment to the beneficiary in the second trust, and the class of permissible appointees under that power must be the same as the class of permissible appointees under the power granted by the first trust.

(f) The authorized trustee shall exercise a power of distribution under this section in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.074. NOTICE REQUIRED. (a) An authorized trustee may exercise a power of distribution under Section 112.072 or 112.073 without the consent of the settlor or beneficiaries of the first trust and without court approval if the trustee provides to all of the current beneficiaries and presumptive remainder beneficiaries written notice of the trustee's decision to exercise the power.

(b) For the purpose of determining who is a current beneficiary or presumptive remainder beneficiary entitled to the notice, a beneficiary is determined as of the date the notice is sent. A beneficiary includes a person entitled to receive property under the terms of the first trust.

(c) In addition to the notice required under Subsection (a), the authorized trustee shall give written notice of the trustee's decision to the attorney general if:

(1) a charity is entitled to notice;

(2) a charity entitled to notice is no longer in existence;

(3) the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or

(4) the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

(d) If the beneficiary has a court-appointed guardian or conservator, the notice required to be given by this section must be given to that guardian or conservator. If the beneficiary is a minor for whom no guardian or conservator has been appointed, the notice required to be given by this section must be given to a parent of the minor.

(e) The authorized trustee is not required to provide the notice to a beneficiary who:

(1) is known to the trustee and cannot be located by the trustee after reasonable diligence;

(2) is not known to the trustee;

(3) waives the requirement of the notice under this section; or

(4) is a descendant of a beneficiary to whom the trustee has given notice if the beneficiary and the beneficiary's ancestor have similar interests in the trust and no apparent conflict of interest exists between them.

(f) The notice required under Subsection (a) must:

(1) include a statement that:

(A) the authorized trustee intends to exercise the power of distribution;

(B) the beneficiary has the right to object to the exercise of the power; and

(C) the beneficiary may petition a court to approve, modify, or deny the exercise of the trustee's power to make a distribution under this subchapter;

(2) describe the manner in which the trustee intends to exercise the power;

(3) specify the date the trustee proposes to distribute the first trust to the second trust;

(4) include the name and mailing address of the trustee;

(5) include copies of the agreements of the first trust and the proposed second trust;

(6) be given not later than the 30th day before the

proposed date of distribution to the second trust; and

(7) be sent by registered or certified mail, return receipt requested, or delivered in person, unless the notice is waived in writing by the person to whom notice is required to be given.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.075. WRITTEN INSTRUMENT REQUIRED. A distribution under Section 112.072 or 112.073 must be made by a written instrument that is signed and acknowledged by the authorized trustee and filed with the records of the first trust and the second trust.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.076. REFERENCE TO TRUST TERMS. A reference to the governing instrument or terms of the governing instrument of a trust includes the terms of a second trust to which that trust's principal was distributed under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.077. SETTLOR OF SECOND TRUST. (a) Except as provided by Subsection (b), the settlor of a first trust is considered to be the settlor of a second trust established under this subchapter.

(b) If a settlor of a first trust is not also the settlor of a second trust into which principal of that first trust is distributed, the settlor of the first trust is considered the settlor of the portion of the second trust distributed to the second trust from that first trust under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.078. COURT-ORDERED DISTRIBUTION. (a) An authorized

trustee may petition a court to order a distribution under this subchapter.

(b) If the authorized trustee receives a written objection to a distribution under this subchapter from a beneficiary before the proposed effective date of the distribution specified in the notice provided to the beneficiary under Section 112.074, the trustee or the beneficiary may petition a court to approve, modify, or deny the exercise of the trustee's power to make a distribution under this subchapter.

(c) If the authorized trustee receives a written objection to the distribution from the attorney general not later than the 30th day after the date the notice required by Section 112.074 was received by the attorney general, the trustee may not make a distribution under Section 112.072 or 112.073 without petitioning a court to approve or modify the exercise of the trustee's power to make a distribution under this subchapter.

(d) In a judicial proceeding under this section, the authorized trustee may present the trustee's reasons for supporting or opposing a proposed distribution, including whether the trustee believes the distribution would enable the trustee to better carry out the purposes of the trust.

(e) The authorized trustee has the burden of proving that the proposed distribution furthers the purposes of the trust, is in accordance with the terms of the trust, and is in the interests of the beneficiaries.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.079. DIVIDED DISCRETION. If an authorized trustee has full discretion to distribute the principal of a trust and another trustee has limited discretion to distribute principal under the trust instrument, the authorized trustee having full discretion may exercise the power to distribute the trust's principal under Section 112.072.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.080. LATER DISCOVERED ASSETS. To the extent the authorized trustee does not provide otherwise:

(1) the distribution of all of the principal of a first trust to a second trust includes subsequently discovered assets otherwise belonging to the first trust and principal paid to or acquired by the first trust after the distribution of the first trust's principal to the second trust; and

(2) the distribution of part of the principal of a first trust to a second trust does not include subsequently discovered assets belonging to the first trust or principal paid to or acquired by the first trust after the distribution of principal from the first trust to the second trust, and those assets or that principal remain the assets or principal of the first trust.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.081. OTHER AUTHORITY TO DISTRIBUTE IN FURTHER TRUST NOT LIMITED. This subchapter may not be construed to limit the power of an authorized trustee to distribute property in further trust under the terms of the governing instrument of a trust, other law, or a court order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.082. NEED FOR DISTRIBUTION NOT REQUIRED. An authorized trustee may exercise the power to distribute principal to a second trust under Section 112.072 or 112.073 regardless of whether there is a current need to distribute principal under the terms of the first trust.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.083. DUTIES NOT CREATED. (a) This subchapter does not create or imply a duty for an authorized trustee to exercise a power to distribute principal, and impropriety may not be inferred as

a result of the trustee not exercising a power conferred by Section 112.072 or 112.073.

(b) An authorized trustee does not have a duty to inform beneficiaries about the availability of the authority provided by this subchapter or a duty to review the trust to determine whether any action should be taken under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.084. CERTAIN DISTRIBUTIONS PROHIBITED. (a) Except as provided by Subsection (b), an authorized trustee may not exercise a power to distribute principal of a trust otherwise provided by Section 112.072 or 112.073 if the distribution is expressly prohibited by the terms of the governing instrument of the trust.

(b) A general prohibition of the amendment or revocation of a trust or a provision that constitutes a spendthrift clause does not preclude the exercise of a power to distribute principal of a trust under Section 112.072 or 112.073.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.085. EXCEPTIONS TO POWER OF DISTRIBUTION. An authorized trustee may not exercise a power to distribute principal of a trust under Section 112.072 or 112.073 to:

(1) reduce, limit, or modify a beneficiary's current, vested right to:

(A) receive a mandatory distribution of income or principal;

(B) receive a mandatory annuity or unitrust interest;

(C) withdraw a percentage of the value of the trust; or

(D) withdraw a specified dollar amount from the trust;

(2) materially impair the rights of any beneficiary of the trust;

(3) materially limit a trustee's fiduciary duty under the trust or as described by Section 111.0035;

(4) decrease or indemnify against a trustee's liability or exonerate a trustee from liability for failure to exercise reasonable

care, diligence, and prudence;

(5) eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the distribution power under Section 112.072 or 112.073; or

(6) reduce, limit, or modify in the second trust a perpetuities provision included in the first trust, unless expressly permitted by the terms of the first trust.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.086. TAX-RELATED LIMITATIONS. (a) The authorized trustee may not distribute the principal of a trust under Section 112.072 or 112.073 in a manner that would prevent a contribution to that trust from qualifying for or that would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed for that contribution, including:

(1) the annual exclusion under Section 2503(b), Internal Revenue Code of 1986;

(2) a marital deduction under Section 2056(a) or 2523(a), Internal Revenue Code of 1986;

(3) the charitable deduction under Section 170(a), 642(c), 2055(a), or 2522(a), Internal Revenue Code of 1986;

(4) direct skip treatment under Section 2642(c), Internal Revenue Code of 1986; or

(5) any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code of 1986.

(b) Notwithstanding Subsection (a), an authorized trustee may distribute the principal of a first trust to a second trust regardless of whether the settlor is treated as the owner of either or both trusts under Sections 671-679, Internal Revenue Code of 1986.

(c) If S corporation stock is held in trust, an authorized trustee may not distribute all or part of that stock under Section 112.072 or 112.073 to a second trust that is not a permitted shareholder under Section 1361(c)(2), Internal Revenue Code of 1986.

(d) If an interest in property that is subject to the minimum distribution rules of Section 401(a)(9), Internal Revenue Code of 1986, is held in trust, an authorized trustee may not distribute the

trust's interest in the property to a second trust under Section 112.072 or 112.073 if the distribution would shorten the minimum distribution period applicable to the property.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.087. COMPENSATION OF TRUSTEE. (a) Except as provided by Subsection (b) and unless a court, on application of the authorized trustee, directs otherwise, the trustee may not exercise a power under Section 112.072 or 112.073 solely to change trust provisions regarding the determination of the compensation of any trustee.

(b) An authorized trustee, in connection with the exercise of a power under Section 112.072 or 112.073 for another valid and reasonable purpose, may bring the trustee's compensation into conformance with reasonable limits authorized by state law.

(c) The compensation payable to an authorized trustee of the first trust may continue to be paid to the trustee of the second trust during the term of the second trust and may be determined in the same manner as the compensation would have been determined in the first trust.

(d) An authorized trustee may not receive a commission or other compensation for the distribution of a particular asset from a first trust to a second trust under Section 112.072 or 112.073.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

CHAPTER 113. ADMINISTRATION

SUBCHAPTER A. POWERS OF TRUSTEE

Sec. 113.001. LIMITATION OF POWERS. A power given to a trustee by this subchapter does not apply to a trust to the extent that the instrument creating the trust, a subsequent court order, or another provision of this subtitle conflicts with or limits the power.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.002. GENERAL POWERS. Except as provided by Section 113.001, a trustee may exercise any powers in addition to the powers authorized by this subchapter that are necessary or appropriate to carry out the purposes of the trust.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.003. OPTIONS. A trustee may:

(1) grant an option involving a sale, lease, or other disposition of trust property, including an option exercisable beyond the duration of the trust; or

(2) acquire and exercise an option for the acquisition of property, including an option exercisable beyond the duration of the trust.

Added by Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 10, eff. January 1, 2006.

Sec. 113.004. ADDITIONS TO TRUST ASSETS. A trustee may receive from any source additions to the assets of the trust.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.005. ACQUISITION OF UNDIVIDED INTERESTS. A trustee may acquire all or a portion of the remaining undivided interest in property in which the trust holds an undivided interest.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.006. GENERAL AUTHORITY TO MANAGE AND INVEST TRUST PROPERTY. Subject to the requirements of Chapter 117, a trustee may manage the trust property and invest and reinvest in property of any character on the conditions and for the lengths of time as the trustee considers proper, notwithstanding that the time may extend

beyond the term of the trust.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 2003, 78th Leg., ch. 1103, Sec. 3, eff. Jan. 1, 2004.

Sec. 113.007. TEMPORARY DEPOSITS OF FUNDS. A trustee may deposit trust funds that are being held pending investment, distribution, or the payment of debts in a bank that is subject to supervision by state or federal authorities. However, a corporate trustee depositing funds with itself is subject to the requirements of Section 113.057 of this code.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984; Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 11, eff. Oct. 2, 1984.

Sec. 113.008. BUSINESS ENTITIES. A trustee may invest in, continue, or participate in the operation of any business or other investment enterprise in any form, including a sole proprietorship, partnership, limited partnership, corporation, or association, and the trustee may effect any change in the organization of the business or enterprise.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.009. REAL PROPERTY MANAGEMENT. A trustee may:

(1) exchange, subdivide, develop, improve, or partition real property;

(2) make or vacate public plats;

(3) adjust boundaries;

(4) adjust differences in valuation by giving or receiving value;

(5) dedicate real property to public use or, if the trustee considers it in the best interest of the trust, dedicate easements to public use without consideration;

(6) raze existing walls or buildings;

(7) erect new party walls or buildings alone or jointly with an owner of adjacent property;

(8) make repairs; and

(9) make extraordinary alterations or additions in structures as necessary to make property more productive.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.010. SALE OF PROPERTY. A trustee may contract to sell, sell and convey, or grant an option to sell real or personal property at public auction or private sale for cash or for credit or for part cash and part credit, with or without security.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.011. LEASES. (a) A trustee may grant or take a lease of real or personal property for any term, with or without options to purchase and with or without covenants relating to erection of buildings or renewals, including the lease of a right or privilege above or below the surface of real property.

(b) A trustee may execute a lease containing terms or options that extend beyond the duration of the trust.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.012. MINERALS. (a) A trustee may enter into mineral transactions, including:

(1) negotiating and making oil, gas, and other mineral leases covering any land, mineral, or royalty interest at any time forming a part of a trust;

(2) pooling and unitizing part or all of the land, mineral leasehold, mineral, royalty, or other interest of a trust estate with land, mineral leasehold, mineral, royalty, or other interest of one or more persons or entities for the purpose of developing and producing oil, gas, or other minerals, and making leases or

assignments granting the right to pool and unitize;

(3) entering into contracts and agreements concerning the installation and operation of plans or other facilities for the cycling, repressuring, processing, or other treating or handling of oil, gas, or other minerals;

(4) conducting or contracting for the conducting of seismic evaluation operations;

(5) drilling or contracting for the drilling of wells for oil, gas, or other minerals;

(6) contracting for and making "dry hole" and "bottom hole" contributions of cash, leasehold interests, or other interests towards the drilling of wells;

(7) using or contracting for the use of any method of secondary or tertiary recovery of any mineral, including the injection of water, gas, air, or other substances;

(8) purchasing oil, gas, or other mineral leases, leasehold interests, or other interests for any type of consideration, including farmout agreements requiring the drilling or reworking of wells or participation therein;

(9) entering into farmout contracts or agreements committing a trust estate to assign oil, gas, or other mineral leases or interests in consideration for the drilling of wells or other oil, gas, or mineral operations;

(10) negotiating the transfer of and transferring oil, gas, or other mineral leases or interests for any consideration, such as retained overriding royalty interests of any nature, drilling or reworking commitments, or production interests; and

(11) executing and entering into contracts, conveyances, and other agreements or transfers considered necessary or desirable to carry out the powers granted in this section, whether or not the action is now or subsequently recognized or considered as a common or proper practice by those engaged in the business of prospecting for, developing, producing, processing, transporting, or marketing minerals, including entering into and executing division orders, oil, gas, or other mineral sales contracts, exploration agreements, processing agreements, and other contracts relating to the processing, handling, treating, transporting, and marketing of oil, gas, or other mineral production from or accruing to a trust and receiving and receipting for the proceeds thereof on behalf of a trust.

(b) A trustee may enter into mineral transactions that extend beyond the term of the trust.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.013. INSURANCE. A trustee may purchase insurance of any nature, form, or amount to protect the trust property and the trustee.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.014. PAYMENT OF TAXES. A trustee may pay taxes and assessments levied or assessed against the trust estate or the trustee by governmental taxing or assessing authorities.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.015. AUTHORITY TO BORROW. A trustee may borrow money from any source, including a trustee, purchase property on credit, and mortgage, pledge, or in any other manner encumber all or any part of the assets of the trust as is advisable in the judgment of the trustee for the advantageous administration of the trust.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.016. MANAGEMENT OF SECURITIES. A trustee may:

(1) pay calls, assessments, or other charges against or because of securities or other investments held by the trust;

(2) sell or exercise stock subscription or conversion rights;

(3) vote corporate stock, general or limited partnership interests, or other securities in person or by general or limited proxy;

(4) consent directly or through a committee or other agent to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise; and

(5) participate in voting trusts and deposit stocks, bonds, or other securities with any protective or other committee formed by or at the instance of persons holding similar securities, under such terms and conditions respecting the deposit thereof as the trustee may approve; sell any stock or other securities obtained by conversion, reorganization, consolidation, merger, liquidation, or the exercise of subscription rights free of any restrictions upon sale otherwise contained in the trust instrument relative to the securities originally held; assent to corporate sales, leases, encumbrances, and other transactions.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.017. CORPORATE STOCK OR OTHER SECURITIES HELD IN NAME OF NOMINEE. A trustee may:

(1) hold corporate stock or other securities in the name of a nominee;

(2) under Subchapter B, Chapter 161, or other law, employ a bank incorporated in this state or a national bank located in this state as custodian of any corporate stock or other securities held in trust; and

(3) under Subchapter C, Chapter 161, or other law, deposit or arrange for the deposit of securities with a Federal Reserve Bank or in a clearing corporation.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.018. EMPLOYMENT OF AGENTS. A trustee may employ attorneys, accountants, agents, including investment agents, and brokers reasonably necessary in the administration of the trust estate.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1999, 76th Leg., ch. 794, Sec. 1, eff.

Sept. 1, 1999.

Sec. 113.019. CLAIMS. A trustee may compromise, contest, arbitrate, or settle claims of or against the trust estate or the trustee.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.020. BURDENSOME OR WORTHLESS PROPERTY. A trustee may abandon property the trustee considers burdensome or worthless.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.021. DISTRIBUTION TO MINOR OR INCAPACITATED BENEFICIARY. (a) A trustee may make a distribution required or permitted to be made to any beneficiary in any of the following ways when the beneficiary is a minor or a person who in the judgment of the trustee is incapacitated by reason of legal incapacity or physical or mental illness or infirmity:

(1) to the beneficiary directly;

(2) to the guardian of the beneficiary's person or estate;

(3) by utilizing the distribution, without the interposition of a guardian, for the health, support, maintenance, or education of the beneficiary;

(4) to a custodian for the minor beneficiary under the Texas Uniform Transfers to Minors Act (Chapter 141) or a uniform gifts or transfers to minors act of another state;

(5) by reimbursing the person who is actually taking care of the beneficiary, even though the person is not the legal guardian, for expenditures made by the person for the benefit of the beneficiary; or

(6) by managing the distribution as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(b) The written receipts of persons receiving distributions under Subsection (a) of this section are full and complete

acquittances to the trustee.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.
Amended by:
Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 11, eff. January 1, 2006.

Sec. 113.0211. ADJUSTMENT OF CHARITABLE TRUST. (a) In this section:

(1) "Charitable entity" has the meaning assigned by Section 123.001(1).

(2) "Charitable trust" means a trust:

(A) the stated purpose of which is to benefit only one or more charitable entities; and

(B) that qualifies as a charitable entity.

(b) The trustee of a charitable trust may acquire, exchange, sell, supervise, manage, or retain any type of investment, subject to restrictions and procedures established by the trustee and in an amount considered appropriate by the trustee, that a prudent investor, exercising reasonable skill, care, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the trust. The prudence of a trustee's actions under this subsection is judged with reference to the investment of all of the trust assets rather than with reference to a single trust investment.

(c) The trustee of a charitable trust may make one or more adjustments between the principal and the income portions of a trust to the extent that the trustee considers the adjustments necessary:

(1) to comply with the terms of the trust, if any, that describe the amount that may or must be distributed to a charitable entity beneficiary by referring to the income portion of the trust; and

(2) to administer the trust in order to carry out the purposes of the charitable trust.

(d) The authority to make adjustments under Subsection (c) includes the authority to allocate all or part of a capital gain to trust income.

(e) In making adjustments under Subsection (c), the trustee

shall consider:

(1) except to the extent that the terms of the trust clearly manifest an intention that the trustee shall or may favor one or more charitable entity beneficiaries, the needs of a charitable entity beneficiary, based on what is fair and reasonable to all other charitable entity beneficiaries of the trust, if any; and

(2) the need of the trust to maintain the purchasing power of the trust's investments over time.

Added by Acts 2003, 78th Leg., ch. 550, Sec. 1, eff. Sept. 1, 2003.

Sec. 113.022. POWER TO PROVIDE RESIDENCE AND PAY FUNERAL EXPENSES. A trustee of a trust that is not a charitable remainder unitrust, annuity trust, or pooled income fund that is intended to qualify for a federal tax deduction under Section 664, Internal Revenue Code, after giving consideration to the probable intention of the settlor and finding that the trustee's action would be consistent with that probable intention, may:

(1) permit real estate held in trust to be occupied by a beneficiary who is currently eligible to receive distributions from the trust estate;

(2) if reasonably necessary for the maintenance of a beneficiary who is currently eligible to receive distributions from the trust estate, invest trust funds in real property to be used for a home by the beneficiary; and

(3) in the trustee's discretion, pay funeral expenses of a beneficiary who at the time of the beneficiary's death was eligible to receive distributions from the trust estate.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 149, Sec. 2, eff. May 24, 1985.

Sec. 113.023. ANCILLARY TRUSTEE. (a) If trust property is situated outside this state, a Texas trustee may name in writing an individual or corporation qualified to act in the foreign jurisdiction in connection with trust property as ancillary trustee.

(b) Within the limits of the authority of the Texas trustee, the ancillary trustee has the rights, powers, discretions, and duties

the Texas trustee delegates, subject to the limitations and directions of the Texas trustee specified in the instrument evidencing the appointment of the ancillary trustee.

(c) The Texas trustee may remove an ancillary trustee and appoint a successor at any time as to all or part of the trust assets.

(d) The Texas trustee may require security of the ancillary trustee, who is answerable to the Texas trustee for all trust property entrusted to or received by the ancillary trustee in connection with the administration of the trust.

(e) If the law of the foreign jurisdiction requires a certain procedure or a judicial order for the appointment of an ancillary trustee or to authorize an ancillary trustee to act, the Texas trustee and the ancillary trustee must satisfy the requirements.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.024. IMPLIED POWERS. The powers, duties, and responsibilities under this subtitle do not exclude other implied powers, duties, or responsibilities that are not inconsistent with this subtitle.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.025. POWERS OF TRUSTEE REGARDING ENVIRONMENTAL LAWS. (a) A trustee or a potential trustee may inspect, investigate, cause to be inspected, or cause to be investigated trust property, property that the trustee or potential trustee has been asked to hold, or property owned or operated by an entity in which the trustee or potential trustee holds or has been asked to hold any interest or for the purpose of determining the potential application of environmental law with respect to the property. This subsection does not grant any person the right of access to any property. The taking of any action under this subsection with respect to a trust or an addition to a trust is not evidence that a person has accepted the trust or the addition to the trust.

(b) A trustee may take on behalf of the trust any action before

or after the initiation of an enforcement action or other legal proceeding that the trustee reasonably believes will help to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee.

Added by Acts 1993, 73rd Leg., ch. 846, Sec. 29, eff. Sept. 1, 1993.

Sec. 113.026. AUTHORITY TO DESIGNATE NEW CHARITABLE BENEFICIARY. (a) In this section:

(1) "Charitable entity" has the meaning assigned by Section 123.001.

(2) "Failed charitable beneficiary" means a charitable entity that is named as a beneficiary of a trust and that:

(A) does not exist at the time the charitable entity's interest in the trust becomes vested;

(B) ceases to exist during the term of the trust; or

(C) ceases to be a charitable entity during the term of the trust.

(b) This section applies only to an express written trust created by an individual with a charitable entity as a beneficiary. If the trust instrument provides a means for replacing a failed charitable beneficiary, the trust instrument governs the replacement of a failed charitable beneficiary, and this section does not apply.

(c) The trustee of a trust may select one or more replacement charitable beneficiaries for a failed charitable beneficiary in accordance with this section.

(d) Each replacement charitable beneficiary selected under this section by any person must:

(1) be a charitable entity and an entity described under Sections 170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Internal Revenue Code of 1986, as amended; and

(2) have the same or similar charitable purpose as the failed charitable beneficiary.

(e) If the settlor of the trust is living and not incapacitated at the time a trustee is selecting a replacement charitable beneficiary, the trustee shall consult with the settlor concerning the selection of one or more replacement charitable beneficiaries.

(f) If the trustee and the settlor agree on the selection of

one or more replacement charitable beneficiaries, the trustee shall send notice of the selection to the attorney general. If the attorney general determines that one or more replacement charitable beneficiaries do not have the same or similar charitable purpose as the failed charitable beneficiary, not later than the 21st day after the date the attorney general receives notice of the selection, the attorney general shall request in writing that a district court in the county in which the trust was created review the selection. If the court agrees with the attorney general's determination, any remaining replacement charitable beneficiary agreed on by the trustee and the settlor is the replacement charitable beneficiary. If there is not a remaining replacement charitable beneficiary agreed on by the trustee and the settlor, the court shall select one or more replacement charitable beneficiaries. If the court finds that the attorney general's request for a review is unreasonable, the replacement charitable beneficiary is the charitable beneficiary agreed on by the trustee and the settlor, and the court may require the attorney general to pay all court costs of the parties involved. Not later than the 30th day after the date the selection is final, the trustee shall provide to each replacement charitable beneficiary selected notice of the selection by certified mail, return receipt requested.

(g) If the trustee and the settlor cannot agree on the selection of a replacement charitable beneficiary, the trustee shall send notice of that fact to the attorney general not later than the 21st day after the date the trustee determines that an agreement cannot be reached. The attorney general shall refer the matter to a district court in the county in which the trust was created. The trustee and the settlor may each recommend to the court one or more replacement charitable beneficiaries. The court shall select a replacement charitable beneficiary and, not later than the 30th day after the date of the selection, provide to each charitable beneficiary selected notice of the selection by certified mail, return receipt requested.

Added by Acts 1999, 76th Leg., ch. 63, Sec. 1, eff. Aug. 30, 1999.

Sec. 113.027. DISTRIBUTIONS GENERALLY. When distributing trust property or dividing or terminating a trust, a trustee may:

(1) make distributions in divided or undivided interests;

(2) allocate particular assets in proportionate or disproportionate shares;

(3) value the trust property for the purposes of acting under Subdivision (1) or (2); and

(4) adjust the distribution, division, or termination for resulting differences in valuation.

Added by Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 12, eff. January 1, 2006.

Sec. 113.028. CERTAIN CLAIMS AND CAUSES OF ACTION PROHIBITED. (a) A trustee may not prosecute or assert a claim for damages in a cause of action against a party who is not a beneficiary of the trust if each beneficiary of the trust provides written notice to the trustee of the beneficiary's opposition to the trustee's prosecuting or asserting the claim in the cause of action.

(b) This section does not apply to a cause of action that is prosecuted by a trustee in the trustee's individual capacity.

(c) The trustee is not liable for failing to prosecute or assert a claim in a cause of action if prohibited by the beneficiaries under Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 765 (H.B. 3434), Sec. 3, eff. June 17, 2005.

Sec. 113.029. DISCRETIONARY POWERS; TAX SAVINGS. (a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of terms such as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to Subsection (d), and unless the terms of the trust expressly indicate that a requirement provided by this subsection does not apply:

(1) a person, other than a settlor, who is a beneficiary and trustee, trustee affiliate, or discretionary power holder of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's, the trustee affiliate's, or

the discretionary power holder's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's, the trustee affiliate's, or the discretionary power holder's individual health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1), Internal Revenue Code of 1986; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power the exercise of which is limited or prohibited by Subsection (b) may be exercised by a majority of the remaining trustees whose exercise of the power is not limited or prohibited by Subsection (b). If the power of all trustees is limited or prohibited by Subsection (b), the court may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined by Section 2056(b)(5) or 2523(e), Internal Revenue Code of 1986, was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c), Internal Revenue Code of 1986.

(e) In this section, "discretionary power holder" means a person who has the sole power or power shared with another person to make discretionary decisions on behalf of a trustee with respect to distributions from a trust.

Added by Acts 2009, 81st Leg., R.S., Ch. 672 (H.B. 2368), Sec. 3, eff. September 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 4, eff. September 1, 2013.

Sec. 113.030. RELOCATION OF ADMINISTRATION OF CHARITABLE TRUST. (a) In this section:

(1) "Charitable entity" has the meaning assigned by Section

123.001.

(2) "Charitable trust" means a trust:

(A) the stated purpose of which is to benefit only one or more charitable entities; and

(B) that qualifies as a charitable entity.

(3) "Trust administration" means the grant-making function of the trust.

(b) Except as provided by this section or specifically authorized by the terms of a trust, the trustee of a charitable trust may not change the location in which the trust administration takes place from a location in this state to a location outside this state.

(c) If the trustee decides to change the location in which the trust is administered from a location in this state to a location outside this state, the trustee shall:

(1) if the settlor is living and not incapacitated:

(A) consult the settlor concerning the selection of a new location for the administration of the trust; and

(B) submit the selection to the attorney general; or

(2) if the settlor is not living or is incapacitated:

(A) propose a new location; and

(B) submit the proposal to the attorney general.

(d) The trustee may file an action in the district court or statutory probate court in which the trust was created seeking a court order authorizing the trustee to change the location in which the trust is administered to a location outside this state. The court may exercise its equitable powers to effectuate the original purpose of the trust.

(e) Except as provided by Subsection (b), the location in which the administration of the trust takes place may not be changed to a location outside this state unless:

(1) the charitable purposes of the trust would not be impaired if the trust administration is moved; and

(2) a district court or statutory probate court authorizes the relocation.

(f) The attorney general may bring an action to enforce the provisions of this section. If a trustee of a charitable trust fails to comply with the provisions of this section, the district court or statutory probate court in the county in which the trust administration was originally located may remove the trustee and appoint a new trustee. Costs of a proceeding to remove a trustee,

including reasonable attorney's fees, may be assessed against the removed trustee. This provision is in addition to and does not supersede the provisions of Chapter 123.

(g) This section does not affect a trustee's authority to sell real estate owned by a charitable trust.

Added by Acts 2009, 81st Leg., R.S., Ch. 754 (S.B. 666), Sec. 1, eff. September 1, 2009.
Redesignated from Property Code, Section 113.029 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(52), eff. September 1, 2011.

SUBCHAPTER B. DUTIES OF TRUSTEE

Sec. 113.051. GENERAL DUTY. The trustee shall administer the trust in good faith according to its terms and this subtitle. In the absence of any contrary terms in the trust instrument or contrary provisions of this subtitle, in administering the trust the trustee shall perform all of the duties imposed on trustees by the common law.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.
Amended by:
Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 13, eff. January 1, 2006.

Sec. 113.052. LOAN OF TRUST FUNDS TO TRUSTEE. (a) Except as provided by Subsection (b) of this section, a trustee may not lend trust funds to:

(1) the trustee or an affiliate;

(2) a director, officer, or employee of the trustee or an affiliate;

(3) a relative of the trustee; or

(4) the trustee's employer, employee, partner, or other business associate.

(b) This section does not prohibit:

(1) a loan by a trustee to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust; or

(2) a deposit by a corporate trustee with itself under Section 113.057 of this Act.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.053. PURCHASE OR SALE OF TRUST PROPERTY BY TRUSTEE. (a) Except as provided by Subsections (b), (c), (d), (e), (f), and (g), a trustee shall not directly or indirectly buy or sell trust property from or to:

(1) the trustee or an affiliate;

(2) a director, officer, or employee of the trustee or an affiliate;

(3) a relative of the trustee; or

(4) the trustee's employer, partner, or other business associate.

(b) A national banking association or a state-chartered corporation with the right to exercise trust powers that is serving as executor, administrator, guardian, trustee, or receiver may sell shares of its own capital stock held by it for an estate to one or more of its officers or directors if a court:

(1) finds that the sale is in the best interest of the estate that owns the shares;

(2) fixes or approves the sales price of the shares and the other terms of the sale; and

(3) enters an order authorizing and directing the sale.

(c) If a corporate trustee, executor, administrator, or guardian is legally authorized to retain its own capital stock in trust, the trustee may exercise rights to purchase its own stock if increases in the stock are offered pro rata to shareholders.

(d) If the exercise of rights or the receipt of a stock dividend results in a fractional share holding and the acquisition meets the investment standard required by this subchapter, the trustee may purchase additional fractional shares to round out the holding to a full share.

(e) A trustee may:

(1) comply with the terms of a written executory contract signed by the settlor, including a contract for deed, earnest money contract, buy/sell agreement, or stock purchase or redemption

agreement; and

(2) sell the stock, bonds, obligations, or other securities of a corporation to the issuing corporation or to its corporate affiliate if the sale is made under an agreement described in Subdivision (1) or complies with the duties imposed by Chapter 117.

(f) A national banking association, a state-chartered corporation, including a state-chartered bank or trust company, a state or federal savings and loan association that has the right to exercise trust powers and that is serving as trustee, or such an institution that is serving as custodian with respect to an individual retirement account, as defined by Section 408, Internal Revenue Code, or an employee benefit plan, as defined by Section 3(3), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(3)), regardless of whether the custodial account is, or would otherwise be, considered a trust for purposes of this subtitle, may, subject to its fiduciary duties:

(1) employ an affiliate or division within a financial institution to provide brokerage, investment, administrative, custodial, or other account services for the trust or custodial account and charge the trust or custodial account for the services;

(2) unless the instrument governing the fiduciary relationship expressly prohibits the purchase or charge, purchase insurance underwritten or otherwise distributed by an affiliate, a division within the financial institution, or a syndicate or selling group that includes the financial institution or an affiliate and charge the trust or custodial account for the insurance premium, provided that:

(A) the person conducting the insurance transaction is appropriately licensed if required by applicable licensing and regulatory requirements administered by a functional regulatory agency of this state; and

(B) the insurance product and premium are the same or similar to a product and premium offered by organizations that are not an affiliate, a division within the financial institution, or a syndicate or selling group that includes the financial institution or an affiliate; and

(3) receive a fee or compensation, directly or indirectly, on account of the services performed or the insurance product sold by the affiliate, division within the financial institution, or syndicate or selling group that includes the financial institution or

an affiliate, whether in the form of shared commissions, fees, or otherwise, provided that any amount charged by the affiliate, division, or syndicate or selling group that includes the financial institution or an affiliate for the services or insurance product is disclosed and does not exceed the customary or prevailing amount that is charged by the affiliate, division, or syndicate or selling group that includes the financial institution or an affiliate, or a comparable entity, for comparable services rendered or insurance provided to a person other than the trust.

(g) In addition to other investments authorized by law for the investment of funds held by a fiduciary or by the instrument governing the fiduciary relationship, and notwithstanding any other provision of law and subject to the standard contained in Chapter 117, a bank or trust company acting as a fiduciary, agent, or otherwise, in the exercise of its investment discretion or at the direction of another person authorized to direct the investment of funds held by the bank or trust company as fiduciary, may invest and reinvest in the securities of an open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) if the portfolio of the investment company or investment trust consists substantially of investments that are not prohibited by the governing instrument. The fact that the bank or trust company or an affiliate of the bank or trust company provides services to the investment company or investment trust, such as those of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and receives compensation for those services does not preclude the bank or trust company from investing or reinvesting in the securities if the compensation is disclosed by prospectus, account statement, or otherwise. An executor or administrator of an estate under a dependent administration or a guardian of an estate shall not so invest or reinvest unless specifically authorized by the court in which such estate or guardianship is pending.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 974, Sec. 1, 2, eff. Aug. 26, 1985; Acts 1989, 71st Leg., ch. 341, Sec. 1, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 933, Sec. 1, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 1103, Sec. 4, eff. Jan. 1, 2004.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1337 (S.B. 778), Sec. 1, eff. September 1, 2013.

Sec. 113.054. SALES FROM ONE TRUST TO ANOTHER. A trustee of one trust may not sell property to another trust of which it is also trustee unless the property is:

(1) a bond, note, bill, or other obligation issued or fully guaranteed as to principal and interest by the United States; and

(2) sold for its current market price.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.055. PURCHASE OF TRUSTEE'S SECURITIES. (a) Except as provided by Subsection (b) of this section, a corporate trustee may not purchase for the trust the stock, bonds, obligations, or other securities of the trustee or an affiliate, and a noncorporate trustee may not purchase for the trust the stock, bonds, obligations, or other securities of a corporation with which the trustee is connected as director, owner, manager, or any other executive capacity.

(b) A trustee may:

(1) retain stock already owned by the trust unless the retention does not satisfy the requirements prescribed by Chapter 117; and

(2) exercise stock rights or purchase fractional shares under Section 113.053 of this Act.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 2003, 78th Leg., ch. 1103, Sec. 5, eff. Jan. 1, 2004.

Sec. 113.056. AUTHORIZATION TO MAKE CERTAIN INVESTMENTS. (a) Unless the terms of the trust instrument provide otherwise, and subject to the investment standards provided by this subtitle and any investment standards provided by the trust instrument, the trustee may invest all or part of the trust assets in an investment vehicle authorized for the collective investment of trust funds pursuant to Part 9, Title 12, of the Code of Federal Regulations.

(d) Subject to any investment standards provided by this chapter, Chapter 117, or the trust instrument, whenever the instrument directs, requires, authorizes, or permits investment in obligations of the United States government, the trustee may invest in and hold such obligations either directly or in the form of interests in an open-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., or in an investment vehicle authorized for the collective investment of trust funds pursuant to Part 9, Title 12 of the Code of Federal Regulations, so long as the portfolio of such investment company, investment trust, or collective investment vehicle is limited to such obligations and to repurchase agreements fully collateralized by such obligations.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 341, Sec. 1, eff. June 10, 1985; Acts 1991, 72nd Leg., ch. 876, Sec. 1, eff. June 16, 1991; Acts 2003, 78th Leg., ch. 1103, Sec. 6, 7, eff. Jan. 1, 2004.

Sec. 113.057. DEPOSITS BY CORPORATE TRUSTEE WITH ITSELF. (a) A corporate trustee may deposit trust funds with itself as a permanent investment if authorized by the settlor in the instrument creating the trust or if authorized in a writing delivered to the trustee by a beneficiary currently eligible to receive distributions from a trust created before January 1, 1988.

(b) A corporate trustee may deposit with itself trust funds that are being held pending investment, distribution, or payment of debts if, except as provided by Subsection (d) of this section:

(1) it maintains under control of its trust department as security for the deposit a separate fund of securities legal for trust investments;

(2) the total market value of the security is at all times at least equal to the amount of the deposit; and

(3) the separate fund is marked as such.

(c) The trustee may make periodic withdrawals from or additions to the securities fund required by Subsection (b) of this section as long as the required value is maintained. Income from securities in the fund belongs to the trustee.

(d) Security for a deposit under this section is not required

for a deposit under Subsection (a) or under Subsection (b) of this section to the extent the deposit is insured or otherwise secured under state or federal law.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 149, Sec. 3, eff. May 24, 1985.

Sec. 113.058. BOND. (a) A corporate trustee is not required to provide a bond to secure performance of its duties as trustee.

(b) Unless the instrument creating the trust provides otherwise, a noncorporate trustee must give bond:

(1) payable to the trust estate of the trust, the registry of the court, or each person interested in the trust, as their interests may appear; and

(2) conditioned on the faithful performance of the trustee's duties.

(c) The bond must be in an amount and with the sureties required by order of a court in a proceeding brought for this determination.

(d) Any interested person may bring an action to increase or decrease the amount of a bond, require a bond, or substitute or add sureties. Notwithstanding Subsection (b), for cause shown, a court may require a bond even if the instrument creating the trust provides otherwise.

(e) The trustee shall deposit the bond with the clerk of the court that issued the order requiring the bond. A suit on the bond may be maintained on a certified copy. Appropriate proof of a recovery on a bond reduces the liability of the sureties pro tanto.

(f) Failure to comply with this section does not make void or voidable or otherwise affect an act or transaction of a trustee with any third person.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.
Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 14, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 6, eff. September 1, 2007.

SUBCHAPTER C. RESIGNATION OR REMOVAL OF TRUSTEE, AND AUTHORITY OF MULTIPLE AND SUCCESSOR TRUSTEES

Sec. 113.081. RESIGNATION OF TRUSTEE. (a) A trustee may resign in accordance with the terms of the trust instrument, or a trustee may petition a court for permission to resign as trustee.

(b) The court may accept a trustee's resignation and discharge the trustee from the trust on the terms and conditions necessary to protect the rights of other interested persons.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.082. REMOVAL OF TRUSTEE. (a) A trustee may be removed in accordance with the terms of the trust instrument, or, on the petition of an interested person and after hearing, a court may, in its discretion, remove a trustee and deny part or all of the trustee's compensation if:

(1) the trustee materially violated or attempted to violate the terms of the trust and the violation or attempted violation results in a material financial loss to the trust;

(2) the trustee becomes incapacitated or insolvent;

(3) the trustee fails to make an accounting that is required by law or by the terms of the trust; or

(4) the court finds other cause for removal.

(b) A beneficiary, cotrustee, or successor trustee may treat a violation resulting in removal as a breach of trust.

(c) A trustee of a charitable trust may not be removed solely on the grounds that the trustee exercised the trustee's power to adjust between principal and income under Section 113.0211.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 2003, 78th Leg., ch. 550, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 16, eff. January 1, 2006.

Sec. 113.083. APPOINTMENT OF SUCCESSOR TRUSTEE. (a) On the death, resignation, incapacity, or removal of a sole or surviving trustee, a successor trustee shall be selected according to the method, if any, prescribed in the trust instrument. If for any reason a successor is not selected under the terms of the trust instrument, a court may and on petition of any interested person shall appoint a successor in whom the trust shall vest.

(b) If a vacancy occurs in the number of trustees originally appointed under a valid charitable trust agreement and the trust agreement does not provide for filling the vacancy, the remaining trustees may fill the vacancy by majority vote.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.084. POWERS OF SUCCESSOR TRUSTEE. Unless otherwise provided in the trust instrument or by order of the court appointing a successor trustee, the successor trustee has the rights, powers, authority, discretion, and title to trust property conferred on the trustee.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 113.085. EXERCISE OF POWERS BY MULTIPLE TRUSTEES. (a) Cotrustees may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee shall participate in the performance of a trustee's function unless the cotrustee:

(1) is unavailable to perform the function because of absence, illness, suspension under this code or other law, disqualification, if any, under this code, disqualification under other law, or other temporary incapacity; or

(2) has delegated the performance of the function to another trustee in accordance with the terms of the trust or applicable law, has communicated the delegation to all other cotrustees, and has filed the delegation in the records of the trust.

(d) If a cotrustee is unavailable to participate in the

performance of a trustee's function for a reason described by Subsection (c)(1) and prompt action is necessary to achieve the efficient administration or purposes of the trust or to avoid injury to the trust property or a beneficiary, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may delegate to a cotrustee the performance of a trustee's function unless the settlor specifically directs that the function be performed jointly. Unless a cotrustee's delegation under this subsection is irrevocable, the cotrustee making the delegation may revoke the delegation.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.
Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 17, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 7, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 973 (H.B. 3635), Sec. 1, eff. September 1, 2009.

SUBCHAPTER E. ACCOUNTING BY TRUSTEE

Sec. 113.151. DEMAND FOR ACCOUNTING. (a) A beneficiary by written demand may request the trustee to deliver to each beneficiary of the trust a written statement of accounts covering all transactions since the last accounting or since the creation of the trust, whichever is later. If the trustee fails or refuses to deliver the statement on or before the 90th day after the date the trustee receives the demand or after a longer period ordered by a court, any beneficiary of the trust may file suit to compel the trustee to deliver the statement to all beneficiaries of the trust. The court may require the trustee to deliver a written statement of account to all beneficiaries on finding that the nature of the beneficiary's interest in the trust or the effect of the administration of the trust on the beneficiary's interest is sufficient to require an accounting by the trustee. However, the trustee is not obligated or required to account to the beneficiaries of a trust more frequently than once every 12 months unless a more frequent accounting is required by the court. If a beneficiary is

successful in the suit to compel a statement under this section, the court may, in its discretion, award all or part of the costs of court and all of the suing beneficiary's reasonable and necessary attorney's fees and costs against the trustee in the trustee's individual capacity or in the trustee's capacity as trustee.

(b) An interested person may file suit to compel the trustee to account to the interested person. The court may require the trustee to deliver a written statement of account to the interested person on finding that the nature of the interest in the trust of, the claim against the trust by, or the effect of the administration of the trust on the interested person is sufficient to require an accounting by the trustee.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 2003, 78th Leg., ch. 550, Sec. 3, eff. Sept. 1, 2003.

Sec. 113.152. CONTENTS OF ACCOUNTING. A written statement of accounts shall show:

(1) all trust property that has come to the trustee's knowledge or into the trustee's possession and that has not been previously listed or inventoried as property of the trust;

(2) a complete account of receipts, disbursements, and other transactions regarding the trust property for the period covered by the account, including their source and nature, with receipts of principal and income shown separately;

(3) a listing of all property being administered, with an adequate description of each asset;

(4) the cash balance on hand and the name and location of the depository where the balance is kept; and

(5) all known liabilities owed by the trust.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

SUBCHAPTER F. COMMON TRUST FUNDS

Sec. 113.171. COMMON TRUST FUNDS. (a) A bank or trust company qualified to act as a fiduciary in this state may establish common trust funds to provide investments to itself as a fiduciary,

including as a custodian under the Texas Uniform Transfers to Minors Act (Chapter 141) or a uniform gifts or transfers to minors act of another state or to itself and others as cofiduciaries.

(b) The fiduciary or cofiduciary may place investment funds in interests in common trust funds if:

(1) the investment is not prohibited by the instrument or order creating the fiduciary relationship; and

(2) if there are cofiduciaries, the cofiduciaries consent to the investment.

(c) A common trust fund includes a fund:

(1) qualified for exemption from federal income taxation as a common trust fund and maintained exclusively for eligible fiduciary accounts; and

(2) consisting solely of assets of retirement, pension, profit sharing, stock bonus, or other employees' trusts that are exempt from federal income taxation.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.
Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 18, eff. January 1, 2006.

Sec. 113.172. AFFILIATED INSTITUTIONS. A bank or trust company that is a member of an affiliated group under Section 1504, Internal Revenue Code of 1954 (26 U.S.C. 1504), with a bank or trust company maintaining common trust funds may participate in one or more of the funds.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

CHAPTER 114. LIABILITIES, RIGHTS, AND REMEDIES OF TRUSTEES, BENEFICIARIES, AND THIRD PERSONS

SUBCHAPTER A. LIABILITY OF TRUSTEE

Sec. 114.001. LIABILITY OF TRUSTEE TO BENEFICIARY. (a) The trustee is accountable to a beneficiary for the trust property and for any profit made by the trustee through or arising out of the administration of the trust, even though the profit does not result

from a breach of trust; provided, however, that the trustee is not required to return to a beneficiary the trustee's compensation as provided by this subtitle, by the terms of the trust instrument, or by a writing delivered to the trustee and signed by all beneficiaries of the trust who have full legal capacity.

(b) The trustee is not liable to the beneficiary for a loss or depreciation in value of the trust property or for a failure to make a profit that does not result from a failure to perform the duties set forth in this subtitle or from any other breach of trust.

(c) A trustee who commits a breach of trust is chargeable with any damages resulting from such breach of trust, including but not limited to:

(1) any loss or depreciation in value of the trust estate as a result of the breach of trust;

(2) any profit made by the trustee through the breach of trust; or

(3) any profit that would have accrued to the trust estate if there had been no breach of trust.

(d) The trustee is not liable to the beneficiary for a loss or depreciation in value of the trust property or for acting or failing to act under Section 113.025 or under any other provision of this subtitle if the action or failure to act relates to compliance with an environmental law and if there is no gross negligence or bad faith on the part of the trustee. The provision of any instrument governing trustee liability does not increase the liability of the trustee as provided by this section unless the settlor expressly makes reference to this subsection.

(e) The trustee has the same protection from liability provided for a fiduciary under 42 U.S.C. Section 9607(n).

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 13, eff. Oct. 2, 1984; Acts 1989, 71st Leg., ch. 341, Sec. 2, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 846, Sec. 30, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 263, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1103, Sec. 8, eff. Jan. 1, 2004.

Sec. 114.002. LIABILITY OF SUCCESSOR TRUSTEE FOR BREACH OF TRUST BY PREDECESSOR. A successor trustee is liable for a breach of

trust of a predecessor only if he knows or should know of a situation constituting a breach of trust committed by the predecessor and the successor trustee:

(1) improperly permits it to continue;

(2) fails to make a reasonable effort to compel the predecessor trustee to deliver the trust property; or

(3) fails to make a reasonable effort to compel a redress of a breach of trust committed by the predecessor trustee.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 114.003. POWERS TO DIRECT: CHARITABLE TRUSTS. (a) In this section, "charitable trust" has the meaning assigned by Section 123.001.

(a-1) The terms of a charitable trust may give a trustee or other person a power to direct the modification or termination of the trust.

(b) If the terms of a charitable trust give a person the power to direct certain actions of the trustee, the trustee shall act in accordance with the person's direction unless:

(1) the direction is manifestly contrary to the terms of the trust; or

(2) the trustee knows the direction would constitute a serious breach of a fiduciary duty that the person holding the power to direct owes to the beneficiaries of the trust.

(c) A person, other than a beneficiary, who holds a power to direct with respect to a charitable trust is presumptively a fiduciary required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct with respect to a charitable trust is liable for any loss that results from a breach of the person's fiduciary duty.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.
Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 19, eff. January 1, 2006.

Acts 2015, 84th Leg., R.S., Ch. 1108 (H.B. 3190), Sec. 1, eff. June 19, 2015.

Sec. 114.0031. DIRECTED TRUSTS; ADVISORS. (a) In this section:

(1) "Advisor" includes protector.

(2) "Investment decision" means, with respect to any investment, the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of the investment or rights in the investment and, with respect to a nonpublicly traded investment, the valuation of the investment.

(b) This section does not apply to a charitable trust as defined by Section 123.001.

(c) For purposes of this section, an advisor with authority with respect to investment decisions is an investment advisor.

(d) A protector has all the power and authority granted to the protector by the trust terms, which may include:

(1) the power to remove and appoint trustees, advisors, trust committee members, and other protectors;

(2) the power to modify or amend the trust terms to achieve favorable tax status or to facilitate the efficient administration of the trust; and

(3) the power to modify, expand, or restrict the terms of a power of appointment granted to a beneficiary by the trust terms.

(e) If the terms of a trust give a person the authority to direct, consent to, or disapprove a trustee's actual or proposed investment decisions, distribution decisions, or other decisions, the person is considered to be an advisor and a fiduciary when exercising that authority except that the trust terms may provide that an advisor acts in a nonfiduciary capacity.

(f) A trustee who acts in accordance with the direction of an advisor, as prescribed by the trust terms, is not liable, except in cases of wilful misconduct on the part of the trustee so directed, for any loss resulting directly or indirectly from that act.

(g) If the trust terms provide that a trustee must make decisions with the consent of an advisor, the trustee is not liable, except in cases of wilful misconduct or gross negligence on the part of the trustee, for any loss resulting directly or indirectly from any act taken or not taken as a result of the advisor's failure to provide the required consent after having been requested to do so by the trustee.

(h) If the trust terms provide that a trustee must act in accordance with the direction of an advisor with respect to investment decisions, distribution decisions, or other decisions of the trustee, the trustee does not, except to the extent the trust terms provide otherwise, have the duty to:

(1) monitor the conduct of the advisor;

(2) provide advice to the advisor or consult with the advisor; or

(3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the trustee would or might have exercised the trustee's own discretion in a manner different from the manner directed by the advisor.

(i) Absent clear and convincing evidence to the contrary, the actions of a trustee pertaining to matters within the scope of the advisor's authority, such as confirming that the advisor's directions have been carried out and recording and reporting actions taken at the advisor's direction, are presumed to be administrative actions taken by the trustee solely to allow the trustee to perform those duties assigned to the trustee under the trust terms, and such administrative actions are not considered to constitute an undertaking by the trustee to monitor the advisor or otherwise participate in actions within the scope of the advisor's authority.

Added by Acts 2015, 84th Leg., R.S., Ch. 1108 (H.B. 3190), Sec. 2, eff. June 19, 2015.

Sec. 114.004. ACTIONS TAKEN PRIOR TO KNOWLEDGE OR NOTICE OF FACTS. A trustee is not liable for a mistake of fact made before the trustee has actual knowledge or receives written notice of the happening of any event that determines or affects the distribution of the income or principal of the trust, including marriage, divorce, attainment of a certain age, performance of education requirements, or death.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 114.005. RELEASE OF LIABILITY BY BENEFICIARY. (a) A beneficiary who has full legal capacity and is acting on full

information may relieve a trustee from any duty, responsibility, restriction, or liability as to the beneficiary that would otherwise be imposed on the trustee by this subtitle, including liability for past violations.

(b) The release must be in writing and delivered to the trustee.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 8, eff. September 1, 2007.

Sec. 114.006. LIABILITY OF COTRUSTEES FOR ACTS OF OTHER COTRUSTEES. (a) A trustee who does not join in an action of a cotrustee is not liable for the cotrustee's action, unless the trustee does not exercise reasonable care as provided by Subsection (b).

(b) Each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a serious breach of trust; and

(2) compel a cotrustee to redress a serious breach of trust.

(c) Subject to Subsection (b), a dissenting trustee who joins in an action at the direction of the majority of the trustees and who has notified any cotrustee of the dissent in writing at or before the time of the action is not liable for the action.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.
Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 20, eff. January 1, 2006.

Sec. 114.007. EXCULPATION OF TRUSTEE. (a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that the term relieves a trustee of liability for:

(1) a breach of trust committed:

(A) in bad faith;

(B) intentionally; or

(C) with reckless indifference to the interest of a beneficiary; or

(2) any profit derived by the trustee from a breach of trust.

(b) A term in a trust instrument relieving the trustee of liability for a breach of trust is ineffective to the extent that the term is inserted in the trust instrument as a result of an abuse by the trustee of a fiduciary duty to or confidential relationship with the settlor.

(c) This section applies only to a term of a trust that may otherwise relieve a trustee from liability for a breach of trust. Except as provided in Section 111.0035, this section does not prohibit the settlor, by the terms of the trust, from expressly:

(1) relieving the trustee from a duty or restriction imposed by this subtitle or by common law; or

(2) directing or permitting the trustee to do or not to do an action that would otherwise violate a duty or restriction imposed by this subtitle or by common law.

Added by Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 21, eff. January 1, 2006.

Sec. 114.008. REMEDIES FOR BREACH OF TRUST. (a) To remedy a breach of trust that has occurred or might occur, the court may:

(1) compel the trustee to perform the trustee's duty or duties;

(2) enjoin the trustee from committing a breach of trust;

(3) compel the trustee to redress a breach of trust, including compelling the trustee to pay money or to restore property;

(4) order a trustee to account;

(5) appoint a receiver to take possession of the trust property and administer the trust;

(6) suspend the trustee;

(7) remove the trustee as provided under Section 113.082;

(8) reduce or deny compensation to the trustee;

(9) subject to Subsection (b), void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property of which the trustee wrongfully disposed and recover

the property or the proceeds from the property; or

(10) order any other appropriate relief.

(b) Notwithstanding Subsection (a)(9), a person other than a beneficiary who, without knowledge that a trustee is exceeding or improperly exercising the trustee's powers, in good faith assists a trustee or in good faith and for value deals with a trustee is protected from liability as if the trustee had or properly exercised the power exercised by the trustee.

Added by Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 21, eff. January 1, 2006.

SUBCHAPTER B. LIABILITY OF BENEFICIARY

Sec. 114.031. LIABILITY OF BENEFICIARY TO TRUSTEE. (a) A beneficiary is liable for loss to the trust if the beneficiary has:

(1) misappropriated or otherwise wrongfully dealt with the trust property;

(2) expressly consented to, participated in, or agreed with the trustee to be liable for a breach of trust committed by the trustee;

(3) failed to repay an advance or loan of trust funds;

(4) failed to repay a distribution or disbursement from the trust in excess of that to which the beneficiary is entitled; or

(5) breached a contract to pay money or deliver property to the trustee to be held by the trustee as part of the trust.

(b) Unless the terms of the trust provide otherwise, the trustee is authorized to offset a liability of the beneficiary to the trust estate against the beneficiary's interest in the trust estate, regardless of a spendthrift provision in the trust.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 114.032. LIABILITY FOR WRITTEN AGREEMENTS. (a) A written agreement between a trustee and a beneficiary, including a release, consent, or other agreement relating to a trustee's duty, power, responsibility, restriction, or liability, is final and binding on the beneficiary and any person represented by a beneficiary as provided by this section if:

(1) the instrument is signed by the beneficiary;

(2) the beneficiary has legal capacity to sign the instrument; and

(3) the beneficiary has full knowledge of the circumstances surrounding the agreement.

(b) A written agreement signed by a beneficiary who has the power to revoke the trust or the power to appoint, including the power to appoint through a power of amendment, the income or principal of the trust to or for the benefit of the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate is final and binding on any person who takes under the power of appointment or who takes in default if the power of appointment is not executed.

(c) A written instrument is final and binding on a beneficiary who is a minor if:

(1) the minor's parent, including a parent who is also a trust beneficiary, signs the instrument on behalf of the minor;

(2) no conflict of interest exists; and

(3) no guardian, including a guardian ad litem, has been appointed to act on behalf of the minor.

(d) A written instrument is final and binding on an unborn or unascertained beneficiary if a beneficiary who has an interest substantially identical to the interest of the unborn or unascertained beneficiary signs the instrument. For purposes of this subsection, an unborn or unascertained beneficiary has a substantially identical interest only with a trust beneficiary from whom the unborn or unascertained beneficiary descends.

(e) This section does not apply to a written instrument that modifies or terminates a trust in whole or in part unless the instrument is otherwise permitted by law.

Added by Acts 1999, 76th Leg., ch. 794, Sec. 3, eff. Sept. 1, 1999.

SUBCHAPTER C. RIGHTS OF TRUSTEE

Sec. 114.061. COMPENSATION. (a) Unless the terms of the trust provide otherwise and except as provided in Subsection (b) of this section, the trustee is entitled to reasonable compensation from the trust for acting as trustee.

(b) If the trustee commits a breach of trust, the court may in

its discretion deny him all or part of his compensation.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 114.062. EXONERATION OR REIMBURSEMENT FOR TORT. (a) Except as provided in Subsection (b) of this section, a trustee who incurs personal liability for a tort committed in the administration of the trust is entitled to exoneration from the trust property if the trustee has not paid the claim or to reimbursement from the trust property if the trustee has paid the claim, if:

(1) the trustee was properly engaged in a business activity for the trust and the tort is a common incident of that kind of activity;

(2) the trustee was properly engaged in a business activity for the trust and neither the trustee nor an officer or employee of the trustee is guilty of actionable negligence or intentional misconduct in incurring the liability; or

(3) the tort increased the value of the trust property.

(b) A trustee who is entitled to exoneration or reimbursement under Subdivision (3) of Subsection (a) is entitled to exoneration or reimbursement only to the extent of the increase in the value of the trust property.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 114.063. GENERAL RIGHT TO REIMBURSEMENT. (a) A trustee may discharge or reimburse himself from trust principal or income or partly from both for:

(1) advances made for the convenience, benefit, or protection of the trust or its property;

(2) expenses incurred while administering or protecting the trust or because of the trustee's holding or owning any of the trust property; and

(3) expenses incurred for any action taken under Section 113.025.

(b) The trustee has a lien against trust property to secure reimbursement under Subsection (a).

(c) A potential trustee is entitled to reimbursement from trust principal or income or partly from both for reasonable expenses incurred for any action taken under Section 113.025(a) if:

(1) a court orders reimbursement or the potential trustee has entered into a written agreement providing for reimbursement with the personal representative of the estate, the trustee of the trust, the settlor, the settlor's attorney-in-fact, the settlor's personal representative, or the person or entity designated in the trust instrument or will to appoint a trustee; and

(2) the potential trustee has been appointed trustee under the terms of the trust instrument or will or has received a written request to accept the trust from the settlor, the settlor's attorney-in-fact, the settlor's personal representative, or the person or entity designated in the trust instrument or will to appoint a trustee.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 846, Sec. 31, eff. Sept. 1, 1993.

Sec. 114.064. COSTS. (a) In any proceeding under this code the court may make such award of costs and reasonable and necessary attorney's fees as may seem equitable and just.

Added by Acts 1985, 69th Leg., ch. 149, Sec. 4, eff. May 24, 1985.

SUBCHAPTER D. THIRD PERSONS

Sec. 114.081. PROTECTION OF PERSON DEALING WITH TRUSTEE. (a) A person who deals with a trustee in good faith and for fair value actually received by the trust is not liable to the trustee or the beneficiaries of the trust if the trustee has exceeded the trustee's authority in dealing with the person.

(b) A person other than a beneficiary is not required to inquire into the extent of the trustee's powers or the propriety of the exercise of those powers if the person:

(1) deals with the trustee in good faith; and

(2) obtains:

(A) a certification of trust described by Section 114.086; or

(B) a copy of the trust instrument.

(c) A person who in good faith delivers money or other assets to a trustee is not required to ensure the proper application of the money or other assets.

(d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated, is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 9, eff. September 1, 2007.

Sec. 114.082. CONVEYANCE BY TRUSTEE. If property is conveyed or transferred to a trustee in trust but the conveyance or transfer does not identify the trust or disclose the names of the beneficiaries, the trustee may convey, transfer, or encumber the title of the property without subsequent question by a person who claims to be a beneficiary under the trust or who claims by, through, or under an undisclosed beneficiary.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 683, Sec. 4, eff. Aug. 31, 1987.

Sec. 114.0821. LIABILITY OF TRUST PROPERTY. Although trust property is held by the trustee without identifying the trust or its beneficiaries, the trust property is not liable to satisfy the personal obligations of the trustee.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Renumbered from Sec. 114.082(b) by Acts 1987, 70th Leg., ch. 683, Sec. 4, eff. Aug. 31, 1987.

Sec. 114.083. RIGHTS AND LIABILITIES FOR COMMITTING TORTS. (a) A personal liability of a trustee or a predecessor trustee for a tort committed in the course of the administration of the trust may be collected from the trust property if the trustee is sued in a representative capacity and the court finds that:

(1) the trustee was properly engaged in a business activity for the trust and the tort is a common incident of that kind of activity;

(2) the trustee was properly engaged in a business activity for the trust and neither the trustee nor an officer or employee of the trustee is guilty of actionable negligence or intentional misconduct in incurring the liability; or

(3) the tort increased the value of the trust property.

(b) A trust that is liable for the trustee's tort under Subdivision (3) of Subsection (a) is liable only to the extent of the permanent increase in value of the trust property.

(c) A plaintiff in an action against the trustee as the representative of the trust does not have to prove that the trustee could have been reimbursed by the trust if the trustee had paid the claim.

(d) Subject to the rights of exoneration or reimbursement under Section 114.062, the trustee is personally liable for a tort committed by the trustee or by the trustee's agents or employees in the course of their employment.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 114.084. CONTRACTS OF TRUSTEE. (a) If a trustee or a predecessor trustee makes a contract that is within his power as trustee and a cause of action arises on the contract, the plaintiff may sue the trustee in his representative capacity, and a judgment rendered in favor of the plaintiff is collectible by execution against the trust property. The plaintiff may sue the trustee individually if the trustee made the contract and the contract does not exclude the trustee's personal liability.

(b) The addition of "trustee" or "as trustee" after the

signature of a trustee who is party to a contract is prima facie evidence of an intent to exclude the trustee from personal liability.

(c) In an action on a contract against a trustee in the trustee's representative capacity the plaintiff does not have to prove that the trustee could have been reimbursed by the trust if the trustee had paid the claim.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 114.085. PARTNERSHIPS. (a) To the extent allowed by law, a trustee who takes the place of a deceased partner in a general partnership in accordance with the articles of partnership is liable to third persons only to the extent of the:

(1) deceased partner's capital in the partnership; and

(2) trust funds held by the trustee.

(b) A trustee who contracts to enter a general partnership in its capacity as trustee shall limit, to the extent allowed by law, the trust's liability to:

(1) the trust assets contributed to the partnership; and

(2) other assets of the trust under the management of the contracting trustee.

(c) If another provision of this subtitle conflicts with this section, this section controls. This section does not exonerate a trustee from liability for negligence.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 114.086. CERTIFICATION OF TRUST. (a) As an alternative to providing a copy of the trust instrument to a person other than a beneficiary, the trustee may provide to the person a certification of trust containing the following information:

(1) a statement that the trust exists and the date the trust instrument was executed;

(2) the identity of the settlor;

(3) the identity and mailing address of the currently acting trustee;

(4) one or more powers of the trustee or a statement that

the trust powers include at least all the powers granted a trustee by Subchapter A, Chapter 113;

(5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(6) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all of the cotrustees are required in order to exercise powers of the trustee; and

(7) the manner in which title to trust property should be taken.

(b) A certification of trust may be signed or otherwise authenticated by any trustee.

(c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification to be incorrect.

(d) A certification of trust:

(1) is not required to contain the dispositive terms of a trust; and

(2) may contain information in addition to the information required by Subsection (a).

(e) A recipient of a certification of trust may require the trustee to furnish copies of the excerpts from the original trust instrument and later amendments to the trust instrument that designate the trustee and confer on the trustee the power to act in the pending transaction.

(f) A person who acts in reliance on a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for the action and may assume without inquiry the existence of the facts contained in the certification.

(g) If a person has actual knowledge that the trustee is acting outside the scope of the trust, and the actual knowledge was acquired by the person before the person entered into the transaction with the trustee or made a binding commitment to enter into the transaction, the transaction is not enforceable against the trust.

(h) A person who in good faith enters into a transaction relying on a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification are correct. This section does not create an implication that a person is liable for acting in reliance on a certification of trust that fails to contain all the information

required by Subsection (a). A person's failure to demand a certification of trust does not:

(1) affect the protection provided to the person by Section 114.081; or

(2) create an inference as to whether the person has acted in good faith.

(i) A person making a demand for the trust instrument in addition to a certification of trust or excerpts as described by Subsection (e) is liable for damages if the court determines that the person did not act in good faith in making the demand.

(j) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

(k) This section does not limit the rights of a beneficiary of the trust against the trustee.

Added by Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 10, eff. September 1, 2007.

CHAPTER 115. JURISDICTION, VENUE, AND PROCEEDINGS

SUBCHAPTER A. JURISDICTION AND VENUE

Sec. 115.001. JURISDICTION. (a) Except as provided by Subsection (d) of this section, a district court has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts, including proceedings to:

(1) construe a trust instrument;

(2) determine the law applicable to a trust instrument;

(3) appoint or remove a trustee;

(4) determine the powers, responsibilities, duties, and liability of a trustee;

(5) ascertain beneficiaries;

(6) make determinations of fact affecting the administration, distribution, or duration of a trust;

(7) determine a question arising in the administration or distribution of a trust;

(8) relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or of this subtitle;

(9) require an accounting by a trustee, review trustee

fees, and settle interim or final accounts; and

(10) surcharge a trustee.

(a-1) The list of proceedings described by Subsection (a) over which a district court has exclusive and original jurisdiction is not exhaustive. A district court has exclusive and original jurisdiction over a proceeding by or against a trustee or a proceeding concerning a trust under Subsection (a) whether or not the proceeding is listed in Subsection (a).

(b) The district court may exercise the powers of a court of equity in matters pertaining to trusts.

(c) The court may intervene in the administration of a trust to the extent that the court's jurisdiction is invoked by an interested person or as otherwise provided by law. A trust is not subject to continuing judicial supervision unless the court orders continuing judicial supervision.

(d) The jurisdiction of the district court is exclusive except for jurisdiction conferred by law on:

(1) a statutory probate court;

(2) a court that creates a trust under Section 867, Texas Probate Code;

(3) a court that creates a trust under Section 142.005;

(4) a justice court under Chapter 27, Government Code;

(5) a small claims court under Chapter 28, Government Code; or

(6) a county court at law.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984; Acts 1997, 75th Leg., ch. 1375, Sec. 5, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 22, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 11, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 657 (S.B. 1197), Sec. 4, eff. September 1, 2011.

Sec. 115.002. VENUE. (a) The venue of an action under Section 115.001 of this Act is determined according to this section.

(b) If there is a single, noncorporate trustee, an action shall be brought in the county in which:

(1) the trustee resides or has resided at any time during the four-year period preceding the date the action is filed; or

(2) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed.

(b-1) If there are multiple noncorporate trustees and the trustees maintain a principal office in this state, an action shall be brought in the county in which:

(1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or

(2) the trustees maintain the principal office.

(b-2) If there are multiple noncorporate trustees and the trustees do not maintain a principal office in this state, an action shall be brought in the county in which:

(1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or

(2) any trustee resides or has resided at any time during the four-year period preceding the date the action is filed.

(c) If there are one or more corporate trustees, an action shall be brought in the county in which:

(1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or

(2) any corporate trustee maintains its principal office in this state.

(c-1) Notwithstanding Subsections (b), (b-1), (b-2), and (c), if the settlor is deceased and an administration of the settlor's estate is pending in this state, an action involving the interpretation and administration of an inter vivos trust created by the settlor or a testamentary trust created by the settlor's will may be brought:

(1) in a county in which venue is proper under Subsection (b), (b-1), (b-2), or (c); or

(2) in the county in which the administration of the settlor's estate is pending.

(d) For just and reasonable cause, including the location of

the records and the convenience of the parties and witnesses, the court may transfer an action from a county of proper venue under this section to another county of proper venue:

(1) on motion of a defendant or joined party, filed concurrently with or before the filing of the answer or other initial responsive pleading, and served in accordance with law; or

(2) on motion of an intervening party, filed not later than the 20th day after the court signs the order allowing the intervention, and served in accordance with law.

(e) Notwithstanding any other provision of this section, on agreement by all parties the court may transfer an action from a county of proper venue under this section to any other county.

(f) For the purposes of this section:

(1) "Corporate trustee" means an entity organized as a financial institution or a corporation with the authority to act in a fiduciary capacity.

(2) "Principal office" means:

(A) if there are one or more corporate trustees, an office of a corporate trustee in this state where the decision makers for the corporate trustee within this state conduct the daily affairs of the corporate trustee; or

(B) if there are multiple trustees, none of which is a corporate trustee, an office in this state that is not maintained within the personal residence of any trustee, and in which one or more trustees conducts the daily affairs of the trustees.

(2-a) The mere presence of an agent or representative of a trustee does not establish a principal office as defined by Subdivision (2). The principal office of a corporate trustee or the principal office maintained by multiple noncorporate trustees may also be but is not necessarily the same as the situs of administration of the trust.

(3) "Situs of administration" means the location in this state where the trustee maintains the office that is primarily responsible for dealing with the settlor and beneficiaries of the trust. The situs of administration may also be but is not necessarily the same as the principal office of a corporate trustee or the principal office maintained by multiple noncorporate trustees.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984; Acts 1999, 76th Leg., ch. 344, Sec. 4.026, eff.

Sept. 1, 1999; Acts 1999, 76th Leg., ch. 933, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 657 (S.B. 1197), Sec. 5, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 5, eff. September 1, 2013.

SUBCHAPTER B. PARTIES, PROCEDURE, AND JUDGMENTS

Sec. 115.011. PARTIES. (a) Any interested person may bring an action under Section 115.001 of this Act.

(b) Contingent beneficiaries designated as a class are not necessary parties to an action under Section 115.001. The only necessary parties to such an action are:

(1) a beneficiary of the trust on whose act or obligation the action is predicated;

(2) a beneficiary of the trust designated by name, other than a beneficiary whose interest has been distributed, extinguished, terminated, or paid;

(3) a person who is actually receiving distributions from the trust estate at the time the action is filed; and

(4) the trustee, if a trustee is serving at the time the action is filed.

(c) The attorney general shall be given notice of any proceeding involving a charitable trust as provided by Chapter 123 of this code.

(d) A beneficiary of a trust may intervene and contest the right of the plaintiff to recover in an action against the trustee as representative of the trust for a tort committed in the course of the trustee's administration or on a contract executed by the trustee.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984; Acts 1995, 74th Leg., ch. 172, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 23, eff. January 1, 2006.
Acts 2011, 82nd Leg., R.S., Ch. 657 (S.B. 1197), Sec. 6, eff. September 1, 2011.

Sec. 115.012. RULES OF PROCEDURE. Except as otherwise provided, all actions instituted under this subtitle are governed by the Texas Rules of Civil Procedure and the other statutes and rules that are applicable to civil actions generally.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 115.013. PLEADINGS AND JUDGMENTS. (a) Actions and proceedings involving trusts are governed by this section.

(b) An affected interest shall be described in pleadings that give reasonable information to an owner by name or class, by reference to the instrument creating the interest, or in other appropriate manner.

(c) A person is bound by an order binding another in the following cases:

(1) an order binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, binds other persons to the extent their interests, as objects, takers in default, or otherwise are subject to the power;

(2) to the extent there is no conflict of interest between them or among persons represented:

(A) an order binding a guardian of the estate or a guardian ad litem binds the ward; and

(B) an order binding a trustee binds beneficiaries of the trust in proceedings to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties;

(3) if there is no conflict of interest and no guardian of the estate or guardian ad litem has been appointed, a parent may represent his minor child as guardian ad litem or as next friend; and

(4) an unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(d) Notice under Section 115.015 shall be given either to a person who will be bound by the judgment or to one who can bind that person under this section, and notice may be given to both. Notice may be given to unborn or unascertained persons who are not represented under Subdivision (1) or (2) of Subsection (c) by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 672 (H.B. 2368), Sec. 4, eff. September 1, 2009.

Sec. 115.014. GUARDIAN OR ATTORNEY AD LITEM. (a) At any point in a proceeding a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If there is not a conflict of interests, a guardian ad litem may be appointed to represent several persons or interests.

(b) At any point in a proceeding a court may appoint an attorney ad litem to represent any interest that the court considers necessary, including an attorney ad litem to defend an action under Section 114.083 for a beneficiary of the trust who is a minor or who has been adjudged incompetent.

(c) A guardian ad litem may consider general benefit accruing to the living members of a person's family.

(d) A guardian ad litem is entitled to reasonable compensation for services in the amount set by the court to be taxed as costs in the proceeding.

(e) An attorney ad litem is entitled to reasonable compensation for services in the amount set by the court in the manner provided by Section 114.064.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.
Amended by:
Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 24, eff. January

1, 2006.

Acts 2009, 81st Leg., R.S., Ch. 672 (H.B. 2368), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 672 (H.B. 2368), Sec. 6, eff. September 1, 2009.

Sec. 115.015. NOTICE TO BENEFICIARIES OF TORT OR CONTRACT PROCEEDING. (a) A court may not render judgment in favor of a plaintiff in an action on a contract executed by the trustee or in an action against the trustee as representative of the trust for a tort committed in the course of the trustee's administration unless the plaintiff proves that before the 31st day after the date the action began or within any other period fixed by the court that is more than 30 days before the date of the judgment, the plaintiff gave notice of the existence and nature of the action to:

(1) each beneficiary known to the trustee who then had a present or contingent interest; or

(2) in an action on a contract involving a charitable trust, the attorney general and any corporation that is a beneficiary or agency in the performance of the trust.

(b) The plaintiff shall give the notice required by Subsection (a) of this section by registered mail or by certified mail, return receipt requested, addressed to the party to be notified at the party's last known address. The trustee shall give the plaintiff a list of the beneficiaries or persons having an interest in the trust estate and their addresses, if known to the trustee, before the 11th day after the date the plaintiff makes a written request for the information.

(c) The plaintiff satisfies the notice requirements of this section by notifying the persons on the list provided by the trustee.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 115.016. NOTICE. (a) If notice of hearing on a motion or other proceeding is required, the notice may be given in the manner prescribed by law or the Texas Rules of Civil Procedure, or, alternatively, notice may be given to any party or to his attorney if

the party has appeared by attorney or requested that notice be sent to his attorney.

(b) If the address or identity of a party is not known and cannot be ascertained with reasonable diligence, on order of the court notice may be given by publishing a copy of the notice at least three times in a newspaper having general circulation in the county where the hearing is to be held. The first publication of the notice must be at least 10 days before the time set for the hearing. If there is no newspaper of general circulation in the county where the hearing is to be held, the publication shall be made in a newspaper of general circulation in an adjoining county.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 115.017. WAIVER OF NOTICE. A person, including a guardian of the estate, a guardian ad litem, or other fiduciary, may waive notice by a writing signed by the person or his attorney and filed in the proceedings.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

CHAPTER 116. UNIFORM PRINCIPAL AND INCOME ACT

SUBCHAPTER A. DEFINITIONS, FIDUCIARY DUTIES, AND OTHER MISCELLANEOUS PROVISIONS

Sec. 116.001. SHORT TITLE. This chapter may be cited as the Uniform Principal and Income Act.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.002. DEFINITIONS. In this chapter:

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Beneficiary" includes, in the case of a decedent's

estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Subchapter D.

(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.

(9) "Person" has the meaning assigned by Section 111.004.

(10) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(11) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(13) "Trustee" has the meaning assigned by Section 111.004.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 12, eff. September 1, 2007.

Sec. 116.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.004. FIDUCIARY DUTIES; GENERAL PRINCIPLES. (a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Subchapters B and C, a fiduciary:

(1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

(2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter;

(3) shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under Section 116.005(a) or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.005. TRUSTEE'S POWER TO ADJUST. (a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in Section 116.004(a), that the trustee is unable to comply with Section 116.004(b). The power to adjust conferred by this subsection includes the power to allocate all or part of a capital gain to trust income.

(b) In deciding whether and to what extent to exercise the power conferred by Subsection (a), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) the nature, purpose, and expected duration of the trust;

(2) the intent of the settlor;

(3) the identity and circumstances of the beneficiaries;

(4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) the net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(9) the anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

(1) that reduces the actuarial value of the income

interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(2) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(3) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(4) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(5) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(6) if the trustee is a beneficiary of the trust; or

(7) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(d) If Subsection (c)(4), (5), (6), or (7) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by Subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in Subsections (c)(1)-(5) or Subsection (c)(7) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in Subsection (c). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of

adjustment conferred by Subsection (a).

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.
Amended by:
Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 25, eff. January 1, 2006.
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 21.002, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 657 (S.B. 1197), Sec. 7, eff. September 1, 2011.

Sec. 116.006. JUDICIAL CONTROL OF DISCRETIONARY POWER. (a) The court may not order a trustee to change a decision to exercise or not to exercise a discretionary power conferred by Section 116.005 of this chapter unless the court determines that the decision was an abuse of the trustee's discretion. A trustee's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(b) The decisions to which Subsection (a) applies include:

(1) a decision under Section 116.005(a) as to whether and to what extent an amount should be transferred from principal to income or from income to principal; and

(2) a decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors in deciding whether and to what extent to exercise the discretionary power conferred by Section 116.005(a).

(c) If the court determines that a trustee has abused the trustee's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules:

(1) to the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the trustee to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position;

(2) to the extent that the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court

shall place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the trustee to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust; and

(3) to the extent that the court is unable, after applying Subdivisions (1) and (2), to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the trustee to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

(d) If the trustee of a trust reasonably believes that one or more beneficiaries of such trust will object to the manner in which the trustee intends to exercise or not exercise a discretionary power conferred by Section 116.005, the trustee may petition the court having jurisdiction over the trust, and the court shall determine whether the proposed exercise or nonexercise by the trustee of such discretionary power will result in an abuse of the trustee's discretion. The trustee shall state in such petition the basis for its belief that a beneficiary would object. The failure or refusal of a beneficiary to sign a waiver or release is not reasonable grounds for a trustee to believe the beneficiary will object. The court may appoint one or more guardians ad litem or attorneys ad litem pursuant to Section 115.014. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the trustee relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion. The trustee shall advance from the trust principal all costs incident to the judicial determination, including the reasonable attorney's fees and costs of the trustee, any beneficiary or beneficiaries who are parties to the action and who retain counsel, any guardian ad litem, and any attorney ad litem. At the conclusion of the proceeding, the court may award costs and reasonable and necessary attorney's fees as provided in Section 114.064, including, if the court considers it appropriate, awarding part or all of such costs against the trust

principal or income, awarding part or all of such costs against one or more beneficiaries or such beneficiary's or beneficiaries' share of the trust, or awarding part or all of such costs against the trustee in the trustee's individual capacity, if the court determines that the trustee's exercise or nonexercise of discretionary power would have resulted in an abuse of discretion or that the trustee did not have reasonable grounds for believing one or more beneficiaries would object to the proposed exercise or nonexercise of the discretionary power.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 672 (H.B. 2368), Sec. 7, eff. September 1, 2009.

Sec. 116.007. PROVISIONS REGARDING NONCHARITABLE UNITRUSTS. (a) This section does not apply to a charitable remainder unitrust as defined by Section 664(d), Internal Revenue Code of 1986 (26 U.S.C. Section 664), as amended.

(b) In this section:

(1) "Unitrust" means a trust the terms of which require distribution of a unitrust amount.

(2) "Unitrust amount" means a distribution mandated by the terms of a trust in an amount equal to a fixed percentage of not less than three or more than five percent per year of the net fair market value of the trust's assets, valued at least annually. The unitrust amount may be determined by reference to the net fair market value of the trust's assets in one year or more than one year.

(c) Distribution of the unitrust amount is considered a distribution of all of the income of the unitrust and shall not be considered a fundamental departure from applicable state law. A distribution of the unitrust amount reasonably apportions the total return of a unitrust.

(d) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount shall be treated as first being made from the following sources in order of priority:

(1) from net accounting income determined as if the trust were not a unitrust;

(2) from ordinary accounting income not allocable to net

accounting income;

(3) from net realized short-term capital gains;

(4) from net realized long-term capital gains; and

(5) from the principal of the trust estate.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

SUBCHAPTER B. DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

Sec. 116.051. DETERMINATION AND DISTRIBUTION OF NET INCOME. After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Subchapters C, D, and E which apply to trustees and the rules in Subdivision (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Subchapters C, D, and E which apply to trustees and by:

(A) including in net income all income from property used to discharge liabilities;

(B) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who

receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under Subdivision (2) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will. Unless otherwise provided by the will or the terms of the trust, a beneficiary who receives a pecuniary amount, regardless of whether in trust, shall be paid interest on the pecuniary amount at the legal rate of interest as provided by Section 302.002, Finance Code. Interest on the pecuniary amount is payable:

(A) under a will, beginning on the first anniversary of the date of the decedent's death; or

(B) under a trust, beginning on the first anniversary of the date on which an income interest ends.

(4) A fiduciary shall distribute the net income remaining after distributions required by Subdivision (3) in the manner described in Section 116.052 to all other beneficiaries even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in Subdivision (1) because of a payment described in Section 116.201 or 116.202 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

(6) A fiduciary, without reduction for taxes, shall pay to a charitable organization that is entitled to receive income under

Subdivision (4) any amount allowed as a tax deduction to the estate or trust for income payable to the charitable organization.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.052. DISTRIBUTION TO RESIDUARY AND REMAINDER BENEFICIARIES. (a) Each beneficiary described in Section 116.051(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

SUBCHAPTER C. APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

Sec. 116.101. WHEN RIGHT TO INCOME BEGINS AND ENDS. (a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) on the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) on the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under Subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.102. APPORTIONMENT OF RECEIPTS AND DISBURSEMENTS WHEN DECEDENT DIES OR INCOME INTEREST BEGINS. (a) A trustee shall

allocate an income receipt or disbursement other than one to which Section 116.051(1) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which Section 116.151 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.103. APPORTIONMENT WHEN INCOME INTEREST ENDS. (a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In

the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

SUBCHAPTER D. ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

PART 1. RECEIPTS FROM ENTITIES

Sec. 116.151. CHARACTER OF RECEIPTS. (a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which Section 116.152 applies, a business or activity to which Section 116.153 applies, or an asset-backed security to which Section 116.178 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) property other than money;

(2) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) money received in total or partial liquidation of the entity; and

(4) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) if the total amount of money and property received in a distribution or series of related distributions is greater than 20

percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under Subsection (d)(2), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.152. DISTRIBUTION FROM TRUST OR ESTATE. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, Section 116.151 or 116.178 applies to a receipt from the trust.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.153. BUSINESS AND OTHER ACTIVITIES CONDUCTED BY TRUSTEE. (a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of

fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) retail, manufacturing, service, and other traditional business activities;

(2) farming;

(3) raising and selling livestock and other animals;

(4) management of rental properties;

(5) extraction of minerals and other natural resources;

(6) timber operations; and

(7) activities to which Section 116.177 applies.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

PART 2. RECEIPTS NOT NORMALLY APPORTIONED

Sec. 116.161. PRINCIPAL RECEIPTS. A trustee shall allocate to principal:

(1) to the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(2) money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this subchapter;

(3) amounts recovered from third parties to reimburse the trust because of disbursements described in Section 116.202(a)(7) or for other reasons to the extent not based on the loss of income;

(4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a

mandatory income interest is income;

(5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) other receipts as provided in Part 3.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.162. RENTAL PROPERTY. To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.163. OBLIGATION TO PAY MONEY. (a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which Section 116.172, 116.173, 116.174, 116.175, 116.177, or 116.178 applies.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.164. INSURANCE POLICIES AND SIMILAR CONTRACTS. (a) Except as otherwise provided in Subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to Section 116.153, loss of profits from a business.

(c) This section does not apply to a contract to which Section 116.172 applies.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

PART 3. RECEIPTS NORMALLY APPORTIONED

Sec. 116.171. INSUBSTANTIAL ALLOCATIONS NOT REQUIRED. If a trustee determines that an allocation between principal and income required by Section 116.172, 116.173, 116.174, 116.175, or 116.178 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in Section 116.005(c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in Section 116.005(d) and may be released for the reasons and in the manner described in Section 116.005(e).

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.172. DEFERRED COMPENSATION, ANNUITIES, AND SIMILAR PAYMENTS. (a) In this section:

(1) "Future payment asset" means the asset from which a payment is derived.

(2) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer.

(3) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that the payer characterizes a payment as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income the part of the payment that does not exceed an amount equal to:

(1) four percent of the fair market value of the future payment asset on the date specified in Subsection (d); less

(2) the total amount that the trustee has allocated to income for all previous payments received from the future payment asset during the same accounting period in which the payment is received.

(d) For purposes of Subsection (c)(1), the determination of the fair market value of a future payment asset is made on the later of:

(1) the date on which the future payment asset first becomes subject to the trust; or

(2) the last day of the accounting period of the trust that immediately precedes the accounting period during which the payment is received.

(e) For each accounting period a payment is received, the amount determined under Subsection (c)(1) must be prorated on a daily basis unless the determination of the fair market value of a future payment asset is made under Subsection (d)(2) and is for an accounting period of 365 days or more.

(f) A trustee shall allocate to principal the part of the payment described by Subsection (c) that is not allocated to income.

(g) If no part of a payment is required to be made or the

payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of Subsection (c) and this subsection, a payment is not "required to be made" to the extent that it is made only because the trustee exercises a right of withdrawal.

(h) Subsections (j) and (k) apply and Subsections (b) and (c) do not apply in determining the allocation of a payment made from a separate fund to:

(1) a trust to which an election to qualify for a marital deduction under Section 2056(b)(7), Internal Revenue Code of 1986, has been made; or

(2) a trust that qualifies for the marital deduction under Section 2056(b)(5), Internal Revenue Code of 1986.

(i) Subsections (h), (j), and (k) do not apply if and to the extent that a series of payments would, without the application of Subsection (h), qualify for the marital deduction under Section 2056(b)(7)(C), Internal Revenue Code of 1986.

(j) The trustee shall determine the internal income of the separate fund for the accounting period as if the separate fund were a trust subject to this code. On request of the surviving spouse, the trustee shall demand of the person administering the separate fund that this internal income be distributed to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund, and the balance to the principal. On request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made to the trust during the accounting period from the separate fund.

(k) If the trustee cannot determine the internal income of the separate fund but can determine the value of the separate fund, the internal income of the separate fund shall be four percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund shall be the product of the interest rate and the present value of the expected future payments, as determined under Section 7520, Internal Revenue Code of 1986, for the month preceding the accounting period for which the computation is made.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 26, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 13, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 672 (H.B. 2368), Sec. 8, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 672 (H.B. 2368), Sec. 9, eff. September 1, 2009.

Sec. 116.173. LIQUIDATING ASSET. (a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to Section 116.172, resources subject to Section 116.174, timber subject to Section 116.175, an activity subject to Section 116.177, an asset subject to Section 116.178, or any asset for which the trustee establishes a reserve for depreciation under Section 116.203.

(b) A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.

(c) The trustee may allocate a receipt from any interest in a liquidating asset the trust owns on January 1, 2004, in the manner provided by this chapter or in any lawful manner used by the trustee before January 1, 2004, to make the same allocation.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.174. MINERALS, WATER, AND OTHER NATURAL RESOURCES. (a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) If received as delay rental or annual rent on a lease, a receipt must be allocated to income.

(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(3) If received as a royalty, shut-in-well payment, take-or-pay payment, or bonus, the trustee shall allocate the receipt equitably.

(4) If an amount is received from a working interest or any other interest not provided for in Subdivision (1), (2), or (3), the trustee must allocate the receipt equitably.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, the trustee must allocate the receipt equitably.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) The trustee may allocate a receipt from any interest in minerals, water, or other natural resources the trust owns on January 1, 2004, in the manner provided by this chapter or in any lawful manner used by the trustee before January 1, 2004, to make the same allocation. The trustee shall allocate a receipt from any interest in minerals, water, or other natural resources acquired by the trust after January 1, 2004, in the manner provided by this chapter.

(e) An allocation of a receipt under this section is presumed to be equitable if the amount allocated to principal is equal to the amount allowed by the Internal Revenue Code of 1986 as a deduction for depletion of the interest.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 14, eff. September 1, 2007.

Sec. 116.175. TIMBER. (a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the

timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in Subdivisions (1) and (2); or

(4) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to Subdivision (1), (2), or (3).

(b) In determining net receipts to be allocated pursuant to Subsection (a), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on January 1, 2004, the trustee may allocate a net receipt from the sale of timber and related products in the manner provided by this chapter or in any lawful manner used by the trustee before January 1, 2004, to make the same allocation. If the trust acquires an interest in timberland after January 1, 2004, the trustee shall allocate net receipts from the sale of timber and related products in the manner provided by this chapter.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.176. PROPERTY NOT PRODUCTIVE OF INCOME. (a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under Section 116.005 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of

income, convert property within a reasonable time, or exercise the power conferred by Section 116.005(a). The trustee may decide which action or combination of actions to take.

(b) In cases not governed by Subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.177. DERIVATIVES AND OPTIONS. (a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under Section 116.153 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.178. ASSET-BACKED SECURITIES. (a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from

the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which Section 116.151 or 116.172 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

SUBCHAPTER E. ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

Sec. 116.201. DISBURSEMENTS FROM INCOME. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which Section 116.051(2)(B) or (C) applies:

(1) one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee unless, consistent with the trustee's fiduciary duties, the trustee determines that a different portion, none, or all of the compensation should be allocated to income;

(2) one-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1337 (S.B. 778), Sec. 2, eff. September 1, 2013.

Sec. 116.202. DISBURSEMENTS FROM PRINCIPAL. (a) A trustee shall make the following disbursements from principal:

(1) the remaining one-half of the disbursements described in Section 116.201(1) unless, consistent with the trustee's fiduciary duties, the trustee determines that a different portion, none, or all of those disbursements should be allocated to income, in which case that portion of the disbursements that are not allocated to income shall be allocated to principal;

(1-a) the remaining one-half of the disbursements described in Section 116.201(2);

(2) all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) payments on the principal of a trust debt;

(4) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) premiums paid on a policy of insurance not described in Section 116.201(4) of which the trust is the owner and beneficiary;

(6) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(7) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that

requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1337 (S.B. 778), Sec. 3, eff. September 1, 2013.

Sec. 116.203. TRANSFERS FROM INCOME TO PRINCIPAL FOR DEPRECIATION. (a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) during the administration of a decedent's estate; or

(3) under this section if the trustee is accounting under Section 116.153 for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.204. TRANSFERS FROM INCOME TO REIMBURSE PRINCIPAL. (a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which Subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) disbursements described in Section 116.202(a)(7).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in Subsection (a).

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

Sec. 116.205. INCOME TAXES. (a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(1) from income to the extent that receipts from the entity are allocated only to income;

(2) from principal to the extent that receipts from the entity are allocated only to principal;

(3) proportionately from principal and income to the extent that receipts from the entity are allocated to both principal and income; and

(4) from principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying the other provisions of this section, the trustee shall adjust income or principal receipts to the extent that

the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 657 (S.B. 1197), Sec. 8, eff. September 1, 2011.

Sec. 116.206. ADJUSTMENTS BETWEEN PRINCIPAL AND INCOME BECAUSE OF TAXES. (a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(1) elections and decisions, other than those described in Subsection (b), that the fiduciary makes from time to time regarding tax matters;

(2) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Added by Acts 2003, 78th Leg., ch. 659, Sec. 1, eff. Jan. 1, 2004.

CHAPTER 117. UNIFORM PRUDENT INVESTOR ACT

Sec. 117.001. SHORT TITLE. This chapter may be cited as the "Uniform Prudent Investor Act."

Added by Acts 2003, 78th Leg., ch. 1103, Sec. 1, eff. Jan. 1, 2004.

Sec. 117.002. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among the states enacting it.

Added by Acts 2003, 78th Leg., ch. 1103, Sec. 1, eff. Jan. 1, 2004.

Sec. 117.003. PRUDENT INVESTOR RULE. (a) Except as otherwise provided in Subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

Added by Acts 2003, 78th Leg., ch. 1103, Sec. 1, eff. Jan. 1, 2004.

Sec. 117.004. STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES. (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably

suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) general economic conditions;

(2) the possible effect of inflation or deflation;

(3) the expected tax consequences of investment decisions or strategies;

(4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) the expected total return from income and the appreciation of capital;

(6) other resources of the beneficiaries;

(7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) Except as otherwise provided by and subject to this subtitle, a trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

Added by Acts 2003, 78th Leg., ch. 1103, Sec. 1, eff. Jan. 1, 2004.

Sec. 117.005. DIVERSIFICATION. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Added by Acts 2003, 78th Leg., ch. 1103, Sec. 1, eff. Jan. 1, 2004.

Sec. 117.006. DUTIES AT INCEPTION OF TRUSTEESHIP. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this chapter.

Added by Acts 2003, 78th Leg., ch. 1103, Sec. 1, eff. Jan. 1, 2004.

Sec. 117.007. LOYALTY. A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

Added by Acts 2003, 78th Leg., ch. 1103, Sec. 1, eff. Jan. 1, 2004.

Sec. 117.008. IMPARTIALITY. If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

Added by Acts 2003, 78th Leg., ch. 1103, Sec. 1, eff. Jan. 1, 2004.

Sec. 117.009. INVESTMENT COSTS. In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

Added by Acts 2003, 78th Leg., ch. 1103, Sec. 1, eff. Jan. 1, 2004.

Sec. 117.010. REVIEWING COMPLIANCE. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

Added by Acts 2003, 78th Leg., ch. 1103, Sec. 1, eff. Jan. 1, 2004.

Sec. 117.011. DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS. (a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of Subsection (a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated, unless:

(1) the agent is an affiliate of the trustee; or

(2) under the terms of the delegation:

(A) the trustee or a beneficiary of the trust is required to arbitrate disputes with the agent; or

(B) the period for bringing an action by the trustee or a beneficiary of the trust with respect to an agent's actions is shortened from that which is applicable to trustees under the law of this state.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

Added by Acts 2003, 78th Leg., ch. 1103, Sec. 1, eff. Jan. 1, 2004.

Sec. 117.012. LANGUAGE INVOKING STANDARD OF CHAPTER. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and

intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

Added by Acts 2003, 78th Leg., ch. 1103, Sec. 1, eff. Jan. 1, 2004.

SUBTITLE C. MISCELLANEOUS TRUSTS

CHAPTER 121. EMPLOYEES' TRUSTS

SUBCHAPTER A. PENSION TRUSTS

Sec. 121.001. PENSION TRUSTS. (a) For the purposes of this subchapter, a pension trust is an express trust:

(1) containing or relating to property;

(2) created by an employer as part of a stock-bonus plan, pension plan, disability or death benefit plan, or profit-sharing plan for the benefit of some or all of the employer's employees;

(3) to which contributions are made by the employer, by some or all of the employees, or by both; and

(4) created for the principal purpose of distributing to the employees, or the successor to their beneficial interest in the trust, the principal or income, or both, of the property held in trust.

(b) This subchapter applies to a pension trust regardless of when the trust was created.

Acts 1983, 68th Leg., p. 3691, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 121.002. EMPLOYEES OF CONTROLLED CORPORATIONS. For the purposes of this subchapter, the relationship of employer and employee exists between a corporation and its own employees, and between a corporation and the employees of each other corporation that it controls, by which it is controlled, or with which it is under common control through the exercise by one or more persons of a majority of voting rights in one or more corporations.

Acts 1983, 68th Leg., p. 3691, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 121.003. APPLICATION OF TEXAS TRUST CODE. The Texas Trust Code (Chapters 111 through 117) applies to a pension trust.

Acts 1983, 68th Leg., p. 3691, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:
Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 27, eff. January 1, 2006.

Sec. 121.004. RULE AGAINST PERPETUITIES. A pension trust may continue for as long as is necessary to accomplish the purposes of the trust and is not invalid under the rule against perpetuities or any other law restricting or limiting the duration of a trust.

Acts 1983, 68th Leg., p. 3691, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 121.005. ACCUMULATION OF INCOME. Notwithstanding any law limiting the time during which trust income may be accumulated, the income of a pension trust may be accumulated under the terms of the trust for as long as is necessary to accomplish the purposes of the trust.

Acts 1983, 68th Leg., p. 3692, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. DEATH BENEFITS UNDER EMPLOYEES' TRUSTS

Sec. 121.051. DEFINITIONS. (a) In this subchapter:

(1) "Death benefit" means a benefit of any kind, including the proceeds of a life insurance policy or any other payment, in cash or property, under an employees' trust or a retirement account, a contract purchased by an employees' trust or a retirement account, or a retirement-annuity contract that is payable because of an employee's, participant's, or beneficiary's death to or for the benefit of the employee's, participant's, or beneficiary's beneficiary.

(2) "Employee" means a person covered by an employees' trust or a retirement account that provides a death benefit or a person whose interest in an employees' trust or a retirement account has not been fully distributed.

(3) "Employees' trust" means:

(A) a trust forming a part of a stock-bonus, pension, or profit-sharing plan under Section 401, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 401 (1986));

(B) a pension trust under Chapter 111; and

(C) an employer-sponsored benefit plan or program, or any other retirement savings arrangement, including a pension plan created under Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C.A. Sec. 1002 (1986)), regardless of whether the plan, program, or arrangement is funded through a trust.

(4) "Individual retirement account" means a trust, custodial arrangement, or annuity under Section 408(a) or (b), Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).

(5) "Participant" means a person covered by an employees' trust or a retirement account that provides a death benefit or a person whose interest in an employees' trust or a retirement account has not been fully distributed.

(6) "Retirement account" means a retirement-annuity contract, an individual retirement account, a simplified employee pension, or any other retirement savings arrangement.

(7) "Retirement-annuity contract" means an annuity contract under Section 403, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 403 (1986)).

(8) "Simplified employee pension" means a trust, custodial arrangement, or annuity under Section 408, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).

(9) "Trust" and "trustee" have the meanings assigned by the Texas Trust Code (Chapters 111 through 115), except that "trust" includes any trust, regardless of when it is created.

(b) References to specific provisions of the Internal Revenue Code of 1954 (26 U.S.C.A.) include corresponding provisions of any subsequent federal tax laws.

Acts 1983, 68th Leg., p. 3692, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 741, Sec. 3, eff. Aug. 31, 1987.

Sec. 121.052. PAYMENT OF DEATH BENEFIT TO TRUSTEE. (a) A death benefit is payable to a trustee of a trust evidenced by a written instrument or declaration existing on the date of an employee's or participant's death, or to a trustee named or to be

named as trustee of a trust created under an employee's or participant's will, if the trustee is designated as beneficiary under the plan containing the employees' trust or under the retirement account.

(b) A trustee of a testamentary trust may be designated under Subsection (a) prior to the execution of the will.

(c) A death benefit under a will is not payable until the will is probated.

(d) The trustee shall hold, administer, and dispose of a death benefit payable under this section in accordance with the terms of the trust on the date of the employee's death.

(e) A death benefit is payable to a trustee of a trust created by the will of a person other than the employee if:

(1) the will has been probated at the time of the employee's death; and

(2) the death benefit is payable to the trustee to be held, administered, and disposed of in accordance with the terms of the testamentary trust.

Acts 1983, 68th Leg., p. 3693, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 741, Sec. 4, eff. Aug. 31, 1987.

Sec. 121.053. VALIDITY OF TRUST DECLARATION. The validity of a trust agreement or declaration is not affected by:

(1) the absence of a corpus other than the right of the trustee to receive a death benefit as beneficiary;

(2) the employee's reservation of the right to designate another beneficiary of the death benefit; or

(3) the existence of authority to amend, modify, revoke, or terminate the agreement or declaration.

Acts 1983, 68th Leg., p. 3693, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 121.054. UNCLAIMED BENEFITS. If a trustee does not claim a death benefit on or before the first anniversary of the employee's or participant's death or if satisfactory evidence is provided to a trustee, custodian, other fiduciary, or other obligor of the employees' trust, contract purchased by the employees' trust, or the retirement account before the first anniversary of the employee's or

participant's death that there is or will be no trustee to receive the death benefit, the death benefit shall be paid:

(1) according to the beneficiary designation under the plan, trust, contract, or arrangement providing the death benefit under the employees' trust or retirement account; or

(2) if there is no designation in the employees' trust or retirement account, to the personal representative of the deceased employee's or participant's estate.

Acts 1983, 68th Leg., p. 3693, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 741, Sec. 5, eff. Aug. 31, 1987.

Sec. 121.055. EXEMPTION FROM TAXES AND DEBTS. Unless the trust agreement, declaration of trust, or will provides otherwise, a death benefit payable to a trustee under this subchapter is not:

(1) part of the deceased employee's estate;

(2) subject to the debts of the deceased employee or the employee's estate, or to other charges enforceable against the estate; or

(3) subject to the payment of taxes enforceable against the deceased employee's estate to a greater extent than if the death benefit is payable, free of trust, to a beneficiary other than the executor or administrator of the estate of the employee.

Acts 1983, 68th Leg., p. 3694, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 121.056. COMMINGLING OF ASSETS. A trustee who receives a death benefit under this subchapter may commingle the property with other assets accepted by the trustee and held in trust, either before or after the death benefit is received.

Acts 1983, 68th Leg., p. 3694, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 121.057. PRIOR DESIGNATIONS NOT AFFECTED. This subchapter does not affect the validity of a beneficiary designation made by an employee before April 3, 1975, that names a trustee as beneficiary of a death benefit.

Acts 1983, 68th Leg., p. 3694, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 121.058. CONSTRUCTION. (a) This subchapter is intended to be declaratory of the common law of this state.

(b) A court shall liberally construe this subchapter to effect the intent that a death benefit received by a trustee under this subchapter is not subject to the obligations of the employee or the employee's estate unless the trust receiving the benefit expressly provides otherwise.

(c) A death benefit shall not be included in property administered as part of a testator's estate or in an inventory filed with the county court because of a reference in a will to the death benefit or because of the naming of the trustee of a testamentary trust.

Acts 1983, 68th Leg., p. 3694, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 123. ATTORNEY GENERAL PARTICIPATION IN PROCEEDINGS INVOLVING CHARITABLE TRUSTS

Sec. 123.001. DEFINITIONS. In this chapter:

(1) "Charitable entity" means a corporation, trust, community chest, fund, foundation, or other entity organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or another civic or public purpose described by Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

(2) "Charitable trust" means a charitable entity, a trust the stated purpose of which is to benefit a charitable entity, or an inter vivos or testamentary gift to a charitable entity.

(3) "Proceeding involving a charitable trust" means a suit or other judicial proceeding the object of which is to:

(A) terminate a charitable trust or distribute its assets to other than charitable donees;

(B) depart from the objects of the charitable trust stated in the instrument creating the trust, including a proceeding in which the doctrine of cy-pres is invoked;

(C) construe, nullify, or impair the provisions of a testamentary or other instrument creating or affecting a charitable

trust;

(D) contest or set aside the probate of an alleged will under which money, property, or another thing of value is given for charitable purposes;

(E) allow a charitable trust to contest or set aside the probate of an alleged will;

(F) determine matters relating to the probate and administration of an estate involving a charitable trust; or

(G) obtain a declaratory judgment involving a charitable trust.

(4) "Fiduciary or managerial agent" means an individual, corporation, or other entity acting either as a trustee, a member of the board of directors, an officer, an executor, or an administrator for a charitable trust.

Added by Acts 1987, 70th Leg., ch. 147, Sec. 4, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 172, Sec. 2, eff. Sept. 1, 1995.

Sec. 123.002. ATTORNEY GENERAL'S PARTICIPATION. For and on behalf of the interest of the general public of this state in charitable trusts, the attorney general is a proper party and may intervene in a proceeding involving a charitable trust. The attorney general may join and enter into a compromise, settlement agreement, contract, or judgment relating to a proceeding involving a charitable trust.

Added by Acts 1987, 70th Leg., ch. 147, Sec. 4, eff. Sept. 1, 1987.

Sec. 123.003. NOTICE. (a) Any party initiating a proceeding involving a charitable trust shall give notice of the proceeding to the attorney general by sending to the attorney general, by registered or certified mail, a true copy of the petition or other instrument initiating the proceeding involving a charitable trust within 30 days of the filing of such petition or other instrument, but no less than 25 days prior to a hearing in such a proceeding. This subsection does not apply to a proceeding that is initiated by an application that exclusively seeks the admission of a will to probate, regardless of whether the application seeks the appointment of a personal representative, if the application:

(1) is uncontested; and

(2) is not subject to Section 83, Texas Probate Code.

(b) Notice shall be given to the attorney general of any pleading which adds new causes of action or additional parties to a proceeding involving a charitable trust in which the attorney general has previously waived participation or in which the attorney general has otherwise failed to intervene. Notice shall be given by sending to the attorney general by registered or certified mail a true copy of the pleading within 30 days of the filing of the pleading, but no less than 25 days prior to a hearing in the proceeding.

(c) The party or the party's attorney shall execute and file in the proceeding an affidavit stating the facts of the notice and shall attach to the affidavit the customary postal receipts signed by the attorney general or an assistant attorney general.

Added by Acts 1987, 70th Leg., ch. 147, Sec. 4, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 172, Sec. 3, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 1017 (H.B. 934), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 15, eff. September 1, 2007.

Sec. 123.004. VOIDABLE JUDGMENT OR AGREEMENT. (a) A judgment in a proceeding involving a charitable trust is voidable if the attorney general is not given notice of the proceeding as required by this chapter. On motion of the attorney general after the judgment is rendered, the judgment shall be set aside.

(b) A compromise, settlement agreement, contract, or judgment relating to a proceeding involving a charitable trust is voidable on motion of the attorney general if the attorney general is not given notice as required by this chapter unless the attorney general has:

(1) declined in writing to be a party to the proceeding; or

(2) approved and joined in the compromise, settlement agreement, contract, or judgment.

Added by Acts 1987, 70th Leg., ch. 147, Sec. 4, eff. Sept. 1, 1987.

Sec. 123.005. BREACH OF FIDUCIARY DUTY: VENUE; JURISDICTION. (a) Venue in a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust shall be a court of competent jurisdiction in Travis County or in the county where the defendant resides or has its principal office. To the extent of a conflict between this subsection and any provision of the Texas Probate Code providing for venue of a proceeding brought with respect to a charitable trust created by a will that has been admitted to probate, this subsection controls.

(b) A statutory probate court of Travis County has concurrent jurisdiction with any other court on which jurisdiction is conferred by Section 4A, Texas Probate Code, in a proceeding brought by the attorney general alleging breach of a fiduciary duty with respect to a charitable trust created by a will that has been admitted to probate.

Added by Acts 1987, 70th Leg., ch. 147, Sec. 4, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 172, Sec. 4, eff. Sept. 1, 1995. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 133 (S.B. 918), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 12(g), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 401 (S.B. 587), Sec. 1, eff. June 17, 2011.

Sec. 123.006. ATTORNEY'S FEES. (a) In a proceeding subject to Section 123.005, the attorney general, if successful in the proceeding, is entitled to recover from the charitable entity or fiduciary or managerial agent of the charitable trust actual costs incurred in bringing the suit and may recover reasonable attorney's fees.

(b) In a proceeding in which the attorney general intervenes under this chapter, other than a proceeding subject to Section 123.005, a court may award the attorney general court costs and reasonable and necessary attorney's fees as may seem equitable and just.

Added by Acts 2009, 81st Leg., R.S., Ch. 133 (S.B. 918), Sec. 2, eff.

September 1, 2009.

CHAPTER 124. PARTITION OF MINERAL INTERESTS OF CHARITABLE TRUST

Sec. 124.001. DEFINITIONS. In this chapter:

(1) "Charitable entity" means a corporation, trust, community chest, fund, foundation, or other entity organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or another civic or public purpose described by Section 501(c)(3), Internal Revenue Code of 1986.

(2) "Charitable trust" means a charitable entity, a trust the stated purpose of which is to benefit a charitable entity, or an inter vivos or testamentary gift to a charitable entity.

(3) "Mineral interest" means an interest in oil, gas, or other mineral substance in place or that otherwise constitutes real property without regard to the depth at which such mineral substance is found.

Added by Acts 2013, 83rd Leg., R.S., Ch. 480 (S.B. 1240), Sec. 1, eff. June 14, 2013.

Sec. 124.002. COMPULSORY DIVESTMENT PROHIBITED. In a suit or other judicial proceeding the object or effect of which is to compel the partition of a mineral interest owned or claimed by a charitable trust, a sale or other action that would divest the charitable trust of the trust's ownership of a mineral interest may not be ordered unless the trust has refused to execute a mineral lease, the terms of which are fair and reasonable, to the plaintiff or petitioner in the proceeding.

Added by Acts 2013, 83rd Leg., R.S., Ch. 480 (S.B. 1240), Sec. 1, eff. June 14, 2013.

TITLE 10. MISCELLANEOUS BENEFICIAL PROPERTY INTERESTS

SUBTITLE A. PERSONS UNDER DISABILITY

CHAPTER 141. TRANSFERS TO MINORS

Sec. 141.001. SHORT TITLE. This chapter may be cited as the Texas Uniform Transfers to Minors Act.

Amended by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 1 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.002. DEFINITIONS. In this chapter:

(1) "Adult" means an individual who is at least 21 years of age.

(2) "Benefit plan" means a retirement plan, including an interest described by Sections 111.004(19)-(23).

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of another.

(4) "Court" means a court with original probate jurisdiction.

(5) "Custodial property" means:

(A) any interest in property transferred to a custodian under this chapter; and

(B) the income from and proceeds of that interest in property.

(6) "Custodian" means a person designated as a custodian under Section 141.010 or a successor or substitute custodian designated under Section 141.019.

(7) "Financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.

(8) "Guardian" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(9) "Legal representative" means an executor, independent executor, administrator or independent administrator of a decedent's estate, an obligor under a benefit plan or other governing instrument, a successor legal representative, or a person legally authorized to perform substantially the same functions.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of whole or half blood or by adoption.

(11) "Minor" means an individual who is younger than 21 years of age.

(12) "Transfer" means a transaction that creates custodial property under Section 141.010.

(12-a) "Qualified minor's trust" means a trust to which a gift is considered a present interest under Section 2503(c), Internal Revenue Code of 1986.

(13) "Transferor" means a person who makes a transfer under this chapter.

(14) "Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

Amended by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 2 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 16, eff. September 1, 2007.

Sec. 141.003. SCOPE AND JURISDICTION. (a) This chapter applies to a transfer that refers to the Texas Uniform Transfers to Minors Act in the designation under Section 141.010(a) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship created under Section 141.010 remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian or the removal of custodial property from this state.

(b) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and that is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

Amended by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 3 by Acts 1997, 75th Leg.,

ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.004. NOMINATION OF CUSTODIAN. (a) A person having the right to designate the recipient of property transferable on the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary on the occurrence of that event by naming the custodian followed in substance by the words: "as custodian for (name of minor) under the Texas Uniform Transfers to Minors Act." The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights, including the right to receive payments from a benefit plan, that is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under Section 141.010(a).

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under Section 141.010. Unless the nomination of a custodian has been revoked, the custodianship becomes effective on the occurrence of the future event, and the custodian shall enforce a transfer of the custodial property under Section 141.010.

Amended by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 4 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 17, eff. September 1, 2007.

Sec. 141.005. TRANSFER BY GIFT OR EXERCISE OF POWER OF APPOINTMENT. A person may make a transfer by irrevocable gift to, or

the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor under Section 141.010.

Amended by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.006. TRANSFER AUTHORIZED BY WILL OR TRUST. (a) A legal representative or trustee may make an irrevocable transfer under Section 141.010 to a custodian for a minor's benefit as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under Section 141.004 to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under Section 141.004, or all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the legal representative or the trustee shall designate the custodian from among those persons eligible to serve as custodian for property of that kind under Section 141.010(a).

Amended by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 6 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.007. OTHER TRANSFER BY FIDUCIARY. (a) Subject to Subsections (b) and (c), a guardian, legal representative, or trustee may make an irrevocable transfer to another adult or trust company as custodian for a minor's benefit under Section 141.010 in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) With the approval of the court supervising the guardianship, a guardian may make an irrevocable transfer to another adult or trust company as custodian for the minor's benefit under Section 141.010.

(c) A transfer under Subsection (a) or (b) may be made only if:

(1) the legal representative or trustee considers the transfer to be in the best interest of the minor;

(2) the transfer is not prohibited by or inconsistent with

provisions of the applicable will, trust agreement, or other governing instrument; and

(3) the transfer is authorized by the court if it exceeds $25,000 in value.

Amended by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 7 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 622 (S.B. 1202), Sec. 1, eff. September 1, 2015.

Sec. 141.008. TRANSFER BY OBLIGOR. (a) Subject to Subsections (b) and (c), a person who is not subject to Section 141.006 or 141.007 and who holds property, including a benefit plan of a minor who does not have a guardian, or who owes a liquidated debt to a minor who does not have a guardian may make an irrevocable transfer to a custodian for the benefit of the minor under Section 141.010.

(b) If a person who has the right to nominate a custodian under Section 141.004 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If a custodian has not been nominated under Section 141.004, or all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $25,000 in value.

Amended by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 8 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 18, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 622 (S.B. 1202), Sec. 2, eff. September 1, 2015.

Sec. 141.009. RECEIPT FOR CUSTODIAL PROPERTY. A written

acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian under this chapter.

Amended by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 9 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.010. MANNER OF CREATING CUSTODIAL PROPERTY AND EFFECTING TRANSFER; DESIGNATION OF INITIAL CUSTODIAN; CONTROL. (a) Custodial property is created and a transfer is made when:

(1) an uncertificated security or a certificated security in registered form is:

(A) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Texas Uniform Transfers to Minors Act"; or

(B) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in Subsection (b);

(2) money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Texas Uniform Transfers to Minors Act";

(3) the ownership of a life or endowment insurance policy or annuity contract is:

(A) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Texas Uniform Transfers to Minors Act"; or

(B) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for (name of minor) under the Texas Uniform Transfers to Minors

Act";

(4) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for (name of minor) under the Texas Uniform Transfers to Minors Act";

(5) an interest in real property is conveyed by instrument recorded in the real property records in the county in which the real property is located to the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Texas Uniform Transfers to Minors Act";

(6) a certificate of title issued by a department or agency of a state or of the United States that evidences title to tangible personal property is:

(A) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Texas Uniform Transfers to Minors Act"; or

(B) delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as a custodian for (name of minor) under the Texas Uniform Transfers to Minors Act"; or

(7) an interest in any property not described in Subdivisions (1)-(6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in Subsection (b).

(b) An instrument in the following form satisfies the requirements of Subsections (a)(1)(B) and (7):

TRANSFER UNDER THE TEXAS UNIFORM TRANSFERS TO MINORS ACT

I, _____ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to _____ (name of custodian), as custodian for _____ (name of minor) under the Texas Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: _____
_____(Signature)
_____ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Texas Uniform Transfers to Minors Act.
Dated: _____
_____
_____(Signature of Custodian)

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

Amended by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 10 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.011. SINGLE CUSTODIANSHIP. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

Amended by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 11 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.012. VALIDITY AND EFFECT OF TRANSFER. (a) The validity of a transfer made in a manner prescribed by this chapter is not affected by the:

(1) transferor's failure to comply with Section 141.010(c) concerning possession and control;

(2) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under Section 141.010(a); or

(3) death or incapacity of a person nominated under Section 141.004 or designated under Section 141.010 as custodian or the disclaimer of the office by that person.

(b) A transfer made under Section 141.010 is irrevocable, and the custodial property is indefeasibly vested in the minor. The custodian has all the rights, powers, duties, and authority provided

in this chapter, and the minor or the minor's legal representative does not have any right, power, duty, or authority with respect to the custodial property except as provided by this chapter.

(c) By making a transfer, the transferor incorporates all the provisions of this chapter in the disposition and grants to the custodian, or to any third person dealing with a person designated as custodian, the respective powers, rights and immunities provided by this chapter.

Amended by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 12 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.013. CARE OF CUSTODIAL PROPERTY. (a) A custodian shall:

(1) take control of custodial property;

(2) register or record title to custodial property if appropriate; and

(3) collect, hold, manage, sell, convey, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on the life of:

(1) the minor only if the minor or the minor's estate is the sole beneficiary; or

(2) another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of the custodian is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial

property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is registered, or held in an account designated, in the name of the custodian followed in substance by the words: "as custodian for _____ (name of minor) under the Texas Uniform Transfers to Minors Act."

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make the records available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor is at least 14 years of age.

Amended by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 13 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.014. POWERS OF CUSTODIAN. (a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of Section 141.013.

Amended by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 14 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.015. USE OF CUSTODIAL PROPERTY. (a) A custodian may deliver or pay to the minor or expend for the minor's benefit as much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

(1) the duty or ability of the custodian personally or of any other person to support the minor; or

(2) any other income or property of the minor that may be

applicable or available for that purpose.

(b) On petition of an interested person or the minor if the minor is at least 14 years of age, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit as much of the custodial property as the court considers advisable for the use and benefit of the minor.

(b-1) A custodian may, without a court order, transfer all or part of the custodial property to a qualified minor's trust. A transfer of property under this subsection terminates the custodianship to the extent of the property transferred.

(c) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

Added by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 15 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 19, eff. September 1, 2007.

Sec. 141.016. CUSTODIAN'S EXPENSES, COMPENSATION, AND BOND. (a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under Section 141.005, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed by the custodian during that year.

(c) Except as provided by Section 141.019(f), a custodian is not required to give a bond.

Added by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 16 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.017. EXEMPTION OF THIRD PERSON FROM LIABILITY. A third person, in good faith and without court order, may act on the instructions of or otherwise deal with any person purporting to make

a transfer or act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining the:

(1) validity of the purported custodian's designation;

(2) propriety of, or the authority under this chapter for, any act of the purported custodian;

(3) validity or propriety under this chapter of any instrument or instructions executed or given by the person purporting to make a transfer or by the purported custodian; or

(4) propriety of the application of the minor's property delivered to the purported custodian.

Added by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 17 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.018. LIABILITY TO THIRD PERSON. (a) A claim based on a contract entered into by a custodian acting in a custodial capacity, an obligation arising from the ownership or control of custodial property, or a tort committed during the custodianship may be asserted against the custodial property by proceeding against the custodian in the custodian's custodial capacity, whether or not the custodian or the minor is personally liable for the claim.

(b) A custodian is not personally liable:

(1) on a contract properly entered into in the custodian's custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(2) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

Added by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 18 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.019. RENUNCIATION, RESIGNATION, DEATH, OR REMOVAL OF CUSTODIAN; DESIGNATION OF SUCCESSOR CUSTODIAN. (a) A person

nominated to serve as a custodian under Section 141.004 or designated to serve as a custodian under Section 141.010 may decline to serve as custodian by delivering written notice to the person who made the nomination or to the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian who is able, willing, and eligible to serve was nominated under Section 141.004, the person who made the nomination may nominate a substitute custodian under Section 141.004; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under Section 141.010(a). A substitute custodian designated under this section has the rights of a successor custodian.

(b) A custodian at any time may designate as successor custodian a trust company or an adult other than a transferor under Section 141.005 by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the custodian's resignation, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering:

(1) written notice to the successor custodian and to the minor if the minor is at least 14 years of age; and

(2) the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor is at least 14 years of age, the minor may designate as successor custodian an adult member of the minor's family, a guardian of the minor, or a trust company in the manner prescribed by Subsection (b). If the minor is younger than 14 years of age or fails to act within 60 days after the ineligibility, death, or incapacity of the custodian, the minor's guardian becomes successor custodian. If the minor has no guardian or the minor's guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) As soon as practicable, a custodian who declines to serve under Subsection (a) or resigns under Subsection (c), or the legal

representative of a deceased or incapacitated custodian, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the guardian of the minor, or the minor if the minor is at least 14 years of age may petition the court to:

(1) remove the custodian for cause and designate a successor custodian other than a transferor under Section 141.005; or

(2) require the custodian to give appropriate bond.

Added by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 19 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.020. ACCOUNTING BY AND DETERMINATION OF LIABILITY. (a) A minor who is at least 14 years of age, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court for:

(1) an accounting by the custodian or the custodian's legal representative; or

(2) a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under Section 141.018 to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under Section 141.019(f), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

Added by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 20 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.021. TERMINATION OF CUSTODIANSHIP. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate on the earlier of the date:

(1) the minor attains 21 years of age, with respect to custodial property transferred under Section 141.005 or 141.006;

(2) the minor attains the age of majority under the laws of this state other than this chapter, with respect to custodial property transferred under Section 141.007 or 141.008; or

(3) the minor's death.

Added by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 21 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.022. APPLICABILITY. Except as provided by Section 141.025, this chapter applies to a transfer within the scope of Section 141.003 made after September 1, 1995, if:

(1) the transfer purports to have been made under the Texas Uniform Gifts to Minors Act; or

(2) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this chapter is necessary to validate the transfer.

Added by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 221, Sec. 1, eff. Sept. 1, 1997. Renumbered from Property Code Sec. 22 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.023. EFFECT ON EXISTING CUSTODIANSHIPS. (a) Any transfer of custodial property under this chapter made before September 1, 1995, is validated notwithstanding that there was no specific authority in this chapter for the coverage of custodial

property of that kind or for a transfer from that source at the time the transfer was made.

(b) Sections 141.002 and 141.021, with respect to the age of a minor for whom custodial property is held under this chapter, do not apply to custodial property held in a custodianship that terminated because the minor attained the age of 18 after August 26, 1973, and before September 1, 1995.

Added by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 23 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.024. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effect its general purpose, to make uniform the law with respect to the subject of this chapter among states enacting that law.

Added by Acts 1995, 74th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 24 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997.

Sec. 141.025. ADDITIONAL TRANSFERS TO CUSTODIANSHIPS IN EXISTENCE BEFORE EFFECTIVE DATE OF ACT. (a) This section applies only to a transfer within the scope of Section 141.003 made after September 1, 1995, to a custodian of a custodianship established before September 1, 1995, under the Texas Uniform Gifts to Minors Act.

(b) This chapter does not prevent a person from making additional transfers to a custodianship described by Subsection (a). On the direction of the transferor or custodian, custodial property that is transferred to the custodianship shall be commingled with the custodial property of the custodianship established under the Texas Uniform Gifts to Minors Act. The additional transfers to the custodianship shall be administered and distributed on termination of the custodianship, as prescribed by this chapter, except that for purposes of Section 141.021, the custodian shall transfer the custodial property to:

(1) the beneficiary on the date the beneficiary attains 18 years of age or an earlier date as prescribed by Section 141.021; or

(2) the beneficiary's estate if the individual dies before the date prescribed by Subdivision (1).

Added by Acts 1997, 75th Leg., ch. 221, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(72), eff. Sept. 1, 1997. Renumbered from Property Code Sec. 25 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(91), eff. Sept. 1, 1999.

CHAPTER 142. MANAGEMENT OF PROPERTY RECOVERED IN SUIT BY A NEXT FRIEND OR GUARDIAN AD LITEM

Sec. 142.001. MANAGEMENT BY DECREE. (a) In a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem, the court, on application and hearing, may provide by decree for the investment of funds accruing to the minor or other person under the judgment in the suit.

(b) If the decree is made during vacation, it must be recorded in the minutes of the succeeding term of the court.

Acts 1983, 68th Leg., p. 3711, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 14(b), eff. Oct. 2, 1984; Acts 1999, 76th Leg., ch. 195, Sec. 2, eff. Sept. 1, 1999.

Sec. 142.002. MANAGEMENT BY BONDED MANAGER. (a) In a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem, the court in which a judgment is rendered may by an order entered of record authorize the next friend, the guardian ad litem, or another person to take possession of money or other personal property recovered under the judgment for the minor or other person represented.

(b) The next friend, guardian ad litem, or other person may not take possession of the property until the person has executed a bond as principal that:

(1) is in an amount at least double the value of the property or, if a surety on the bond is a solvent surety company authorized under the law of this state to execute the bond, is in an amount at least equal to the value of the property;

(2) is payable to the county judge; and

(3) is conditioned on the obligation of the next friend, guardian ad litem, or other person to use the property under the direction of the court for the benefit of its owner and to return the property, with interest or other increase, to the person entitled to receive the property when ordered by the court to do so.

Acts 1983, 68th Leg., p. 3711, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 14(c), eff. Oct. 2, 1984; Acts 1999, 76th Leg., ch. 195, Sec. 3, eff. Sept. 1, 1999.

Sec. 142.003. COMPENSATION AND DUTIES OF MANAGERS. (a) A person who manages property under Section 142.001 or 142.002 is entitled to receive compensation as allowed by the court.

(b) The person shall make dispositions of the property as ordered by the court and shall return the property into court on the order of the court.

Acts 1983, 68th Leg., p. 3711, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 142.004. INVESTMENT OF FUNDS. (a) In a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem, any money recovered by the plaintiff, if not otherwise managed under this chapter, may be invested:

(1) by the next friend or guardian ad litem in:

(A) a higher education savings plan established under Subchapter G, Chapter 54, Education Code, or a prepaid tuition program established under Subchapter H, Chapter 54, Education Code; or

(B) interest-bearing time deposits in a financial institution doing business in this state and insured by the Federal Deposit Insurance Corporation; or

(2) by the clerk of the court, on written order of the court of proper jurisdiction, in:

(A) a higher education savings plan established under Subchapter G, Chapter 54, Education Code, or a prepaid tuition program established under Subchapter H, Chapter 54, Education Code;

(B) interest-bearing deposits in a financial institution doing business in this state and insured by the Federal Deposit Insurance Corporation;

(C) United States treasury bills;

(D) an eligible interlocal investment pool that meets the requirements of Sections 2256.016, 2256.017, and 2256.019, Government Code; or

(E) a no-load money market mutual fund, if the fund:

(i) is regulated by the Securities and Exchange Commission;

(ii) has a dollar weighted average stated maturity of 90 days or fewer; and

(iii) includes in its investment objectives the maintenance of a stable net asset value of $1 for each share.

(b) If the money invested under this section may not be withdrawn from the financial institution without an order of the court, a next friend or guardian ad litem who makes the investment is not required to execute a bond with respect to the money.

(c) When money invested under this section is withdrawn, the court may:

(1) on a finding that the person entitled to receive the money is no longer under the disability, order the funds turned over to the person; or

(2) order management of the funds under another provision of this chapter.

(d) Interest earned on an account invested by the clerk of the court shall be paid in the same manner as interest earned on an account under Chapter 117, Local Government Code.

(e) If money is invested under Subsection (a)(2)(E), the court may waive any bonding requirement.

Acts 1983, 68th Leg., p. 3712, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 14(d), eff. Oct. 2, 1984; Acts 1997, 75th Leg., ch. 505, Sec. 22, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 94, Sec. 1, eff. May 17, 1999; Acts 1999, 76th Leg., ch. 195, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 17.002, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 289 (H.B. 1560), Sec. 1, eff. September 1, 2015.

Sec. 142.005. TRUST FOR PROPERTY. (a) Any court of record with jurisdiction to hear a suit involving a beneficiary may, on application and on a finding that the creation of a trust would be in the best interests of the beneficiary, enter a decree in the record directing the clerk to deliver any funds accruing to the beneficiary under the judgment to a financial institution, except as provided by Subsections (m) and (n).

(b) The decree shall provide for the creation of a trust for the management of the funds for the benefit of the beneficiary and for terms, conditions, and limitations of the trust, as determined by the court, that are not in conflict with the following mandatory provisions:

(1) The beneficiary shall be the sole beneficiary of the trust.

(2) The trustee may disburse amounts of the trust's principal, income, or both as the trustee in the trustee's sole discretion determines to be reasonably necessary for the health, education, support, or maintenance of the beneficiary. The trustee may conclusively presume that medicine or treatments approved by a licensed physician are appropriate for the health of the beneficiary.

(3) The income of the trust not disbursed under Subdivision (2) shall be added to the principal of the trust.

(4) If the beneficiary is a minor, the trust shall terminate on the death of the beneficiary, on the beneficiary's attaining an age stated in the trust, or on the 25th birthday of the beneficiary, whichever occurs first, or if the beneficiary is an incapacitated person, the trust shall terminate on the death of the beneficiary or when the beneficiary regains capacity.

(5) A trustee that is a financial institution shall serve without bond.

(6) The trustee shall receive reasonable compensation paid from trust's income, principal, or both on application to and approval of the court.

(7) The first page of the trust instrument shall contain the following notice:

NOTICE: THE BENEFICIARY AND CERTAIN PERSONS INTERESTED IN THE WELFARE OF THE BENEFICIARY MAY HAVE REMEDIES UNDER SECTION 114.008 OR 142.005, PROPERTY CODE.

(c) A trust established under this section may provide that:

(1) distributions of the trust principal before the termination of the trust may be made from time to time as the beneficiary attains designated ages and at designated percentages of the principal; and

(2) distributions, payments, uses, and applications of all trust funds may be made to the legal or natural guardian of the beneficiary or to the person having custody of the beneficiary or may be made directly to or expended for the benefit, support, or maintenance of the beneficiary without the intervention of any legal guardian or other legal representative of the beneficiary.

(d) A court that creates a trust under this section has continuing jurisdiction and supervisory power over the trust, including the power to construe, amend, revoke, modify, or terminate the trust. A trust created under this section is not subject to revocation by the beneficiary or a guardian of the beneficiary's estate. If the trust is revoked by the court before the beneficiary is 18 years old, the court may provide for the management of the trust principal and any undistributed income as authorized by this chapter. If the trust is revoked by the court after the beneficiary is 18 years old, the trust principal and any undistributed income shall be delivered to the beneficiary after the payment of all proper and necessary expenses.

(e) On the termination of the trust under its terms or on the death of the beneficiary, the trust principal and any undistributed income shall be paid to the beneficiary or to the representative of the estate of the deceased beneficiary.

(f) A trust established under this section prevails over any other law concerning minors, incapacitated persons, or their property, and the trust continues in force and effect until terminated or revoked, notwithstanding the appointment of a guardian of the estate of the minor or incapacitated person, or the attainment of the age of majority by the minor.

(g) Notwithstanding any other provision of this chapter, if the court finds that it would be in the best interests of the beneficiary for whom a trust is established under this section, the court may omit or modify any terms required by Subsection (b) if the court determines that the omission or modification is necessary or appropriate to allow the beneficiary to be eligible to receive public benefits or assistance under a state or federal program. This

section does not require a distribution from a trust if the distribution is discretionary under the terms of the trust.

(h) A trust created under this section is subject to Subtitle B, Title 9.

(i) Notwithstanding Subsection (h), this section prevails over a provision in Subtitle B, Title 9, that is in conflict or inconsistent with this section.

(j) A provision in a trust created under this section that relieves a trustee from a duty, responsibility, or liability imposed by this section or Subtitle B, Title 9, is enforceable only if:

(1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and

(2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the beneficiary of the trust.

(k) In addition to ordering other appropriate remedies and grounds, the court may appoint a guardian ad litem to investigate and report to the court whether the trustee should be removed for failing or refusing to make distributions for the health, education, support, or maintenance of the beneficiary required under the terms of the trust if the court is petitioned by:

(1) a parent of the beneficiary;

(2) a next friend of the beneficiary;

(3) a guardian of the beneficiary;

(4) a conservator of the beneficiary;

(5) a guardian ad litem for the beneficiary; or

(6) an attorney ad litem for the beneficiary.

(l) A person listed in Subsection (k) shall be reimbursed from the trust for reasonable attorney's fees, not to exceed $1,000, incurred in bringing the petition.

(m) If the value of the trust's principal is $50,000 or less, the court may appoint a person other than a financial institution to serve as trustee of the trust only if the court finds the appointment is in the beneficiary's best interests.

(n) If the value of the trust's principal is more than $50,000, the court may appoint a person other than a financial institution to serve as trustee of the trust only if the court finds that:

(1) no financial institution is willing to serve as

trustee; and

(2) the appointment is in the beneficiary's best interests.

(o) In this section:

(1) "Beneficiary" means:

(A) a minor or incapacitated person who:

(i) has no legal guardian; and

(ii) is represented by a next friend or an appointed guardian ad litem; or

(B) a person with a physical disability.

(2) "Financial institution" means a financial institution, as defined by Section 201.101, Finance Code, that has trust powers, exists, and does business under the laws of this or another state or the United States.

Acts 1983, 68th Leg., p. 3712, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 14(e), (f), eff. Oct. 2, 1984; Acts 1997, 75th Leg., ch. 128, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1154, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 28, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 20, eff. September 1, 2007.

Sec. 142.006. CLAIMS AGAINST PROPERTY. If any person claims an interest in property subject to management under this chapter, the court having authority over the property may hear evidence on the interest and may order the claim or the portion of the claim found to be just to be paid to the person entitled to receive it.

Acts 1983, 68th Leg., p. 3714, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 142.007. INCAPACITATED PERSON. For the purposes of this chapter, "incapacitated person" means a person who is impaired because of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or any other cause except status as a minor to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 14(g), eff. Oct. 2, 1984.

Sec. 142.008. STRUCTURED SETTLEMENT. (a) In a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem, the court, on a motion from the parties, may provide for a structured settlement that:

(1) provides for periodic payments; and

(2) is funded by:

(A) an obligation guaranteed by the United States government; or

(B) an annuity contract that meets the requirements of Section 142.009.

(b) The person obligated to fund a structured settlement shall provide to the court:

(1) a copy of the instrument that provides funding for the structured settlement; or

(2) an affidavit from an independent financial consultant that specifies the present value of the structured settlement and the method by which the value is calculated.

(c) A structured settlement provided for under this section is solely for the benefit of the beneficiary of the structured settlement and is not subject to the interest payment calculations contained in Section 117.054, Local Government Code.

Added by Acts 1999, 76th Leg., ch. 195, Sec. 5, eff. Sept. 1, 1999.

Sec. 142.009. ANNUITY CONTRACT REQUIREMENTS FOR STRUCTURED SETTLEMENT. (a) An insurance company providing an annuity contract for a structured settlement as provided by Section 142.008 must:

(1) be licensed to write annuity contracts in this state;

(2) have a minimum of $1 million of capital and surplus; and

(3) be approved by the court and comply with any requirements imposed by the court to ensure funding to satisfy periodic settlement payments.

(b) In approving an insurance company under Subsection (a)(3),

the court may consider whether the company:

(1) holds an industry rating equivalent to at least two of the following rating organizations:

(A) A. M. Best Company: A++ or A+;

(B) Duff & Phelps Credit Rating Company Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA;

(C) Moody's Investors Service Claims Paying Ability Rating: Aa3, Aa2, Aa1, or aaa; or

(D) Standard & Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;

(2) is an affiliate, as that term is described by Section 823.003, Insurance Code, of a liability insurance carrier involved in the suit for which the structured settlement is created; or

(3) is connected in any way to a person obligated to fund the structured settlement.

Added by Acts 1999, 76th Leg., ch. 195, Sec. 5, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 96, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.551, eff. Sept. 1, 2003.

SUBTITLE B. FIDUCIARIES

CHAPTER 161. MANAGEMENT AND CONTROL OF SECURITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. DEFINITIONS. In this chapter:

(1) "Fiduciary" means an executor, administrator, or trustee of an express trust, including a corporation or a natural person acting as fiduciary, and a successor or substitute, whether or not designated in a trust instrument.

(2) "Clearing corporation" has the meaning assigned by Section 8.102, Business & Commerce Code, as amended.

Acts 1983, 68th Leg., p. 3715, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.002. DECREE OR GOVERNING INSTRUMENT CONTROLS. The authority granted in this chapter is subject to contrary or limiting provisions in the instrument or court order appointing the fiduciary of the securities or in a subsequent court order.

Acts 1983, 68th Leg., p. 3715, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. CUSTODIAN OF SECURITIES

Sec. 161.021. AUTHORITY OF FIDUCIARY. A fiduciary who holds a security in a fiduciary capacity may:

(1) employ a bank incorporated in this state or a national bank located in this state as custodian of the security; and

(2) whether the fiduciary is an individual or a bank and if any individual who is a cofiduciary with the bank consents, authorize the security to be registered and held in the name of a nominee of the bank without disclosing the fiduciary relationship.

Acts 1983, 68th Leg., p. 3716, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.022. SEPARATE ASSETS. (a) A bank holding a security under this subchapter, whether in registered or bearer form, at all times shall keep the security separate from the bank's assets. The bank may:

(1) hold separately the certificates representing securities that periodically comprise the assets of a particular fiduciary account from those of all other accounts; or

(2) without certification as to ownership attached, hold in bulk certificates representing the same class of securities of the same issuer that periodically comprise the assets of different fiduciary accounts and, to the extent feasible, merge certificates of small denomination into one or more certificates of large denomination.

(b) A bank that holds security certificates in bulk is subject to the regulations issued by the Finance Commission of Texas if the bank is chartered by this state or by the comptroller of the currency if the bank is a national banking association.

Acts 1983, 68th Leg., p. 3716, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.023. EXPENSE OF CUSTODIANSHIP. Unless the fiduciary is a corporation, the cost of employing a bank as a custodian of securities under this subchapter is a charge against the estate or trust.

Acts 1983, 68th Leg., p. 3716, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.024. RECORDS. A bank holding a security under Section 161.021, whether in registered or bearer form, at all times shall keep records showing the ownership of the security.

Acts 1983, 68th Leg., p. 3716, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.025. REDELIVERY OF SECURITY HELD BY NOMINEE. (a) A bank holding a security in the name of a nominee of the bank under this subchapter may not redeliver the security to the individual fiduciary who authorized its registration in the name of the nominee without registering the security in the name of the individual fiduciary, as fiduciary.

(b) A sale of the security by the bank at the direction of the individual fiduciary is not a redelivery.

Acts 1983, 68th Leg., p. 3717, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.026. DISPOSITION OF SECURITY HELD BY NOMINEE. A bank holding a security in the name of a nominee under this subchapter may make any disposition of the security that is authorized or ordered by a court having jurisdiction of the estate or trust.

Acts 1983, 68th Leg., p. 3717, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.027. LIABILITY. A bank holding a security in the name of a nominee under this subchapter is liable for a loss resulting from the acts of the bank's nominee with respect to the security.

Acts 1983, 68th Leg., p. 3717, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.028. CERTIFICATION. (a) On the demand of a fiduciary employing a bank to hold a security as custodian under this subchapter, the bank shall identify in a written certification the securities it holds for the fiduciary.

(b) On the demand of a party, or the attorney of a party, to an accounting by a bank holding a security in the name of a nominee under this subchapter, the bank shall identify in a written certification the securities it holds as fiduciary.

Acts 1983, 68th Leg., p. 3717, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. DEPOSIT OF SECURITY WITH FEDERAL RESERVE BANK OR CLEARING CORPORATION

Sec. 161.051. APPLICATION. (a) Except as provided by Subsection (b), this subchapter applies to a fiduciary holding a security in its fiduciary capacity and to a bank, trust company, or private banker holding a security as a fiduciary, custodian, custodian for a fiduciary, or managing agent, regardless of:

(1) the date of the agreement, instrument, or court order by which the fiduciary, custodian, or managing agent is appointed; and

(2) ownership by the fiduciary, custodian, or managing agent of capital stock of the clearing corporation.

(b) This subchapter does not apply to a security held by a fiduciary, bank, trust company, or private banker on behalf of a domestic insurance company, unless the prior express approval of the State Board of Insurance is obtained. The board may grant approval to all domestic insurance companies generally, or to specific insurance companies on a case-by-case basis.

(c) For the purposes of this subchapter, "fiduciary" includes a state or national bank acting in a fiduciary capacity.

Acts 1983, 68th Leg., p. 3717, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.052. AUTHORITY OF FIDUCIARY. A fiduciary holding a security in its fiduciary capacity and a bank, trust company, or private banker holding a security as a custodian for a fiduciary, a managing agent, or a custodian may deposit or arrange for the deposit of the security with:

(1) the Federal Reserve Bank of Dallas if the United States has agreed to pay or has guaranteed payment of the security's principal and interest; or

(2) a clearing corporation, either in this state or

elsewhere, regardless of whether the clearing corporation conducts or is authorized to conduct business in this state.

Acts 1983, 68th Leg., p. 3718, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.053. BULK HOLDINGS. A clearing corporation may merge and hold in bulk certificates representing the same class of securities of the same issuer that are deposited with it under this subchapter, together with any other securities deposited with the clearing corporation by any person in the name of the nominee of the clearing corporation, regardless of the ownership of the securities. Certificates of small denomination may be merged into one or more certificates of larger denomination.

Acts 1983, 68th Leg., p. 3718, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.054. RECORDS. A fiduciary, bank, trust company, or private banker depositing a security under this subchapter shall show in its records at all times the ownership of the securities deposited in the account.

Acts 1983, 68th Leg., p. 3719, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.055. REGULATION. A bank, trust company, or private banker depositing securities under this subchapter is subject to the regulations issued by the Finance Commission of Texas if the institution is chartered by this state or is private or by the comptroller of the currency if the institution is a national banking association.

Acts 1983, 68th Leg., p. 3719, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.056. BOOK TRANSFERS. The Federal Reserve Bank of Dallas or a clearing corporation holding securities deposited under this subchapter may transfer ownership of or other interests in the securities by making entries in the books of the bank or corporation and without physical delivery of certificates representing the

securities.

Acts 1983, 68th Leg., p. 3719, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.057. LIABILITY. A fiduciary who deposits securities in a clearing corporation is liable to the beneficial owner of the securities for a loss resulting from the acts or omissions of the clearing corporation. This subchapter does not affect a liability between the fiduciary and the clearing corporation.

Acts 1983, 68th Leg., p. 3719, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 161.058. CERTIFICATION. (a) On the demand of a fiduciary for whom a bank, trust company, or private banker is acting as custodian, the bank, trust company, or private banker shall identify in a written certification the securities deposited by the bank, trust company, or private banker with the federal reserve bank or in the clearing corporation for the account of the fiduciary.

(b) On the demand of a party, or the attorney of a party, to an accounting by a fiduciary or by a bank, trust company, or private banker that is acting as a fiduciary, a custodian, a custodian for a fiduciary, or a managing agent, the fiduciary, bank, trust company, or private banker shall identify in a written certification to the party the securities deposited by the fiduciary, bank, trust company, or private banker with the federal reserve bank or the clearing corporation.

Acts 1983, 68th Leg., p. 3719, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 162. CONSTRUCTION PAYMENTS, LOAN RECEIPTS, AND MISAPPLICATION OF TRUST FUNDS

SUBCHAPTER A. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS

Sec. 162.001. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS AS TRUST FUNDS. (a) Construction payments are trust funds under this chapter if the payments are made to a contractor or subcontractor or to an officer, director, or agent of a contractor or subcontractor, under a construction contract for the improvement of specific real property in this state.

(b) Loan receipts are trust funds under this chapter if the funds are borrowed by a contractor, subcontractor, or owner or by an officer, director, or agent of a contractor, subcontractor, or owner for the purpose of improving specific real property in this state, and the loan is secured in whole or in part by a lien on the property.

(c) A fee payable to a contractor is not considered trust funds if:

(1) the contractor and property owner have entered into a written construction contract for the improvement of specific real property in this state before the commencement of construction of the improvement and the contract provides for the payment by the owner of the costs of construction and a reasonable fee specified in the contract payable to the contractor; and

(2) the fee is earned as provided by the contract and paid to the contractor or disbursed from a construction account described by Section 162.006, if applicable.

(d) Trust funds paid to a creditor under this chapter are not property or an interest in property of a debtor who is a trustee described by Section 162.002.

Acts 1983, 68th Leg., p. 3720, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 1018, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1277 (H.B. 1513), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1277 (H.B. 1513), Sec. 2, eff. September 1, 2009.

Sec. 162.002. CONTRACTORS AS TRUSTEES. A contractor, subcontractor, or owner or an officer, director, or agent of a contractor, subcontractor, or owner, who receives trust funds or who has control or direction of trust funds, is a trustee of the trust funds.

Acts 1983, 68th Leg., p. 3721, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 162.003. BENEFICIARIES OF TRUST FUNDS. (a) An artisan,

laborer, mechanic, contractor, subcontractor, or materialman who labors or who furnishes labor or material for the construction or repair of an improvement on specific real property in this state is a beneficiary of any trust funds paid or received in connection with the improvement.

(b) A property owner is a beneficiary of trust funds described by Section 162.001 in connection with a residential construction contract, including funds deposited into a construction account described by Section 162.006.

Acts 1983, 68th Leg., p. 3721, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 1018, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1277 (H.B. 1513), Sec. 3, eff. September 1, 2009.

Sec. 162.004. APPLICATION. (a) This chapter does not apply to:

(1) a bank, savings and loan, or other lender;

(2) a title company or other closing agent; or

(3) a corporate surety who issues a payment bond covering the contract for the construction or repair of the improvement.

(b) The Texas Trust Act (Chapters 111 through 115) does not apply to any trust created under this chapter, nor does this chapter affect any provision of the Texas Trust Act.

(c) Regardless of whether a construction contract is covered by a statutory or common law payment bond, this chapter applies to a public or private construction contract for the improvement of specific real property in this state.

Acts 1983, 68th Leg., p. 3721, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 578, Sec. 2, eff. Aug. 31, 1987.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1277 (H.B. 1513), Sec. 4, eff. September 1, 2009.

Sec. 162.005. DEFINITIONS. In this chapter:

(1) A trustee acts with "intent to defraud" when the

trustee:

(A) retains, uses, disburses, or diverts trust funds with the intent to deprive the beneficiaries of the trust funds;

(B) retains, uses, disburses, or diverts trust funds and fails to establish or maintain a construction account as required by Section 162.006 or fails to establish or maintain an account record for the construction account as required by Section 162.007; or

(C) uses, disburses, or diverts trust funds that were paid to the trustee in reliance on an affidavit furnished by the trustee under Section 53.085 if the affidavit contains false information relating to the trustee's payment of current or past due obligations.

(2) "Current or past due obligations" are those obligations incurred or owed by the trustee for labor or materials furnished in the direct prosecution of the work under the construction contract prior to the receipt of the trust funds and which are due and payable by the trustee no later than 30 days following receipt of the trust funds.

(3) "Direct cost" means a cost included under a construction contract that is specific to the construction of the improvement that is the subject of the contract.

(4) "Indirect cost" means a cost included under a construction contract that is not specific to the construction of the improvement that is the subject of the contract.

(5) "Financial institution" means a bank, savings association, savings bank, credit union, or savings and loan association authorized to do business in the state.

(6) "Construction account" means an account in a financial institution into which only trust funds and funds deposited by the contractor that are necessary to pay charges imposed on the account by the financial institution may be maintained.

Added by Acts 1987, 70th Leg., ch. 578, Sec. 3, eff. Aug. 31, 1987. Amended by Acts 1997, 75th Leg., ch. 1018, Sec. 3, eff. Sept. 1, 1997.

Sec. 162.006. CONSTRUCTION ACCOUNT REQUIRED IN CERTAIN CIRCUMSTANCES. (a) A contractor who enters into a written contract

with a property owner to construct improvements to a residential homestead for an amount exceeding $5,000 shall deposit the trust funds in a construction account in a financial institution.

(b) The periodic statement received from the financial institution must refer to the account as a "construction account" to satisfy the requirements of this section.

Added by Acts 1997, 75th Leg., ch. 1018, Sec. 4, eff. Sept. 1, 1997.

Sec. 162.007. MANAGEMENT OF CONSTRUCTION ACCOUNTS. (a) A contractor required to maintain a construction account under this subchapter shall maintain an account record for the construction account that provides information relating to:

(1) the source and amount of the funds in the account and the date the funds were deposited;

(2) the date and amount of each disbursement from the account and the person to whom the funds were disbursed; and

(3) the current balance of the account.

(b) The contractor shall maintain an account record for each construction project that specifies the direct costs and indirect costs charged to the owner.

(c) The contractor shall retain all invoices and other supporting documentation received relating to funds that were disbursed from the construction account.

(d) The contractor shall ensure that all deposit and disbursement documentation includes the construction account number or information that provides a direct connection between the documentation and the account.

(e) The contractor may not destroy information required to be maintained under this section before the first anniversary of the date the improvement that is the subject of the contract is completed.

Added by Acts 1997, 75th Leg., ch. 1018, Sec. 4, eff. Sept. 1, 1997.

SUBCHAPTER B. MISAPPLICATION OF TRUST FUNDS

Sec. 162.031. MISAPPLICATION OF TRUST FUNDS. (a) A trustee who, intentionally or knowingly or with intent to defraud, directly or indirectly retains, uses, disburses, or otherwise diverts trust

funds without first fully paying all current or past due obligations incurred by the trustee to the beneficiaries of the trust funds, has misapplied the trust funds.

(b) It is an affirmative defense to prosecution or other action brought under Subsection (a) that the trust funds not paid to the beneficiaries of the trust were used by the trustee to pay the trustee's actual expenses directly related to the construction or repair of the improvement or have been retained by the trustee, after notice to the beneficiary who has made a request for payment, as a result of the trustee's reasonable belief that the beneficiary is not entitled to such funds or have been retained as authorized or required by Chapter 53.

(c) It is also an affirmative defense to prosecution or other action brought under Subsection (a) that the trustee paid the beneficiaries all trust funds which they are entitled to receive no later than 30 days following written notice to the trustee of the filing of a criminal complaint or other notice of a pending criminal investigation.

(d) A trustee who commingles trust funds with other funds in the trustee's possession does not defeat a trust created by this chapter.

Acts 1983, 68th Leg., p. 3721, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 578, Sec. 4, eff. Aug. 31, 1987. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1277 (H.B. 1513), Sec. 5, eff. September 1, 2009.

Sec. 162.032. PENALTIES. (a) A trustee who misapplies trust funds amounting to $500 or more in violation of this chapter commits a Class A misdemeanor.

(b) A trustee who misapplies trust funds amounting to $500 or more in violation of this chapter, with intent to defraud, commits a felony of the third degree.

(c) A trustee who fails to establish or maintain a construction account in violation of Section 162.006 or fails to establish or maintain an account record for the construction account in violation of Section 162.007 commits a Class A misdemeanor.

Acts 1983, 68th Leg., p. 3722, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 1987, 70th Leg., ch. 578, Sec. 5, eff. Aug. 31, 1987; Acts 1997, 75th Leg., ch. 1018, Sec. 5, eff. Sept. 1, 1997.

Sec. 162.033. ELECTION OF OFFENSES. If the misapplication of trust funds by a trustee constitutes another offense punishable under the laws of this state, the state may elect the offense for which it will prosecute the trustee.

Acts 1983, 68th Leg., p. 3722, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 163. MANAGEMENT, INVESTMENT, AND EXPENDITURE OF INSTITUTIONAL FUNDS

Sec. 163.001. SHORT TITLE. This chapter may be cited as the Uniform Prudent Management of Institutional Funds Act.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 834 (H.B. 860), Sec. 1, eff. September 1, 2007.

Sec. 163.002. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) institutions organized and operated exclusively for a charitable purpose perform essential and needed services in the state;

(2) uncertainty exists regarding the prudence standards for the management and investment of charitable funds and for endowment spending by institutions described by Subdivision (1); and

(3) the institutions, their officers, directors, and trustees, and the citizens of this state will benefit from removal of the uncertainty regarding applicable prudence standards and by permitting endowment funds to be invested for the long-term goals of achieving growth and maintaining purchasing power without adversely affecting the availability of funds for current expenditure.

(b) The purpose of this chapter is to provide guidance and authority through modern articulations of prudence standards for the management and investment of charitable funds and for endowment spending by institutions organized and operated exclusively for a

charitable purpose in order to provide uniformity and remove uncertainty regarding those standards.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989. Amended by Acts 1993, 73rd Leg., ch. 240, Sec. 1, eff. May 22, 1993. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 834 (H.B. 860), Sec. 1, eff. September 1, 2007.

Sec. 163.003. DEFINITIONS. In this chapter:

(1) "Charitable purpose" means the promotion of a scientific, educational, philanthropic, or environmental purpose, social welfare, the arts and humanities, or another civic or public purpose described by Section 501(c)(3) of the Internal Revenue Code of 1986.

(2) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) "Institution" means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes;

(B) a government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and

(C) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

(A) program-related assets;

(B) a fund held for an institution by a trustee that is not an institution; or

(C) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise

upon violation or failure of the purposes of the fund.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989. Amended by Acts 1993, 73rd Leg., ch. 240, Sec. 2, eff. May 22, 1993. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 834 (H.B. 860), Sec. 1, eff. September 1, 2007.

Sec. 163.004. STANDARD OF CONDUCT IN MANAGING AND INVESTING INSTITUTIONAL FUND. (a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the

following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) general economic conditions;

(B) the possible effect of inflation or deflation;

(C) the expected tax consequences, if any, of investment decisions or strategies;

(D) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) the expected total return from income and the appreciation of investments;

(F) other resources of the institution;

(G) the needs of the institution and the fund to make distributions and to preserve capital; and

(H) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989. Amended by Acts 1993, 73rd Leg., ch. 240, Sec. 3, eff. May 22, 1993; Acts 2001, 77th Leg., ch. 1158, Sec. 88, 89, eff. June 15, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 834 (H.B. 860), Sec. 1, eff. September 1, 2007.

Sec. 163.005. APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUND; RULES OF CONSTRUCTION. (a) Subject to the intent of a donor expressed in the gift instrument and to Subsections (d) and (e), an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) the duration and preservation of the endowment fund;

(2) the purposes of the institution and the endowment fund;

(3) general economic conditions;

(4) the possible effect of inflation or deflation;

(5) the expected total return from income and the appreciation of investments;

(6) other resources of the institution; and

(7) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under Subsection (a), a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

(1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) do not otherwise limit the authority to appropriate for expenditure or accumulate under Subsection (a).

(d) Except as provided in Subsection (f), appropriation for expenditure in any year of an amount greater than seven percent of the fair market value of an endowment fund with an aggregate value of $1 million or more, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than three years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(1) apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument; or

(2) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to seven percent of the fair market value of the endowment fund.

(e) For an institution with an endowment fund with an aggregate value of less than $1 million, a rebuttable presumption of imprudence is created if more than five percent of the fair market value of the endowment fund is appropriated for expenditure in any year, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure was made. For an endowment fund in existence for fewer than three years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(1) apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument; or

(2) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to five percent of the fair market value of the endowment fund.

(f) This subsection applies only to a university system, as defined by Section 61.003(10), Education Code. The appropriation for expenditure in any year of any amount greater than nine percent of the fair market value of an endowment fund with an aggregate value of $450 million or more, calculated on the basis of market values determined at least quarterly and averaged over a period of not less

than three years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than three years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(1) apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument; or

(2) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to nine percent of the fair market value of the endowment fund.

(g) If an institution pools the assets of individual endowment funds for collective investment, this section applies to the pooled fund and does not apply to individual endowment funds, including individual endowment funds for which the nature of the underlying asset or donor restrictions preclude inclusion in a pool but which are managed by the institution in accordance with a collective investment policy.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 834 (H.B. 860), Sec. 1, eff. September 1, 2007.

Sec. 163.006. DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS. (a) Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with Subsection (a) is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this chapter.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 834 (H.B. 860), Sec. 1, eff. September 1, 2007.

Sec. 163.007. RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE. (a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. Chapter 123 applies to a proceeding under this subsection. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful,

the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. Chapter 123 applies to a proceeding under this subsection.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after receipt of notice by the attorney general, may release or modify the restriction, in whole or part, if:

(1) the institutional fund subject to the restriction has a total value of less than $25,000;

(2) more than 20 years have elapsed since the fund was established; and

(3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

(e) The notification to the attorney general under Subsection (d) must be accompanied by a copy of the gift instrument and a statement of facts sufficient to evidence compliance with Subsections (d)(1), (2), and (3).

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 834 (H.B. 860), Sec. 1, eff. September 1, 2007.

Sec. 163.008. REVIEWING COMPLIANCE. Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 834 (H.B. 860), Sec. 1, eff. September 1, 2007.

Sec. 163.009. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND

NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101 of that Act (15 U.S.C. Section 7001(a)) or authorize electronic delivery of any of the notices described in Section 103 of that Act (15 U.S.C. Section 7003(b)).

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 834 (H.B. 860), Sec. 1, eff. September 1, 2007.

Sec. 163.010. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law substantially similar to this chapter.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 834 (H.B. 860), Sec. 1, eff. September 1, 2007.

Sec. 163.011. APPLICABILITY OF OTHER PARTS OF CODE. Subtitle B, Title 9 (the Texas Trust Code), does not apply to any institutional fund subject to this chapter.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 834 (H.B. 860), Sec. 1, eff. September 1, 2007.

SUBTITLE C. POWERS OF APPOINTMENT

CHAPTER 181. POWERS OF APPOINTMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 181.001. DEFINITIONS. In this chapter:

(1) "Donee" means a person, whether or not a resident of this state, who, either alone or in conjunction with others, may exercise a power.

(1-a) "Object of the power of appointment" means a person

to whom the donee is given the power to appoint.

(2) "Power" means the authority to appoint or designate the recipient of property, to invade or consume property, to alter, amend, or revoke an instrument under which an estate or trust is created or held, and to terminate a right or interest under an estate or trust, and any authority remaining after a partial release of a power.

(3) "Property" means all property and interests in property, real or personal, including parts of property, partial interests, and all or any part of the income from property.

(4) "Release" means a renunciation, relinquishment, surrender, refusal to accept, extinguishment, and any other form of release, including a covenant not to exercise all or part of a power.

Acts 1983, 68th Leg., p. 3723, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 2003, 78th Leg., ch. 551, Sec. 1, eff. Sept. 1, 2003.

Sec. 181.002. APPLICATION. (a) Except as provided by Subsection (b), this chapter applies:

(1) to a power or a release of a power, regardless of the date the power is created;

(2) to a vested, contingent, or conditional power; and

(3) to a power classified as a power in gross, a power appurtenant, a power appendant, a collateral power, a general, limited, or special power, an exclusive or nonexclusive power, or any other power.

(b) This chapter applies regardless of the time or manner a power is created or reserved or the release is made and regardless of the time, manner, or in whose favor a power may be exercised.

(c) This chapter does not apply to a power in trust that is imperative.

Acts 1983, 68th Leg., p. 3723, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.003. CHAPTER NOT EXCLUSIVE. The provisions of this chapter concerning the release of a power are not exclusive.

Acts 1983, 68th Leg., p. 3724, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.004. CONSTRUCTION. This chapter is intended to be declarative of the common law of this state, and it shall be liberally construed to make all powers, except imperative powers in trust, releasable unless the instrument creating the trust expressly provides otherwise.

Acts 1983, 68th Leg., p. 3724, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. RELEASE OF POWERS OF APPOINTMENT

Sec. 181.051. AUTHORITY OF DONEE TO RELEASE POWER. Unless the instrument creating the power specifically provides to the contrary, a donee may at any time:

(1) completely release the power;

(2) release the power as to any property subject to the power;

(3) release the power as to a person in whose favor a power may be exercised; or

(4) limit in any respect the extent to which the power may be exercised.

Acts 1983, 68th Leg., p. 3724, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.052. REQUISITES OF RELEASE. (a) A partial or complete release of a power, with or without consideration, is valid if the donee executes and acknowledges, in the manner required by law for the execution and recordation of deeds, an instrument evidencing an intent to make the release, and the instrument is delivered:

(1) to the person or in the manner specified in the instrument creating the power;

(2) to an adult, other than the donee releasing the power, who may take any of the property subject to the power if the power is not exercised or in whose favor it may be exercised after the partial release;

(3) to a trustee or cotrustee of the property subject to the power; or

(4) to an appropriate county clerk for recording.

(b) An instrument releasing a power may be recorded in a county in this state in which:

(1) property subject to the power is located;

(2) a donee in control of the property resides;

(3) a trustee in control of the property resides;

(4) a corporate trustee in control of the property has its principal office; or

(5) the instrument creating the power is probated or recorded.

Acts 1983, 68th Leg., p. 3724, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.053. RELEASE BY GUARDIAN. If a person under a disability holds a power, the guardian of the person's estate may release the power in the manner provided in this chapter on the order of the court in this state in which the guardian was appointed or in which the guardianship proceeding is pending.

Acts 1983, 68th Leg., p. 3725, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.054. EFFECT OF RELEASE ON MULTIPLE DONEES. Unless the instrument creating a power provides otherwise, the complete or partial release by one or more donees of a power that may be exercised by two or more donees, either as an individual or a fiduciary, together or successively, does not prevent or limit the exercise or participation in the exercise of the power by the other donee or donees.

Acts 1983, 68th Leg., p. 3725, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.055. NOTICE OF RELEASE. (a) A fiduciary or other person in possession or control of property subject to a power, other than the donee, does not have notice of a release of the power until the original release or a copy is delivered to the fiduciary or other person.

(b) A purchaser, lessee, or mortgagee of real property subject to a power who has paid a valuable consideration and who is without actual notice does not have notice of a release of the power until the instrument releasing the power is filed for record with the county clerk of the county in which the real property is located.

Acts 1983, 68th Leg., p. 3725, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.056. RECORDING. (a) A county clerk shall record a release of a power in the county deed records, and the clerk shall index the release, with the name of the donee entered in the grantor index.

(b) The county clerk shall charge the same fee for recording the release of a power as the clerk is authorized to charge for recording a deed.

Acts 1983, 68th Leg., p. 3726, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.057. EFFECT OF FAILURE TO DELIVER OR FILE. Failure to deliver or file an instrument releasing a power under Sections 181.052 and 181.055 does not affect the validity of the release as to the donee, the person in whose favor the power may be exercised, or any other person except those expressly protected by Sections 181.052 and 181.055.

Acts 1983, 68th Leg., p. 3726, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 181.058. RESTRAINTS ON ALIENATION OR ANTICIPATION. The release of a power that otherwise may be released is not prevented merely by provisions of the instrument creating the power that restrain alienation or anticipation.

Acts 1983, 68th Leg., p. 3726, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. EXERCISE OF POWERS OF APPOINTMENT

Sec. 181.081. EXTENT OF POWER. Unless an instrument creating a power expressly provides to the contrary, a donee may exercise a power in any manner consistent with this subchapter.

Added by Acts 2003, 78th Leg., ch. 551, Sec. 2, eff. Sept. 1, 2003.

Sec. 181.082. GENERAL EXERCISE. In exercising a power, a donee

may make an appointment:

(1) of present, future, or present and future interests;

(2) with conditions and limitations;

(3) with restraints on alienation;

(4) of interests to a trustee for the benefit of one or more objects of the power; and

(5) that creates any right existing under common law.

Added by Acts 2003, 78th Leg., ch. 551, Sec. 2, eff. Sept. 1, 2003.

Sec. 181.083. CREATING ADDITIONAL POWERS. (a) In exercising a power, a donee may make appointments that create in the objects of the power additional powers of appointment. The additional powers of appointment must be exercisable in favor of objects of the power who would have been permissible objects under the original donee's power.

(b) In exercising a power, a donee who may appoint outright to an object of the power may make appointments that create in the object of the power powers exercisable in favor of persons that the original donee may direct, even though the objects of the secondary power of appointment may not have been permissible objects of the original donee's power.

Added by Acts 2003, 78th Leg., ch. 551, Sec. 2, eff. Sept. 1, 2003.

TITLE 11. RESTRICTIVE COVENANTS

CHAPTER 201. RESTRICTIVE COVENANTS APPLICABLE TO CERTAIN SUBDIVISIONS

Sec. 201.001. APPLICATION. (a) This chapter applies to a residential real estate subdivision that is located in whole or in part:

(1) within a city that has a population of more than 100,000, or within the extraterritorial jurisdiction of such a city;

(2) in the unincorporated area of:

(A) a county having a population of 3.3 million or more; or

(B) a county having a population of 40,000 or more that is adjacent to a county having a population of 3.3 million or more; or

(3) in the incorporated area of a county having a population of 40,000 or more that is adjacent to a county having a

population of 3.3 million or more.

(b) The provisions of this chapter relating to extension of the term of, renewal of, or creation of restrictions do not apply to a subdivision if, by the express terms of the instrument creating existing restrictions, some or all of the restrictions affecting the real property within the subdivision provide:

(1) for automatic extensions of the term of the restrictions for an indefinite number of successive specified periods of at least 10 years subject to a right of waiver or termination, in whole or in part, by a specified percentage of less than 50 percent plus one of the owners of real property interests in the subdivision, as set forth in the instrument creating the restrictions; or

(2) for an indefinite number of successive extensions of at least 10 years of the term of the restrictions by written and filed agreement of a specified percentage of less than 50 percent plus one of the owners of real property interests in the subdivision, as authorized by the instrument creating the restrictions.

(c) The provisions of this chapter relating to addition to or modification of existing restrictions do not apply to a subdivision if, by the express terms of the instrument creating the restrictions, the restrictions affecting the real property within the subdivision provide for addition to or modification of the restrictions by written and filed agreement of a specified percentage of less than 75 percent of the owners of real property interests in the subdivision, as set forth in the instrument creating the restrictions. A subdivision is excluded under this subsection regardless of whether a provision in the restrictions requires the consent of the developer of the subdivision or an architectural control committee for an addition to or modification of the restrictions.

(d) A residential real estate subdivision that is or was subject to this chapter at any time remains subject to this chapter regardless of a change in circumstances that removes the subdivision from the applicability requirements of Subsection (a).

Added by Acts 1985, 69th Leg., ch. 309, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 712, Sec. 2, eff. June 18, 1987; Acts 1989, 71st Leg., ch. 556, Sec. 1, eff. June 14, 1989; Acts 1991, 72nd Leg., ch. 821, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 451, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 451, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch.

1127, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1004 (H.B. 638), Sec. 1, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1367 (H.B. 3674), Sec. 3, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 109, eff. September 1, 2011.

Sec. 201.002. FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) the pending expiration of property restrictions applicable to real estate subdivisions in municipalities and in the extraterritorial jurisdiction area of municipalities where there is no zoning creates uncertainty in living conditions and discourages investments in affected subdivisions;

(2) owners of land in affected subdivisions are reluctant or unable to provide proper maintenance, upkeep, and repairs of structures because of the pending expiration of the restrictions;

(3) financial institutions cannot or will not lend money for investments, maintenance, upkeep, or repairs in affected subdivisions;

(4) these conditions cause dilapidation of housing and other structures and cause unhealthful and unsanitary conditions in affected subdivisions, contrary to the health, safety, and welfare of the citizens; and

(5) the existence of racial covenants in subdivisions, regardless of their unenforceability, is offensive, repugnant, and harmful to members of racial or ethnic minority groups, and public policy requires that these covenants be deleted.

(b) The purpose of this chapter is to provide a procedure for extending the term of, creation of, additions to, or modification of restrictions and to provide for the removal of any restriction or other provision relating to race, religion, or national origin that is void and unenforceable under either the United States Constitution or Section 5.026.

Added by Acts 1985, 69th Leg., ch. 309, Sec. 1, eff. Sept. 1, 1985.

Sec. 201.003. DEFINITIONS. In this chapter:

(1) "Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records, or deed records.

(2) "Residential real estate subdivision" or "subdivision" means:

(A) all land encompassed within one or more maps or plats of land that is divided into two or more parts if the maps or plats cover land within a city, town, or village, or within the extraterritorial jurisdiction of a city, town, or village and are recorded in the deed, map, or real property records of a county, and the land encompassed within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only; or

(B) all land located within a city, town, or village, or within the extraterritorial jurisdiction of a city, town, or village that has been divided into two or more parts and that is or was burdened by restrictions limiting at least a majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county.

(3) "Owner" means an individual, fiduciary, partnership, joint venture, corporation, association, or other entity that owns record title to real property in a subdivision, or the personal representative of an individual who owns record title to subdivision property.

(4) "Petition" means one or more instruments, however designated or entitled, by which one or more of the purposes authorized by this chapter are sought to be accomplished.

(5) "Real property records" means the applicable records of a county clerk in which conveyances of real property are recorded.

(6) "Lienholder" means an individual, corporation, financial institution, or other entity that holds a vendor's or deed of trust lien secured by land within the subdivision.

(7) "Petition committee" or "committee" means a group of three or more owners who file with the county clerk a notice as required by Section 201.005(a) and who prepare and circulate a

petition as allowed under this chapter.

Added by Acts 1985, 69th Leg., ch. 309, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 822, Sec. 2, eff. Sept. 1, 1991.

Sec. 201.004. EXTENSION, RENEWAL, CREATION, MODIFICATION OF, OR ADDITION TO, RESTRICTIONS. (a) A petition may be filed under this chapter to:

(1) extend or renew an unexpired restriction;

(2) create a restriction;

(3) add to or modify an existing restriction; or

(4) modify an existing provision in an instrument creating a restriction that provides for extension of those restrictions.

(b) A petition is not effective to extend, renew, create, add to, or modify a restriction unless the petition is filed with the county clerk's office in the county where the subdivision is located before the second anniversary of the date the committee files with the county clerk the notice required by Section 201.005(a).

(c) If a petition meeting the requirements of this chapter is filed with the county clerk within the required period, the provisions of the petition extending, renewing, creating, adding to, or modifying a restriction apply to and burden all of the property in the subdivision except property excluded under Section 201.009. If a petition contains provisions extending or renewing the term of a restriction, the petition may provide for an initial extension or renewal period of not more than 10 years and additional automatic extensions of the term for not more than 10 years each. The extension, renewal, creation, or modification of, or addition to, a restriction takes effect on the later of the dates the petition is filed with the county clerk or a date specified in the petition.

(d) If existing originally applicable restrictions provide a procedure for extension, that procedure may be used for successive extensions of the originally applicable restrictions unless the original restriction instrument expressly prohibits the procedure from being used for successive extensions.

Added by Acts 1985, 69th Leg., ch. 309, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 822, Sec. 3, eff. Sept. 1, 1991. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1367 (H.B. 3674), Sec. 4, eff.

September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 821 (S.B. 1672), Sec. 1, eff. June 19, 2009.

Sec. 201.005. PETITION COMMITTEE. (a) At least three owners may form a petition committee. The committee shall file written notice of its formation with the county clerk of each county in which the subdivision is located.

(b) A notice filed under this chapter must contain:

(1) a statement that a petition committee has been formed for the extension of the term of, creation of, addition to, or modification of one or more restrictions;

(2) the name and residential address of each member of the committee;

(3) the name of the subdivision to which the restrictions apply and a reference to the real property records or map or plat records where the instrument or instruments that contain the restrictions sought to be extended, added to, or modified are recorded or, if the creation of a restriction is proposed, a reference to the place where the map or other document, if any, is recorded;

(4) a general statement of the matters to be included in the petition;

(5) if the creation of a restriction for a subdivision is proposed, a copy of the proposed petition creating the restriction; and

(6) if the amendment or modification of a restriction is proposed, a copy of the proposed instrument creating the amendment or modification, containing the original restriction that is affected and indicating by appropriate deletion and insertion the change to the restriction that is proposed to be amended or modified.

(c) Each member of the committee must sign and acknowledge the notice before a notary or other official authorized to take acknowledgments.

(d) The county clerk shall enter on the notice the date it is filed and record it in the real property records of the county.

(e) An individual's membership on the committee terminates if the individual ceases to own land in the subdivision. If a vacancy on the committee occurs, either because a member ceases to own land

in the subdivision or because a member resigns or dies, a majority of the remaining members may appoint as a successor an individual who owns land in the subdivision and who consents to serve as a committee member. If one or more successor committee members are appointed, the surviving committee members shall file written notice of the name and address of each successor committee member with the county clerk not later than the 10th day after the date of the appointment.

(f) After August 31, 1989, only one committee in a subdivision may file to operate under this chapter at one time. Before September 1, 1989, there is no limit on the number of committees in a subdivision with power to act under this chapter at one time. If more than one committee in a subdivision files a notice after August 31, 1989, the committee that files its notice first is the committee with the power to act. A committee that does not effect a successful petition within the time provided by this chapter is dissolved by operation of law. Except as provided by Section 201.006(c), a new committee for that subdivision may not be validly created under this chapter before the fifth anniversary of the date of dissolution of the previous committee. A petition circulated by a dissolved committee is ineffective for any of the purposes of this chapter.

Added by Acts 1985, 69th Leg., ch. 309, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 712, Sec. 3, eff. June 18, 1987.

Sec. 201.0051. SPECIAL PETITION APPROVAL REQUIRED FOR CERTAIN RESTRICTIONS. A right created or an obligation imposed by an existing restriction that relates to the developer of the subdivision or an architectural control committee established by the instrument creating the restriction cannot be altered unless the person who has the right or obligation signs and acknowledges the petition.

Added by Acts 1997, 75th Leg., ch. 451, Sec. 3, eff. Sept. 1, 1997.

Sec. 201.006. PETITION PROCEDURE. (a) A petition may be circulated, signed, acknowledged, and filed by or on behalf of owners at any time during the circulating committee's existence. The petition must conform to the requirements of Section 201.007.

(b) The petition may be filed not later than one year after the date on which the notice required by Section 201.005(a) is filed. The

petition must be signed and acknowledged by owners who own, in the aggregate:

(1) a majority of the total number of lots in the subdivision, in order to extend, renew, or create restrictions;

(2) a majority of the total number of separately owned parcels, tracts, or building sites in the subdivision, whether or not the parcels, tracts, or building sites contain part or all of one or more platted lots or combinations of lots, in order to extend, renew, or create restrictions;

(3) a majority of the square footage within all of the lots in the subdivision, excluding any area dedicated or used exclusively for roadways or public purposes or by utilities, in order to extend, renew, or create restrictions;

(4) at least 75 percent of the total number of lots in the subdivision, in order to modify or add to existing restrictions;

(5) at least 75 percent of the total number of separately owned parcels, tracts, or building sites in the subdivision, whether or not the parcels, tracts, or building sites contain part or all of one or more platted lots or combination of lots, in order to modify or add to existing restrictions; or

(6) at least 75 percent of the square footage within all of the lots in the subdivision, excluding any area dedicated or used exclusively for roadways or public purposes or by utilities, in order to modify or add to existing restrictions.

(c) If, after August 31, 1988, a court of competent jurisdiction holds any provision of a restrictive covenant affecting a subdivision to which this chapter applies invalid, a petition committee authorized by this chapter may file a petition not later than one year after the date on which the judgment is rendered. For this purpose, the five-year limitation period in Section 201.005(f) does not apply.

(d) The petition is effective if signed and acknowledged by the required number of owners of any one of the classifications of property specified in Subsection (b) and is filed as provided by Subsection (f).

(e) After an owner signs a petition, the fact that the owner subsequently conveys the land in the subdivision does not affect the previous signing of the petition.

(f) The petition must be filed with the county clerk of each county in which the subdivision is located.

Added by Acts 1985, 69th Leg., ch. 309, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 712, Sec. 4, eff. June 18, 1987; Acts 1991, 72nd Leg., ch. 822, Sec. 4, eff. Sept. 1, 1991.

Sec. 201.007. CONTENTS OF PETITION. (a) A petition filed under this chapter must contain or be supplemented by one or more instruments containing:

(1) the name of the subdivision;

(2) a reference to the real property records or map or plat records where the instrument or instruments that contain any restriction sought to be extended, added to, or modified are recorded or, in the case of the creation of a restriction, a reference to the place where the map or other document identifying the subdivision is recorded;

(3) a verbatim statement of any provisions for extension of the term of, or addition to, the restriction;

(4) if a restriction is being amended or modified, the text of the proposed instrument creating the amendment or modification, together with a comparison of the original restriction that is affected indicating by appropriate deletion and insertion the change to the restriction that is proposed to be amended or modified;

(5) if a restriction is being created, the text of the proposed instrument creating the restriction;

(6) original acknowledged signatures of the required number of owners as provided by Section 201.006;

(7) alternate boxes, clearly identified in a conspicuous manner next to the place for signing the petition, that enable each record owner to mark the appropriate box to show the exercise of the owner's option of either including or excluding the owner's property from being burdened by the restrictions being extended, created, added to, or modified;

(8) a statement that owners who do not sign the petition must file suit under Section 201.010 before the 181st day after the date on which the certificate called for by Section 201.008(e) is filed in order to challenge the procedures followed in extending, creating, adding to, or modifying a restriction; and

(9) a statement that owners who do not sign the petition may delete their property from the operation of the extended, created, added to, or modified restriction by filing a statement

described in the fourth listed category in Section 201.009(b) before one year after the date on which the owner receives actual notice of the filing of the petition authorized by this chapter.

(b) If a restriction being added to, modified, or extended contains any provision relating to race, religion, or national origin that is void and unenforceable under either the United States Constitution or Section 5.026, the void and unenforceable restriction shall, by the provisions of the petition, be declared to be deleted from the restriction as if the provision had never been contained in the restriction.

(c) Each petition filed under this chapter must contain an assertion from the signing owners that they own record title to property within the subdivision, and the legal description and street address of the property of each signing owner must be shown beside or above the signature. If there is more than one record owner of a tract, each record owner must sign the petition before the property can be counted as a part of the number required by Section 201.006.

Added by Acts 1985, 69th Leg., ch. 309, Sec. 1, eff. Sept. 1, 1985.

Sec. 201.008. NOTICE AND CERTIFICATE OF COMPLIANCE. (a) Not later than the 60th day after the date on which a petition that meets the requirements of this chapter is filed, the committee shall give notice directed to all persons who then are record owners of property in the subdivision. The notice must contain:

(1) the name of the subdivision covered by the petition;

(2) a copy of the petition;

(3) a statement that the proper number of property owners in the subdivision have signed and acknowledged the petition; and

(4) the date the petition was filed with the county clerk.

(b) Except as provided by Subsection (d), the notice required by Subsection (a) must be:

(1) published once a week for two consecutive weeks in a newspaper of general circulation in the county or counties where the subdivision is located; and

(2) sent by certified mail, return receipt requested, to each person who owned land in the subdivision as of the date the notice is given, excluding the owners of land dedicated for public use or for use by utilities.

(c) If the committee acts in good faith in determining ownership and giving notice as required by this section, the failure to give personal notice to an owner does not affect the application of an extension, modification, or creation of, or addition to, a restriction under this chapter to the property of a person who signed the petition.

(d) Instead of the information required by Subsection (a)(2), a notice published as required by Subsection (b)(1) may contain a general description of the purpose and effect of the petition.

(e) On compliance with the notice requirements of this section, a majority of the members of the committee shall execute a certificate of compliance and file the certificate with the county clerk of each county where the subdivision is located.

(f) The county clerk of each county shall record the certificate in the real property records of the county.

Added by Acts 1985, 69th Leg., ch. 309, Sec. 1, eff. Sept. 1, 1985.

Sec. 201.009. PROPERTY WITHIN SUBDIVISION NOT AFFECTED BY PETITION. (a) The procedures called for under this chapter are considered complete and regular in all respects unless challenged by a declaratory judgment suit under Section 201.010.

(b) A restriction added, modified, created, or extended under this chapter does not affect or encumber property within the subdivision that is included within one of the following categories:

(1) property exclusively dedicated for use by the public or for use by utilities;

(2) property of an owner who elected in the petition to exclude the property from the restriction;

(3) property of an owner who did not sign the petition and has not received actual notice of the filing of the petition;

(4) property of an owner who did not sign the petition and who files, before one year after the date on which the owner received actual notice of the filing of the petition, an acknowledged statement describing the owner's property by reference to the recorded map or plat of the subdivision and stating that the owner elects to have the property deleted and excluded from the operation of the extended, modified, changed, or created restriction; and

(5) property owned by a minor or a person judicially

declared to be incompetent at the time the certificate is filed, unless:

(A) actual notice of the filing of the petition is given to a guardian of the minor or incompetent person, and the guardian has not filed the statement described in the fourth listed category in this subsection;

(B) a predecessor in title to the minor or incompetent person signed a petition that was filed while the property was owned by the predecessor; or

(C) the incompetent person signed a petition that was filed before the judicial declaration of the person's incompetency.

(c) The county clerk shall file a statement described in the fourth listed category in Subsection (b) in the same manner as the petition and certificate. Substantial compliance by an owner with the requirements for the statement prevents the owner's property from being burdened by an extended, created, added to, or modified restriction if the statement is filed within the time required.

(d) A lienholder whose lien was established before the effective date of a petition is not bound by the petition unless the lienholder signs it and it is later filed. If such a lienholder who does not sign the filed petition later acquires title to the property in the subdivision through foreclosure, the acquisition is free of the restrictions added, modified, created, or extended by the petition. However, if any other person acquires the title to the property at a foreclosure sale, that person takes the property subject to the restriction added, modified, created, or extended by the petition, if any prior owner of the foreclosed property signed and acknowledged the petition.

(e) Notwithstanding any other provision of this chapter, property that is excluded in any manner from the operation of restrictions that are modified, added to, or created by a petition under this chapter is, unless the petition expressly provides otherwise, subject to those restrictions, if any, affecting the excluded property as the restrictions existed immediately before the effective date of the petition, and those restrictions are continued in effect to the extent originally applicable to the excluded property. After the filing of such a petition, those restrictions may be added to, modified, or extended by a specified percentage of the owners of real property interests in accordance with this chapter or the instruments evidencing the restrictions as they existed

immediately before the effective date of the petition, if otherwise still applicable. Any petition filed under this chapter that creates, adds to, or modifies restrictions may provide for the subsequent addition to or extension, creation, or modification of, the resulting restrictions by a specified percentage of the owners of real property interests in the subdivision as set forth in the instruments evidencing the continued restrictions. This subsection does not abrogate, alter, affect, or impair the rights of a lienholder under Subsection (d) to not be bound by a petition adopted under this chapter when the lienholder subsequently acquires title to the excluded property through foreclosure.

Added by Acts 1985, 69th Leg., ch. 309, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 712, Sec. 5, eff. June 18, 1987.

Sec. 201.010. ACTION AND LIMITATIONS OF REMEDIES. (a) If an owner and the owner's predecessors in interest neither signed the petition nor filed the statement described in the fourth listed category in Section 201.009(b), the owner may file a suit for declaratory judgment in a court of competent jurisdiction:

(1) to challenge the completeness or regularity of the procedures leading to the recordation of a certificate, if the suit is filed before the 181st day after the date on which the certificate is filed with the county clerk; or

(2) to exclude the owner's property from the operation of the extended, modified, added to, or created restriction.

(b) A suit for a declaratory judgment must name as defendants the final members of the petition committee who are owners of property in the subdivision at the time of the filing of the suit. In addition, a suit for a declaratory judgment must name all other owners of property in the subdivision as defendants, either as individuals or as members of a class.

(c) An owner who files a suit for the second listed purpose in Subsection (a) is entitled to relief only if the owner pleads and establishes that the conditions of land use within the subdivision at the time the certificate was filed were incompatible with the restriction. As an alternative to excluding a specific parcel of land from the operation of the restriction, a court may alter the restriction as it applies to the parcel to better conform to the

incompatible conditions.

(d) The remedies in this section are exclusive of all others in actions brought to challenge a restriction extended, modified, added to, or created under this chapter. The filing of an action for the first listed purpose in Subsection (a) does not prevent the restriction from taking effect in accordance with its terms pending a final judgment.

Added by Acts 1985, 69th Leg., ch. 309, Sec. 1, eff. Sept. 1, 1985.

Sec. 201.011. PROHIBITION OF CLAIM OF LACK OF MUTUALITY. If a petition procedure is completed under this chapter, the owners of property within the subdivision whose property is covered by the petition may not raise in any judicial proceeding the issue that the restrictions added, modified, created, or extended under this chapter are not enforceable on the grounds that the restrictions are not applicable to all of the property in the subdivision.

Added by Acts 1985, 69th Leg., ch. 309, Sec. 1, eff. Sept. 1, 1985.

Sec. 201.012. MULTIPLE FILING; COMPUTATION OF FILING DATE. For purposes of this chapter, an instrument required to be filed with the clerk of more than one county is considered filed on the date on which the last required filing is made.

Added by Acts 1985, 69th Leg., ch. 309, Sec. 1, eff. Sept. 1, 1985.

Sec. 201.013. CUMULATIVE EFFECT. The procedure prescribed by this chapter for adding to, modifying, creating, or extending the term of a restriction is cumulative and not in lieu of other methods of adding to, modifying, creating, or extending a restriction.

Added by Acts 1985, 69th Leg., ch. 309, Sec. 1, eff. Sept. 1, 1985.

CHAPTER 202. CONSTRUCTION AND ENFORCEMENT OF RESTRICTIVE COVENANTS

Sec. 202.001. DEFINITIONS. In this chapter:

(1) "Dedicatory instrument" means each document governing

the establishment, maintenance, or operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to:

(A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association;

(B) properly adopted rules and regulations of the property owners' association; or

(C) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

(2) "Property owners' association" means an incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by the dedicatory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the residential subdivision, planned unit development, condominium or townhouse regime, or similar planned development.

(3) "Petition" means one or more instruments, however designated or entitled, by which one or more actions relating to restrictive covenants are sought to be accomplished.

(4) "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

(5) "Front yard" means a yard within a lot having a front building setback line with a setback of not less than 15 feet extending the full width of the lot between the front lot line and the front building setback line.

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1142 (H.B. 1821), Sec. 2, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1389 (H.B. 680), Sec. 1, eff. June 14, 2013.

Sec. 202.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to all restrictive covenants regardless of the date on which they were created.

(b) This chapter does not affect the requirements of the Community Homes for Disabled Persons Location Act (Article 1011n, Vernon's Texas Civil Statutes).

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987.

Sec. 202.003. CONSTRUCTION OF RESTRICTIVE COVENANTS. (a) A restrictive covenant shall be liberally construed to give effect to its purposes and intent.

(b) In this subsection, "family home" is a residential home that meets the definition of and requirements applicable to a family home under the Community Homes for Disabled Persons Location Act (Article 1011n, Vernon's Texas Civil Statutes). A dedicatory instrument or restrictive covenant may not be construed to prevent the use of property as a family home. However, any restrictive covenant that applies to property used as a family home shall be liberally construed to give effect to its purposes and intent except to the extent that the construction would restrict the use as a family home.

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987.

Sec. 202.004. ENFORCEMENT OF RESTRICTIVE COVENANTS. (a) An exercise of discretionary authority by a property owners' association or other representative designated by an owner of real property concerning a restrictive covenant is presumed reasonable unless the court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory.

(b) A property owners' association or other representative designated by an owner of real property may initiate, defend, or intervene in litigation or an administrative proceeding affecting the enforcement of a restrictive covenant or the protection, preservation, or operation of the property covered by the dedicatory instrument.

(c) A court may assess civil damages for the violation of a restrictive covenant in an amount not to exceed $200 for each day of the violation.

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987.

Sec. 202.005. WITHDRAWAL OF SIGNATURE. (a) A signature may be withdrawn from a petition authorized to be filed in connection with terminating restrictive covenants, as provided by this section.

(b) To withdraw a signature, the signer must request that the signature be withdrawn.

(c) To be effective, a withdrawal request must:

(1) be in writing and be signed and acknowledged by the signer of the petition;

(2) be filed with the authority with whom the petition is required to be filed not later than the day before the petition filing deadline, if any; and

(3) be delivered in the form of a copy of the request to the circulator of the petition not later than the date the request is filed or by the effective date of this chapter, whichever is later.

(d) A withdrawal request or copy filed or delivered by mail is considered to be filed or delivered at the time of its receipt by the appropriate person.

(e) The filing of an effective withdrawal request nullifies the signature on the petition and places the signer in the same position as if the signer had not signed the petition.

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987.

Sec. 202.006. PUBLIC RECORDS. (a) A property owners' association shall file all dedicatory instruments in the real property records of each county in which the property to which the dedicatory instruments relate is located.

(b) A dedicatory instrument has no effect until the instrument is filed in accordance with this section.

Added by Acts 1999, 76th Leg., ch. 1420, Sec. 2, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1142 (H.B. 1821), Sec. 3, eff. January 1, 2012.

Sec. 202.007. CERTAIN RESTRICTIVE COVENANTS PROHIBITED. (a) A

property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from:

(1) implementing measures promoting solid-waste composting of vegetation, including grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass;

(2) installing rain barrels or a rainwater harvesting system;

(3) implementing efficient irrigation systems, including underground drip or other drip systems; or

(4) using drought-resistant landscaping or water-conserving natural turf.

(b) A provision that violates Subsection (a) is void.

(c) A property owners' association may restrict the type of turf used by a property owner in the planting of new turf to encourage or require water-conserving turf.

(d) This section does not:

(1) restrict a property owners' association from regulating the requirements, including size, type, shielding, and materials, for or the location of a composting device if the restriction does not prohibit the economic installation of the device on the property owner's property where there is reasonably sufficient area to install the device;

(2) require a property owners' association to permit a device described by Subdivision (1) to be installed in or on property:

(A) owned by the property owners' association;

(B) owned in common by the members of the property owners' association; or

(C) in an area other than the fenced yard or patio of a property owner;

(3) prohibit a property owners' association from regulating the installation of efficient irrigation systems, including establishing visibility limitations for aesthetic purposes;

(4) prohibit a property owners' association from regulating the installation or use of gravel, rocks, or cacti;

(5) restrict a property owners' association from regulating yard and landscape maintenance if the restrictions or requirements do not restrict or prohibit turf or landscaping design that promotes water conservation;

(6) require a property owners' association to permit a rain barrel or rainwater harvesting system to be installed in or on property if:

(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;

(7) restrict a property owners' association from regulating 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; or

(8) prohibit a property owners' association from requiring an owner to submit a detailed description or a plan for the installation of drought-resistant landscaping or water-conserving natural turf for review and approval by the property owners' association to ensure, to the extent practicable, maximum aesthetic compatibility with other landscaping in the subdivision.

(d-1) A property owners' association may not unreasonably deny or withhold approval of a proposed installation of drought-resistant landscaping or water-conserving natural turf under Subsection (d)(8) or unreasonably determine that the proposed installation is aesthetically incompatible with other landscaping in the subdivision.

(e) This section does not apply to a property owners' association that:

(1) is located in a municipality with a population of more than 175,000 that is located in a county in which another municipality with a population of more than one million is predominantly located; and

(2) manages or regulates a development in which at least 4,000 acres of the property is subject to a covenant, condition, or restriction designating the property for commercial use, multifamily dwellings, or open space.

Added by Acts 2003, 78th Leg., ch. 1024, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1311 (H.B. 3391), Sec. 6, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 736 (S.B. 198), Sec. 1, eff. September 1, 2013.

Sec. 202.009. REGULATION OF DISPLAY OF POLITICAL SIGNS. (a) Except as otherwise provided by this section, a property owners' association may not enforce or adopt a restrictive covenant that prohibits a property owner from displaying on the owner's property one or more signs advertising a political candidate or ballot item for an election:

(1) on or after the 90th day before the date of the election to which the sign relates; or

(2) before the 10th day after that election date.

(b) This section does not prohibit the enforcement or adoption of a covenant that:

(1) requires a sign to be ground-mounted; or

(2) limits a property owner to displaying only one sign for each candidate or ballot item.

(c) This section does not prohibit the enforcement or adoption of a covenant that prohibits a sign that:

(1) contains roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component;

(2) is attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object;

(3) includes the painting of architectural surfaces;

(4) threatens the public health or safety;

(5) is larger than four feet by six feet;

(6) violates a law;

(7) contains language, graphics, or any display that would be offensive to the ordinary person; or

(8) is accompanied by music or other sounds or by streamers or is otherwise distracting to motorists.

(d) A property owners' association may remove a sign displayed in violation of a restrictive covenant permitted by this section.

Added by Acts 2005, 79th Leg., Ch. 1010 (H.B. 873), Sec. 1, eff. June 18, 2005.

Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) In this section:

(1) "Development period" means a period stated in a declaration during which a declarant reserves:

(A) a right to facilitate the development, construction, and marketing of the subdivision; and

(B) a right to direct the size, shape, and composition of the subdivision.

(1-a) "Residential unit" means a structure or part of a structure intended for use as a single residence and that is:

(A) a single-family house; or

(B) a separate living unit in a duplex, a triplex, or a quadplex.

(2) "Solar energy device" has the meaning assigned by Section 171.107, Tax Code.

(b) Except as otherwise provided by Subsection (d), a property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device.

(c) A provision that violates Subsection (b) is void.

(d) A property owners' association may include or enforce a provision in a dedicatory instrument that prohibits a solar energy device that:

(1) as adjudicated by a court:

(A) threatens the public health or safety; or

(B) violates a law;

(2) is located on property owned or maintained by the property owners' association;

(3) is located on property owned in common by the members of the property owners' association;

(4) is located in an area on the property owner's property other than:

(A) on the roof of the home or of another structure allowed under a dedicatory instrument; or

(B) in a fenced yard or patio owned and maintained by the property owner;

(5) if mounted on the roof of the home:

(A) extends higher than or beyond the roofline;

(B) is located in an area other than an area designated by the property owners' association, unless the alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the device if located in an area designated by the property owners' association;

(C) does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or

(D) has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace;

(6) if located in a fenced yard or patio, is taller than the fence line;

(7) as installed, voids material warranties; or

(8) was installed without prior approval by the property owners' association or by a committee created in a dedicatory instrument for such purposes that provides decisions within a reasonable period or within a period specified in the dedicatory instrument.

(e) A property owners' association or the association's architectural review committee may not withhold approval for installation of a solar energy device if the provisions of the dedicatory instruments to the extent authorized by Subsection (d) are met or exceeded, unless the association or committee, as applicable, determines in writing that placement of the device as proposed by the property owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort

or annoyance to persons of ordinary sensibilities. For purposes of making a determination under this subsection, the written approval of the proposed placement of the device by all property owners of adjoining property constitutes prima facie evidence that such a condition does not exist.

(f) During the development period for a development with fewer than 51 planned residential units, the declarant may prohibit or restrict a property owner from installing a solar energy device.

Added by Acts 2011, 82nd Leg., R.S., Ch. 939 (H.B. 362), Sec. 1, eff. June 17, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 126 (S.B. 1626), Sec. 1, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 126 (S.B. 1626), Sec. 2, eff. September 1, 2015.

Sec. 202.011. REGULATION OF CERTAIN ROOFING MATERIALS. A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner who is otherwise authorized to install shingles on the roof of the owner's property from installing shingles that:

(1) are designed primarily to:

(A) be wind and hail resistant;

(B) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or

(C) provide solar generation capabilities; and

(2) when installed:

(A) resemble the shingles used or otherwise authorized for use on property in the subdivision;

(B) are more durable than and are of equal or superior quality to the shingles described by Paragraph (A); and

(C) match the aesthetics of the property surrounding the owner's property.

Added by Acts 2011, 82nd Leg., R.S., Ch. 939 (H.B. 362), Sec. 1, eff. June 17, 2011.

Sec. 202.012. FLAG DISPLAY. (a) A property owners'

association may not, except as provided in this section, adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from the display of:

(1) the flag of the United States of America;

(2) the flag of the State of Texas; or

(3) an official or replica flag of any branch of the United States armed forces.

(b) A property owners' 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;

(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:

(A) is not more than 20 feet in height and, subject to applicable zoning ordinances, easements, and setbacks of record, is located in the front yard of the property; or

(B) is attached to any portion of a residential structure owned by the property owner and not maintained by the property owners' association;

(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.

(c) A property owner who has a front yard and who otherwise complies with any permitted property owners' association regulations may elect to install a flagpole in accordance with either Subsection (b)(2)(A) or Subsection (b)(2)(B).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1028 (H.B. 2779), Sec. 1, eff. June 17, 2011.
Redesignated from Property Code, Section 202.011 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(40), eff. September 1, 2013.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1389 (H.B. 680), Sec. 2, eff. June 14, 2013.

Sec. 202.018. REGULATION OF DISPLAY OF CERTAIN RELIGIOUS ITEMS. (a) Except as otherwise provided by this section, a property owners' association may not enforce or adopt a restrictive covenant that prohibits a property owner or resident from displaying or affixing on the entry to the owner's or resident's dwelling one or more religious items the display of which is motivated by the owner's or resident's sincere religious belief.

(b) This section does not prohibit the enforcement or adoption of a covenant that, to the extent allowed by the constitution of this state and the United States, prohibits the display or affixing of a religious item on the entry to the owner's or resident's dwelling that:

(1) threatens the public health or safety;

(2) violates a law;

(3) contains language, graphics, or any display that is patently offensive to a passerby;

(4) is in a location other than the entry door or door frame or extends past the outer edge of the door frame of the owner's or resident's dwelling; or

(5) individually or in combination with each other religious item displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches.

(c) Except as otherwise provided by this section, this section does not authorize an owner or resident to use a material or color for an entry door or door frame of the owner's or resident's dwelling or make an alteration to the entry door or door frame that is not authorized by the restrictive covenants governing the dwelling.

(d) A property owners' association may remove an item displayed in violation of a restrictive covenant permitted by this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 263 (H.B. 1278), Sec. 1, eff. June 17, 2011.

Sec. 202.019. STANDBY ELECTRIC GENERATORS. (a) In this section, "standby electric generator" means a device that converts mechanical energy to electrical energy and is:

(1) powered by natural gas, liquefied petroleum gas, diesel fuel, biodiesel fuel, or hydrogen;

(2) fully enclosed in an integral manufacturer-supplied sound attenuating enclosure;

(3) connected to the main electrical panel of a residence by a manual or automatic transfer switch; and

(4) rated for a generating capacity of not less than seven kilowatts.

(b) Except as provided by this section, a property owners' association may not adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from owning, operating, installing, or maintaining a permanently installed standby electric generator.

(c) A property owners' association may adopt or enforce any of the following dedicatory instrument provisions to regulate the operation and installation of standby electric generators:

(1) a dedicatory instrument provision that requires a standby electric generator to be installed and maintained in compliance with:

(A) the manufacturer's specifications; and

(B) applicable governmental health, safety, electrical, and building codes;

(2) a dedicatory instrument provision that requires all electrical, plumbing, and fuel line connections to be installed only by licensed contractors;

(3) a dedicatory instrument provision that requires all electrical connections to be installed in accordance with applicable governmental health, safety, electrical, and building codes;

(4) a dedicatory instrument provision that requires all natural gas, diesel fuel, biodiesel fuel, or hydrogen fuel line connections to be installed in accordance with applicable governmental health, safety, electrical, and building codes;

(5) a dedicatory instrument provision that requires all liquefied petroleum gas fuel line connections to be installed in accordance with rules and standards promulgated and adopted by the Railroad Commission of Texas and other applicable governmental health, safety, electrical, and building codes;

(6) a dedicatory instrument provision that requires nonintegral standby electric generator fuel tanks to be installed and maintained to comply with applicable municipal zoning ordinances and governmental health, safety, electrical, and building codes;

(7) a dedicatory instrument provision that requires the standby electric generator and its electrical lines and fuel lines to be maintained in good condition;

(8) a dedicatory instrument provision that requires the repair, replacement, or removal of any deteriorated or unsafe component of a standby electric generator, including electrical or fuel lines;

(9) a dedicatory instrument provision that requires an owner to screen a standby electric generator if the standby electric generator is:

(A) visible from the street faced by the dwelling;

(B) located in an unfenced side or rear yard of a residence and is visible either from an adjoining residence or from adjoining property owned by the property owners' association; or

(C) located in a side or rear yard fenced by a wrought iron or residential aluminum fence and is visible through the fence either from an adjoining residence or from adjoining property owned by the property owners' association;

(10) a dedicatory instrument provision that sets reasonable times, consistent with the manufacturer's recommendations, for the periodic testing of a standby electric generator;

(11) a dedicatory instrument provision that prohibits the use of a standby electric generator to generate all or substantially all of the electrical power to a residence, except when utility-generated electrical power to the residence is not available or is intermittent due to causes other than nonpayment for utility service to the residence;

(12) a dedicatory instrument provision that regulates the location of the standby electric generator; or

(13) a dedicatory instrument provision that prohibits an owner from locating a standby electric generator on property:

(A) owned or maintained by the property owners' association; or

(B) owned in common by the property owners' association members.

(d) A dedicatory instrument provision permitted by Subsection (c), if adopted, must be reasonably applied and enforced.

(e) A dedicatory instrument provision that regulates the location of a standby electric generator is unenforceable if:

(1) it increases the cost of installing the standby electric generator by more than 10 percent; or

(2) it increases the cost of installing and connecting the electrical and fuel lines for the standby electric generator by more than 20 percent.

(f) If a dedicatory instrument requires that the installation of a standby electric generator be approved before installation, approval may not be withheld if the proposed installation meets or exceeds the dedicatory instrument provisions permitted by Subsection (c).

(g) If a dedicatory instrument provision requires an owner to submit an application for approval of improvements located exterior to a residence, this section does not negate the requirement, but the information required to be submitted as part of the application for the installation of a standby electric generator may not be greater or more detailed than the application for any other improvement.

(h) In a hearing, action, or proceeding to determine whether a proposed or installed standby electric generator complies with the requirements of a dedicatory instrument provision permitted by Subsection (c), the party asserting noncompliance bears the burden of proof.

Added by Acts 2015, 84th Leg., R.S., Ch. 1014 (H.B. 939), Sec. 1, eff. June 19, 2015.

CHAPTER 203. ENFORCEMENT OF LAND USE RESTRICTIONS IN CERTAIN COUNTIES

Sec. 203.001. APPLICABILITY OF CHAPTER. This chapter applies only to a county with a population of more than 200,000.

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987. Amended by Acts 1997, 75th Leg., ch. 274, Sec. 2, eff. May 26, 1997.

Sec. 203.002. DEFINITION. In this chapter, "restriction" means a limitation that affects the use to which real property may be put, fixes the distance at which buildings or other structures must be set back from property, street, or lot lines, affects the size of lots, or affects the size, type, or number of buildings or other structures that may be built on the property.

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987.

Sec. 203.003. COUNTY ATTORNEY AUTHORIZED TO ENFORCE RESTRICTIONS. (a) The county attorney may sue in a court of competent jurisdiction to enjoin or abate violations of a restriction contained or incorporated by reference in a properly recorded plan, plat, replat, or other instrument affecting a real property subdivision located in the county, regardless of the date on which the instrument was recorded.

(b) The county attorney may not enforce a restriction relating to race or any other restriction that violates the state or federal constitution.

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987.

Sec. 203.004. ADMINISTRATIVE FEE. (a) A complaint filed in connection with Section 203.003 must be accompanied by an administrative fee prescribed by the county commissioners court. The amount of the fee may not exceed the administrative costs to be incurred by the county in pursuing the matter.

(b) The administrative fee shall be deposited in a special county fund. The fund may be used only to administer this chapter.

(c) The commissioners court may waive the administrative fee if the complainant files with the complaint a hardship affidavit in a form approved by the commissioners court.

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987.

Sec. 203.005. COURT COSTS AND ATTORNEY'S FEES. (a) The county may be awarded court costs and attorney's fees in a successful action under this chapter.

(b) If the court costs and attorney's fees awarded to the county, together with the administrative fee collected under Section 203.004, exceed the county's expenses in a successful action under this chapter, any portion of the excess that does not exceed the amount of the administrative fee collected by the county shall be refunded to the complainant.

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987.

CHAPTER 204. POWERS OF PROPERTY OWNERS' ASSOCIATION RELATING TO RESTRICTIVE COVENANTS IN CERTAIN SUBDIVISIONS

Sec. 204.001. DEFINITIONS. In this chapter:

(1) "Restrictions," "residential real estate subdivision," "subdivision," "owner," "real property records," and "lienholder" have the meanings assigned by Section 201.003.

(2) "Dedicatory instrument," "petition," and "restrictive covenant" have the meanings assigned by Section 202.001.

(3) "Regular assessment" means an assessment, charge, fee, or dues that each owner of property within a subdivision is required to pay to the property owners' association on a regular basis and that are to be used by the association for the benefit of the subdivision in accordance with the original, extended, added, or modified restrictions.

(4) "Special assessment" means an assessment, charge, fee, or dues that each owner of property within a subdivision is required to pay to the property owners' association, after a vote of the membership, for the purpose of paying for the costs of capital improvements to the common areas that are incurred or will be

incurred by the association during the fiscal year. A special assessment may be assessed before or after the association incurs the capital improvement costs.

Added by Acts 1995, 74th Leg., ch. 1040, Sec. 2, eff. Aug. 28, 1995.

Sec. 204.002. APPLICATION. (a) This chapter applies only to a residential real estate subdivision, excluding a condominium development governed by Title 7, Property Code, that is located in whole or in part:

(1) in a county with a population of 3.3 million or more;

(2) in a county with a population of not less than 285,000 and not more than 300,000 that is adjacent to the Gulf of Mexico and that is adjacent to a county having a population of 3.3 million or more; or

(3) in a county with a population of 275,000 or more that:

(A) is adjacent to a county with a population of 3.3 million or more; and

(B) contains part of a national forest.

(b) This chapter applies to a restriction regardless of its effective date.

(c) This chapter does not apply to portions of a subdivision that are zoned for or that contain a commercial structure, an industrial structure, an apartment complex, or a condominium development governed by Title 7, Property Code. For purposes of this subsection, "apartment complex" means two or more dwellings in one or more buildings that are owned by the same owner, located on the same lot or tract, and managed by the same owner, agent, or management company.

Added by Acts 1995, 74th Leg., ch. 1040, Sec. 2, eff. Aug. 28, 1995. Amended by Acts 2003, 78th Leg., ch. 547, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1078 (H.B. 1632), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 110, eff. September 1, 2011.

Sec. 204.003. APPLICATION OF PROVISIONS OF RESTRICTIVE

COVENANTS IN CERTAIN CIRCUMSTANCES. (a) An express designation in a document creating restrictions applicable to a residential real estate subdivision that provides for the extension of, addition to, or modification of existing restrictions by a designated number of owners of real property in the subdivision prevails over the provisions of this chapter.

(b) Notwithstanding Subsection (a), for a residential subdivision described by Subsection (c), the provisions of this chapter prevail over an express designation in a document described by Subsection (a) if:

(1) the designated number of owners of real property in the subdivision required for approval of an extension of, addition to, or modification of the document is more than 75 percent; or

(2) the designation prohibits the extension of, addition to, or modification of an existing restriction for a certain time period and that time period has not expired.

(c) Subsection (b) applies to a residential subdivision that is located in a county described by Section 204.002(a)(3) other than a gated community with private streets.

(d) A document creating restrictions that provides for the extension or renewal of restrictions and does not provide for modification or amendment of restrictions may be modified under this chapter, including modifying the provision that provides for extension or renewal of the restrictions.

Added by Acts 1995, 74th Leg., ch. 1040, Sec. 2, eff. Aug. 28, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 767 (H.B. 3518), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1367 (H.B. 3674), Sec. 5, eff. September 1, 2007.

Reenacted and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 20.004, eff. September 1, 2009.

Sec. 204.004. PROPERTY OWNERS' ASSOCIATION. (a) A property owners' association is a designated representative of the owners of property in a subdivision and may be referred to as a "homeowners association," "community association," "civic association," "civic club," "association," "committee," or similar term contained in the

restrictions. The membership of the association consists of the owners of property within the subdivision.

(b) The association must be nonprofit and may be incorporated as a Texas nonprofit corporation. An unincorporated association may incorporate under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(c) The association's board of directors or trustees must be elected or appointed in accordance with the applicable provisions of the restrictions and the association's articles of incorporation or bylaws.

Added by Acts 1995, 74th Leg., ch. 1040, Sec. 2, eff. Aug. 28, 1995.

Sec. 204.005. EXTENSION OF, ADDITION TO, OR MODIFICATION OF EXISTING RESTRICTIONS. (a) A property owners' association has authority to approve and circulate a petition relating to the extension of, addition to, or modification of existing restrictions. A property owners' association is not required to comply with Sections 201.009-201.012.

(b) A petition to extend, add to, or modify existing restrictions approved and circulated by a property owners' association is effective if:

(1) the petition is approved by the owners, excluding lienholders, contract purchasers, and the owners of mineral interests, of at least 75 percent of the real property in the subdivision or a smaller percentage required by the original dedicatory instrument; and

(2) the petition is filed as a dedicatory instrument with the county clerk of the county in which the subdivision is located.

(c) If a subdivision consisting of multiple sections, each with its own restrictions, is represented by a single property owners' association, the approval requirement may be satisfied by obtaining approval of at least 75 percent of the owners on a section-by-section basis or of the total number of properties in the property owners' association's jurisdiction.

(d) If approved, the petition is binding on all properties in the subdivision or section, as applicable.

(e) A property owners' association that circulates a petition must notify all record owners of property in the subdivision in

writing of the proposed extension, addition to, or modification of the existing restrictions. Notice may be hand-delivered to residences within the subdivision or sent by regular mail to the owner's last known mailing address as reflected in the ownership records maintained by the property owners' association. The approval of multiple owners of a property may be reflected by the signature of a single co-owner.

Added by Acts 1995, 74th Leg., ch. 1040, Sec. 2, eff. Aug. 28, 1995.

Sec. 204.006. CREATION OF PROPERTY OWNERS' ASSOCIATION. (a) If existing restrictions applicable to a subdivision do not provide for a property owners' association and require approval of more than 60 percent of the owners to add to or modify the original dedicating instrument, a petition to add to or modify the existing restrictions for the sole purpose of creating and operating a property owners' association with mandatory membership, mandatory regular or special assessments, and equivalent voting rights for each of the owners in the subdivision is effective if:

(1) a petition committee has been formed as prescribed by Section 201.005;

(2) the petition is approved by the owners, excluding lienholders, contract purchasers, and the owners of mineral interests, of at least 60 percent of the real property in the subdivision; and

(3) the procedure employed in the circulation and approval of the petition to add to or amend the existing restrictions for the specified purpose complies with the requirements of this chapter.

(b) If the circulated petition is not approved by the required percentage of owners within one year of the creation of the petition committee, the petition is void and another petition committee may be formed.

(c) If the petition is approved, the petition is binding on all properties in the subdivision or section, as applicable.

Added by Acts 1995, 74th Leg., ch. 1040, Sec. 2, eff. Aug. 28, 1995.

Sec. 204.007. EFFECT ON LIENHOLDERS. (a) Extensions of, additions to, or modifications of restrictions under this chapter are

binding on a lienholder, excluding restrictions relating to regular or special assessment increases if the assessment is not subordinated to purchase money or home improvement liens.

(b) If the assessment lien of the property owners' association is subordinate to purchase money or home improvement liens, the lienholder is not entitled to notice of the proposed dedicatory instrument and the lienholder is bound by the instrument if the instrument is approved. If the assessment lien is not subordinated, a lienholder who is not a signatory to the dedicatory instrument and whose lien was established before the effective date of the dedicatory instrument is not bound by the portion of the dedicatory instrument that increases the amount of the regular or special assessment during any period of ownership by the lienholder.

(c) A person who acquires title to the property at a foreclosure sale or by deed from a foreclosing lienholder is bound by the assessment increase.

Added by Acts 1995, 74th Leg., ch. 1040, Sec. 2, eff. Aug. 28, 1995.

Sec. 204.008. METHOD OF ADOPTION. An extension, addition to, or modification of restrictions proposed by a property owners' association may be adopted:

(1) by a written ballot that states the substance of the amendment and specifies the date by which a ballot must be received to be counted;

(2) at a meeting of the members represented by the property owners' association if written notice of the meeting stating the purpose of the meeting is delivered to each owner of property in the subdivision;

(3) by door-to-door circulation of a petition by the property owners' association or a person authorized by the property owners' association;

(4) by a method permitted by the existing restrictions; or

(5) by a combination of the methods described by this section.

Added by Acts 1995, 74th Leg., ch. 1040, Sec. 2, eff. Aug. 28, 1995.

Sec. 204.009. TEXAS NONPROFIT CORPORATIONS. (a) If the

property owners' association is referenced in the existing, extended, added to, or modified restrictions as a Texas nonprofit corporation, the instrument contemplates the interaction of a nonprofit corporation, its articles of incorporation, and its bylaws.

(b) The property owners' association has the powers and shall promote the purposes enumerated in the articles of incorporation and bylaws. These powers and purposes necessarily modify the express provisions of the restrictions to include the referenced powers and purposes.

Added by Acts 1995, 74th Leg., ch. 1040, Sec. 2, eff. Aug. 28, 1995.

Sec. 204.010. POWERS OF PROPERTY OWNERS' ASSOCIATION. (a) Unless otherwise provided by the restrictions or the association's articles of incorporation or bylaws, the property owners' association, acting through its board of directors or trustees, may:

(1) adopt and amend bylaws;

(2) adopt and amend budgets for revenues, expenditures, and reserves and collect regular assessments or special assessments for common expenses from property owners;

(3) hire and terminate managing agents and other employees, agents, and independent contractors;

(4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings on matters affecting the subdivision;

(5) make contracts and incur liabilities relating to the operation of the subdivision and the property owners' association;

(6) regulate the use, maintenance, repair, replacement, modification, and appearance of the subdivision;

(7) make additional improvements to be included as a part of the common area;

(8) grant easements, leases, licenses, and concessions through or over the common area;

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

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

(11) if notice and an opportunity to be heard are given, collect reimbursement of actual attorney's fees and other reasonable costs incurred by the property owners' association relating to violations of the subdivision's restrictions or the property owners' association's bylaws and rules;

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

(13) adopt and amend rules regulating the collection of delinquent assessments and the application of payments;

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

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

(16) if the restrictions allow for an annual increase in the maximum regular assessment without a vote of the membership, assess the increase annually or accumulate and assess the increase after a number of years;

(17) subject to the requirements of the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and by majority vote of its board of directors, indemnify a director or officer of the property owners' association who was, is, or may be made a named defendant or respondent in a proceeding because the person is or was a director;

(18) if the restrictions vest the architectural control authority in the property owners' association or if the authority is vested in the property owners' association under Section 204.011:

(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 subdivision change;

(19) exercise other powers conferred by the restrictions, its articles of incorporation, or its bylaws;

(20) exercise other powers that may be exercised in this state by a corporation of the same type as the property owners' association; and

(21) exercise other powers necessary and proper for the

governance and operation of the property owners' association.

(b) Powers enumerated by this section are in addition to any other powers granted to a property owners' association by this chapter or other law.

Added by Acts 1995, 74th Leg., ch. 1040, Sec. 2, eff. Aug. 28, 1995.

Sec. 204.011. ARCHITECTURAL CONTROL COMMITTEE. (a) This section applies to restrictions providing for the creation and operation of an architectural control committee with the power to approve or deny applications for proposed original construction or modification of a building, structure, or improvement.

(b) Unless the restrictions applicable to a residential real estate subdivision vest the architectural control committee authority in the property owners' association before either of the following events, the architectural control committee authority automatically vests in the property owners' association when:

(1) the term of the architectural control committee authority expires as prescribed by the restrictions;

(2) a residence on the last available building site is completed and sold;

(3) the person or entity designated as the architectural control committee in the restrictions assigns, in writing, authority to the property owners' association; or

(4) an assignee of the original holder abandons its authority for more than one year.

(c) If the architectural control committee authority is transferred to the property owners' association, the authority is vested in the property owners' association until:

(1) the restrictions are modified to reflect otherwise;

(2) the restrictions are terminated; or

(3) the property owners' association ceases to exist.

(d) If existing restrictions applicable to a subdivision do not provide for a property owners' association and a property owners' association has not been formed, the architectural control committee authority over the entire subdivision vests in a civic association other than a property owners' association if:

(1) an architectural control committee created by the restrictions exercised the architectural control committee authority

as provided by the restrictions over all the lots in the subdivision for at least 10 years and over a majority of the lots in the subdivision for at least 20 years;

(2) an architectural control committee created by the restrictions assigned the civic association the architectural control committee authority over a majority of the lots in the subdivision;

(3) the civic association was assigned the architectural control committee authority over a majority of the lots in the subdivision and has exercised that authority over all the lots in the subdivision for at least 10 years; and

(4) the architectural control committee authority has lapsed in the lots in which the civic association lacks authority, and the lapse is solely the result of:

(A) the automatic termination of the architectural control committee authority; or

(B) the death of a member of the architectural control committee or another cause resulting from the inability to locate a member of the architectural control committee or the member's assigns.

Added by Acts 1995, 74th Leg., ch. 1040, Sec. 2, eff. Aug. 28, 1995. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 711 (H.B. 2218), Sec. 1, eff. September 1, 2007.

CHAPTER 205. RESTRICTIVE COVENANTS APPLICABLE TO REVISED SUBDIVISIONS IN CERTAIN COUNTIES

Sec. 205.001. DEFINITIONS. In this chapter:

(1) "Restrictions" and "subdivision" have the meanings assigned by Section 201.003.

(2) "Property owners' association" has the meaning assigned by Section 202.001.

Added by Acts 1995, 74th Leg., ch. 1040, Sec. 3, eff. Aug. 28, 1995. Amended by Acts 1997, 75th Leg., ch. 451, Sec. 4, eff. Sept. 1, 1997.

Sec. 205.002. APPLICABILITY. This chapter applies only to a county with a population of 65,000 or more.

Added by Acts 1995, 74th Leg., ch. 1040, Sec. 3, eff. Aug. 28, 1995.

Sec. 205.003. RESTRICTIONS APPLICABLE TO REVISED SUBDIVISIONS. (a) If all or part of a subdivision plat is revised to provide for another subdivision of land within all or part of the earlier subdivision, the restrictions that apply to the subdivision before the revision apply to the newly created subdivision.

(b) The property owners of the newly created subdivision must comply with the petition procedures prescribed by Chapter 204 to modify the restrictions.

Added by Acts 1995, 74th Leg., ch. 1040, Sec. 3, eff. Aug. 28, 1995.

Sec. 205.004. AMENDMENT OF RESTRICTIONS BY GOVERNING BODY OF PROPERTY OWNERS' ASSOCIATION. (a) The governing body of a property owners' association may amend the restrictions for the limited purpose of complying with United States Department of Housing and Urban Development or United States Department of Veterans Affairs requirements for subdivision property to qualify for insured or guaranteed mortgage loans.

(b) An amendment adopted under this section must:

(1) indicate that the amendment is adopted under authority of this section by specifically referencing this section;

(2) be signed by a majority of the governing body; and

(3) be filed in the real property records of the county in which the subdivision is located.

Added by Acts 1997, 75th Leg., ch. 451, Sec. 5, eff. Sept. 1, 1997.

CHAPTER 206. EXTENSION OF RESTRICTIONS IMPOSING REGULAR ASSESSMENTS IN CERTAIN SUBDIVISIONS

Sec. 206.001. DEFINITIONS. In this chapter:

(1) "Community association" means an incorporated association created to enforce restrictions.

(2) "Dedicatory instrument" and "restrictive covenant" have the meanings assigned by Section 202.001.

(3) "Lienholder," "owner," "real property records," "residential real estate subdivision," and "restrictions" have the

meanings assigned by Section 201.003.

(4) "Regular assessment" means an assessment, charge, fee, or dues that each owner is required to pay to the community association on a regular basis and that is to be used by the association for the benefit of the subdivision in accordance with the original, extended, added, or modified restrictions.

Added by Acts 1997, 75th Leg., ch. 1249, Sec. 1, eff. Sept. 1, 1997.

Sec. 206.002. APPLICABILITY OF CHAPTER. This chapter applies only to:

(1) a residential real estate subdivision that:

(A) consists of at least 4,600 homes;

(B) is located in whole or in part in a municipality with a population of more than 1.6 million located in a county with a population of 2.8 million or more; and

(C) has restrictions the terms of which are automatically extended but has a regular assessment that is established by a separate document that permits the assessment to expire and does not provide for extension of the term of the assessment; or

(2) a residential real estate subdivision that:

(A) consists of at least 750 homes;

(B) is located in two adjacent municipalities in a county with a population of 2.8 million or more; and

(C) has use restrictions the terms of which are automatically extended but has a regular assessment that is established by two separate documents that permit the assessment to expire and do not provide for extension of the term of the assessment.

Added by Acts 1997, 75th Leg., ch. 1249, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 597, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.003. EXTENSION OF RESTRICTION IMPOSING REGULAR ASSESSMENT. (a) A community association may approve and submit to a vote of the owners an extension of a restriction imposing a regular assessment.

(b) The extension of a restriction imposing a regular

assessment is approved if a majority of the owners in the subdivision who vote on the issue in accordance with Section 206.004 vote in favor of the extension.

(c) An extension approved in accordance with this section and Section 206.004 applies to all real property in the subdivision, including residential and commercial property.

(d) A document certifying that a majority of the owners voting on the issue approved the extension of the restriction must be recorded in the real property records of the county in which the subdivision is located.

Added by Acts 1997, 75th Leg., ch. 1249, Sec. 1, eff. Sept. 1, 1997.

Sec. 206.004. METHOD OF VOTING. (a) An extension of a restriction that imposes a regular assessment must be voted on:

(1) by a written ballot that states the substance of the amendment extending the restriction and specifies the date by which the community association must receive a ballot for the ballot to be counted; or

(2) at a meeting of the property owners in the subdivision.

(b) The community association shall provide for mailing to each owner, as applicable:

(1) the ballot under Subsection (a)(1); or

(2) notice of the meeting under Subsection (a)(2) that states the purpose of the meeting.

(c) In conjunction with a vote by ballot or at a meeting under Subsection (a), the community association may provide for circulation of a petition in the subdivision.

(d) The vote of multiple owners of a property may be reflected by the signature or vote of one of the owners.

(e) The community association shall record a copy of the ballot or petition in the real property records in the county in which the subdivision is located prior to submission of the extension to a vote of the owners.

Added by Acts 1997, 75th Leg., ch. 1249, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 207. DISCLOSURE OF INFORMATION BY PROPERTY OWNERS' ASSOCIATIONS

Sec. 207.001. DEFINITIONS. In this chapter:

(1) "Restrictions" has the meaning assigned by Section 201.003.

(2) "Dedicatory instrument," "property owners' association," and "restrictive covenant" have the meanings assigned by Section 209.002.

(3) "Owner" means a person who owns record title to property in a subdivision or the personal representative of an individual who owns record title to property in a subdivision.

(4) "Regular assessment" and "special assessment" have the meanings assigned by Section 204.001.

(5) "Resale certificate" means a written statement issued, signed, and dated by an officer or authorized agent of a property owners' association that contains the information specified by Section 207.003(b).

(6) "Subdivision" means all land that has been divided into two or more parts and that is or was burdened by restrictions limiting at least the majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county.

Added by Acts 1999, 76th Leg., ch. 1198, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 2, eff. September 1, 2015.

Sec. 207.002. APPLICABILITY. (a) This chapter applies to a subdivision with a property owners' association that is entitled to levy regular or special assessments.

(b) This chapter does not apply to a condominium council of owners governed by Chapter 81 or a condominium unit owners' association governed by Chapter 82.

Added by Acts 1999, 76th Leg., ch. 1198, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 3, eff. September 1, 2015.

Sec. 207.003. DELIVERY OF SUBDIVISION INFORMATION TO OWNER. (a) Not later than the 10th business day after the date a written request for subdivision information is received from an owner or the owner's agent, a purchaser of property in a subdivision or the purchaser's agent, or a title insurance company or its agent acting on behalf of the owner or purchaser and the evidence of the requestor's authority to order a resale certificate under Subsection (a-1) is received and verified, the property owners' association shall deliver to the owner or the owner's agent, the purchaser or the purchaser's agent, or the title insurance company or its agent:

(1) a current copy of the restrictions applying to the subdivision;

(2) a current copy of the bylaws and rules of the property owners' association; and

(3) a resale certificate prepared not earlier than the 60th day before the date the certificate is delivered that complies with Subsection (b).

(a-1) For a request from a purchaser of property in a subdivision or the purchaser's agent, the property owners' association may require the purchaser or purchaser's agent to provide to the association, before the association begins the process of preparing or delivers the items listed in Subsection (a), reasonable evidence that the purchaser has a contractual or other right to acquire property in the subdivision.

(b) A resale certificate under Subsection (a) must contain:

(1) a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and any other restraint contained in the restrictions or restrictive covenants that restricts the owner's right to transfer the owner's property;

(2) the frequency and amount of any regular assessments;

(3) the amount and purpose of any special assessment that has been approved before and is due after the resale certificate is delivered;

(4) the total of all amounts due and unpaid to the property owners' association that are attributable to the owner's property;

(5) capital expenditures, if any, approved by the property owners' association for the property owners' association's current fiscal year;

(6) the amount of reserves, if any, for capital expenditures;

(7) the property owners' association's current operating budget and balance sheet;

(8) the total of any unsatisfied judgments against the property owners' association;

(9) the style and cause number of any pending lawsuit in which the property owners' association is a party, other than a lawsuit relating to unpaid ad valorem taxes of an individual member of the association;

(10) a copy of a certificate of insurance showing the property owners' association's property and liability insurance relating to the common areas and common facilities;

(11) a description of any conditions on the owner's property that the property owners' association board has actual knowledge are in violation of the restrictions applying to the subdivision or the bylaws or rules of the property owners' association;

(12) a summary or copy of notices received by the property owners' association from any governmental authority regarding health or housing code violations existing on the preparation date of the certificate relating to the owner's property or any common areas or common facilities owned or leased by the property owners' association;

(13) the amount of any administrative transfer fee charged by the property owners' association for a change of ownership of property in the subdivision;

(14) the name, mailing address, and telephone number of the property owners' association's managing agent, if any;

(15) a statement indicating whether the restrictions allow foreclosure of a property owners' association's lien on the owner's property for failure to pay assessments; and

(16) a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee.

(c) A property owners' association may charge a reasonable fee to assemble, copy, and deliver the information required by this section and may charge a reasonable fee to prepare and deliver an update of a resale certificate under Subsection (f).

(c-1) 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 in the time prescribed by Subsection (a).

(d) The property owners' association shall deliver the information required by Subsection (a) or (f) to the person specified in the written request. A written request that does not specify the name and location to which the information is to be sent is not effective. The property owners' association may deliver the information required by Subsection (a) and any update to the resale certificate required by Subsection (f) by mail, hand delivery, or alternative delivery means specified in the written request.

(e) Unless required by a dedicatory instrument, neither a property owners' association or its agent is required to inspect a property before issuing a resale certificate or an update to a resale certificate.

(f) Not later than the seventh business day after the date a written request for an update of a resale certificate delivered under Subsection (a) is received from an owner, owner's agent, or title insurance company or its agent acting on behalf of the owner, the property owners' association shall deliver to the owner, owner's agent, or title insurance company or its agent an updated resale certificate that contains the following information:

(1) if a right of first refusal or other restraint on sale is contained in the restrictions, a statement of whether the property owners' association waives the restraint on sale;

(2) the status of any unpaid special assessments, dues, or other payments attributable to the owner's property; and

(3) any changes to the information provided in the resale certificate issued under Subsection (a).

(g) Requests for an updated resale certificate pursuant to Subsection (f) must be made within 180 days of the date a resale certificate is issued under Subsection (a). The update request may be made only by the party requesting the original resale certificate.

Added by Acts 1999, 76th Leg., ch. 1198, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 147 (S.B. 1918), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1142 (H.B. 1821), Sec. 4, eff. January 1, 2012.

Sec. 207.004. OWNER'S REMEDIES FOR FAILURE BY PROPERTY OWNERS' ASSOCIATION TO TIMELY DELIVER INFORMATION. (a) If a property owners' association does not timely deliver information in accordance with Section 207.003, the owner, owner's agent, or title insurance company or its agent acting on behalf of the owner may submit a second request for the information.

(b) If a property owners' association fails to deliver the information required under Section 207.003 before the seventh day after the second request for the information was mailed by certified mail, return receipt requested, or hand delivered, evidenced by receipt, the owner:

(1) may seek one or any combination of the following:

(A) a court order directing the property owners' association to furnish the required information;

(B) a judgment against the property owners' association for not more than $500;

(C) a judgment against the property owners' association for court costs and attorney's fees; or

(D) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Paragraphs (B) and (C) from any future regular or special assessments payable to the property owners' association; and

(2) may provide a buyer under contract to purchase the owner's property an affidavit that states that the owner, owner's agent, or title insurance company or its agent acting on behalf of the owner made, in accordance with this chapter, two written requests to the property owners' association for the information described in Section 207.003 and that the association did not timely provide the information.

(c) If the owner provides a buyer under contract to purchase the owner's property an affidavit in accordance with Subsection (b)(2):

(1) the buyer, lender, or title insurance company or its agent is not liable to the property owners' association for:

(A) any money that is due and unpaid to the property owners' association on the date the affidavit was prepared; and

(B) any debt to the property owners' association or claim by the property owners' association that accrued before the

date the affidavit was prepared; and

(2) the property owners' association's lien to secure the amounts due the property owners' association on the owner's property on the date the affidavit was prepared shall automatically terminate.

Added by Acts 1999, 76th Leg., ch. 1198, Sec. 1, eff. Sept. 1, 1999.

Sec. 207.005. EFFECT OF RESALE CERTIFICATE; LIABILITY. (a) A property owners' association may not deny the validity of any statement in the resale certificate. The property owners' association's lien to secure undisclosed amounts due the property owners' association on the date the resale certificate is prepared shall automatically terminate as a lien securing the undisclosed amount. A buyer, buyer's agent, owner, owner's agent, lender, and title insurance company and its agent are not liable for any debt or claim existing on the preparation date of the resale certificate that is not disclosed in the resale certificate.

(b) A resale certificate does not affect:

(1) the right of a property owners' association to recover debts or claims that arise or become due after the date the resale certificate is prepared; or

(2) a lien on a property securing payment of future assessments held by the property owners' association.

(c) The owner's agent and the title insurance company and its agent are not liable to a buyer for any delay or failure by the property owners' association in delivering the information required by Section 207.003.

(d) Except as provided by Section 207.004, the property owners' association is not liable to an owner selling property in the subdivision for delay or failure to deliver the information required by Section 207.003. An officer or agent of the property owners' association is not liable for a delay or failure to furnish a resale certificate.

Added by Acts 1999, 76th Leg., ch. 1198, Sec. 1, eff. Sept. 1, 1999.

Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. A property owners' association shall make dedicatory instruments relating to the association or subdivision and filed in the county

deed records available on a website if the association has, or a management company on behalf of the association maintains, a publicly accessible website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1142 (H.B. 1821), Sec. 5, eff. January 1, 2012.

CHAPTER 208. AMENDMENT AND TERMINATION OF RESTRICTIVE COVENANTS IN HISTORIC NEIGHBORHOODS

Sec. 208.001. DEFINITIONS. In this chapter:

(1) "Owner" and "real property records" have the meanings assigned by Section 201.003.

(2) "Dedicatory instrument," "property owners' association," "petition," and "restrictive covenant" have the meanings assigned by Section 202.001.

(3) "Regular assessment" and "special assessment" have the meanings assigned by Section 204.001.

(4) "Apartment complex" has the meaning assigned by Section 204.002(c).

(5) "Historic neighborhood" means:

(A) an area incorporated as a separate municipality before 1900 and subsequently annexed into another municipality;

(B) an area described by a municipal map or subdivision plat filed in real property records of the county in which the area is located before 1900; or

(C) an area designated as a historic district or similar designation by the municipality in which the area is located, the Texas Historical Commission, or the National Register of Historic Places.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 207.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), eff. Sept. 1, 2001.

Sec. 208.002. APPLICABILITY. (a) This chapter applies only to a historic neighborhood that is located in whole or in part in a municipality with a population of 1.6 million or more located in a county with a population of 2.8 million or more.

(b) This chapter applies to a restrictive covenant regardless

of the date on which it was created.

(c) This chapter applies to property in the area of a historic neighborhood that is zoned for or that contains a commercial structure, an industrial structure, an apartment complex, or a condominium development covered by Title 7 only if the owner of the property signed a restrictive covenant that includes the property in a common scheme for preservation of historic property as described by Section 208.004.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 207.002 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), 21,002(17), eff. Sept. 1, 2001.

Sec. 208.003. HISTORIC NEIGHBORHOOD PRESERVATION ASSOCIATION. (a) A historic neighborhood preservation association must:

(1) be a Texas nonprofit corporation or limited liability company organized, in part, to encourage the preservation of property in a historic neighborhood; and

(2) open its membership to all owners of property in the historic neighborhood.

(b) A historic neighborhood preservation association may be composed of only a portion of the owners of property in the historic neighborhood.

(c) A historic neighborhood preservation association may be a property owners' association or an organization that is qualified as a charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986.

(d) A statement in the articles of incorporation or association, bylaws, regulations, or operating agreement of the historic neighborhood preservation association is prima facie evidence of compliance with Subsection (a).

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 207.003 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), eff. Sept. 1, 2001.

Sec. 208.004. COMMON SCHEME FOR PRESERVATION OF PROPERTY IN HISTORIC NEIGHBORHOOD. (a) A common scheme for preservation of historic property exists in a historic neighborhood if:

(1) the restrictive covenants were created by individual dedicatory instruments signed by an owner of one or more separately owned parcels or tracts in the historic neighborhood; and

(2) the restrictive covenants authorize a historic neighborhood preservation association to enforce the restrictive covenants.

(b) A common scheme for preservation of historic property does not include property that is not subject to restrictive covenants that authorize a historic neighborhood preservation association to enforce the restrictive covenants.

(c) Restrictive covenants included in a common scheme for preservation of historic property exist for the benefit of all owners of property subject to the common scheme for preservation as if each owner were referenced in each dedicatory instrument.

(d) Each owner of property subject to a common scheme for preservation of historic property may enforce restrictive covenants on other property included in the common scheme for preservation.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 207.004 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), eff. Sept. 1, 2001.

Sec. 208.005. AMENDMENT OR TERMINATION OF RESTRICTIVE COVENANTS UNDER COMMON SCHEME FOR PRESERVATION. (a) A restrictive covenant applicable to property that is included in a common scheme for preservation of historic property may not be amended or terminated except as provided by this section.

(b) A historic neighborhood preservation association may approve and submit to a vote of the owners of property that is included in a common scheme for preservation of historic property an amendment of the restrictive covenants or the termination of all or part of the restrictive covenants included in the common scheme for preservation of historic property.

(c) The amendment or termination of a restrictive covenant is effective and applies to each separately owned parcel or tract subject to the common scheme for preservation of historic property if the owners of at least 75 percent of the parcels or tracts who vote on the issue in accordance with Section 208.006 vote in favor of the amendment or termination of the restrictive covenant.

(d) A document certifying that 75 percent of the owners voting on the issue approved the amendment or termination of the restrictive covenant must be recorded by the historic neighborhood preservation association in the real property records of the county in which the historic neighborhood is located. The document is prima facie evidence that the requisite percentage of votes was attained and the required formalities for the action were taken.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 207.005 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), 21.002(18), eff. Sept. 1, 2001.

Sec. 208.006. METHOD OF VOTING. (a) An amendment or termination of a restrictive covenant must be voted on:

(1) by a written ballot that states the substance of the amendment or termination of the restrictive covenant and specifies the date by which the historic neighborhood preservation association must receive a ballot for the ballot to be counted;

(2) at a meeting of the historic neighborhood preservation association;

(3) by circulation of a petition by the historic neighborhood preservation association or a person authorized by the historic neighborhood preservation association; or

(4) by any combination of methods described by this subsection.

(b) If the vote occurs at a meeting of the historic neighborhood preservation association under Subsection (a)(2), the historic neighborhood preservation association shall:

(1) before the meeting, deliver written notice of the meeting stating the purpose of the meeting to each owner of property subject to the common scheme for preservation of historic property; and

(2) provide each owner of property subject to the common scheme for preservation with the opportunity to appear and vote at the meeting.

(c) The historic neighborhood preservation association shall provide for the mailing to each owner, as applicable:

(1) the ballot under Subsection (a)(1);

(2) notice of the meeting under Subsection (a)(2); or

(3) the petition under Subsection (a)(3).

(d) The vote of multiple owners of a property may be reflected by signature or vote of one of the owners.

(e) The historic neighborhood preservation association shall record a copy of the ballot or petition, as applicable, in the real property records of the county in which the historic neighborhood is located before the vote of the owners.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 207.006 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), eff. Sept. 1, 2001.

Sec. 208.007. REGULAR AND SPECIAL ASSESSMENTS. The procedure established by this chapter for the amendment of restrictive covenants may not be used to establish a regular or special assessment.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 207.007 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), eff. Sept. 1, 2001.

Sec. 208.008. BUILDING LINES. The procedure established by this chapter for the amendment of restrictive covenants may not be used to modify a building line established by a restrictive covenant, municipal map, or subdivision plat.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 207.008 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), eff. Sept. 1, 2001.

Sec. 208.009. DEFENSE TO ENFORCEMENT OF RESTRICTIVE COVENANT. An owner may not assert as a defense to the enforcement of a restrictive covenant that is part of a common scheme for preservation of historic property that the owner or a predecessor in title signed a blank signature page or similar procedural defect if the signature page was attached to a dedicatory instrument adopted by a historic neighborhood preservation association and:

(1) the dedicatory instrument has been recorded for more

than two years; or

(2) the restrictive covenant is referenced in the owner's title insurance policy obtained by the owner when the property was purchased.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 207.009 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), eff. Sept. 1, 2001.

CHAPTER 209. TEXAS RESIDENTIAL PROPERTY OWNERS PROTECTION ACT

Sec. 209.001. SHORT TITLE. This chapter may be cited as the Texas Residential Property Owners Protection Act.

Added by Acts 2001, 77th Leg., ch. 926, Sec. 1, eff. Jan. 1, 2002.

Sec. 209.002. DEFINITIONS. In this chapter:

(1) "Assessment" means a regular assessment, special assessment, or other amount a property owner is required to pay a property owners' association under the dedicatory instrument or by law.

(2) "Board" means the governing body of a property owners' association.

(3) "Declaration" means an instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision.

(4) "Dedicatory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or similar instruments subjecting property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, and to all lawful amendments to the covenants, bylaws, rules, or regulations.

(4-a) "Development period" means a period stated in a declaration during which a declarant reserves:

(A) a right to facilitate the development, construction, and marketing of the subdivision; or

(B) a right to direct the size, shape, and composition of the subdivision.

(5) "Lot" means any designated parcel of land located in a residential subdivision, including any improvements on the designated parcel.

(6) "Owner" means a person who holds record title to property in a residential subdivision and includes the personal representative of a person who holds record title to property in a residential subdivision.

(7) "Property owners' association" or "association" means an incorporated or unincorporated association that:

(A) is designated as the representative of the owners of property in a residential subdivision;

(B) has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; and

(C) manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision.

(8) "Regular assessment" means an assessment, a charge, a fee, or dues that each owner of property within a residential subdivision is required to pay to the property owners' association on a regular basis and that is designated for use by the property owners' association for the benefit of the residential subdivision as provided by the restrictions.

(9) "Residential subdivision" or "subdivision" means a subdivision, planned unit development, townhouse regime, or similar planned development in which all land has been divided into two or more parts and is subject to restrictions that:

(A) limit a majority of the land subject to the dedicatory instruments, excluding streets, common areas, and public areas, to residential use for single-family homes, townhomes, or duplexes only;

(B) are recorded in the real property records of the county in which the residential subdivision is located; and

(C) require membership in a property owners' association that has authority to impose regular or special assessments on the property in the subdivision.

(10) "Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any

amendment or extension of the restrictions.

(11) "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

(12) "Special assessment" means an assessment, a charge, a fee, or dues, other than a regular assessment, that each owner of property located in a residential subdivision is required to pay to the property owners' association, according to procedures required by the dedicatory instruments, for:

(A) defraying, in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in common areas owned by the property owners' association, including the necessary fixtures and personal property related to the common areas;

(B) maintenance and improvement of common areas owned by the property owners' association; or

(C) other purposes of the property owners' association as stated in its articles of incorporation or the dedicatory instrument for the residential subdivision.

(13) "Verified mail" means any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier.

Added by Acts 2001, 77th Leg., ch. 926, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 863 (H.B. 503), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 4, eff. September 1, 2015.

Sec. 209.003. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a residential subdivision that is subject to restrictions or provisions in a declaration that authorize the property owners' association to collect regular or special assessments on all or a majority of the property in the subdivision.

(b) Except as otherwise provided by this chapter, this chapter applies only to a property owners' association that requires mandatory membership in the association for all or a majority of the

owners of residential property within the subdivision subject to the association's dedicatory instruments.

(c) This chapter applies to a residential property owners' association regardless of whether the entity is designated as a "homeowners' association," "community association," or similar designation in the restrictions or dedicatory instrument.

(d) This chapter does not apply to a condominium as defined by Section 81.002 or 82.003.

(e) The following provisions of this chapter do not apply to a property owners' association that is a mixed-use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines:

(1) Section 209.005(c);
(2) Section 209.0056;
(3) Section 209.0057;
(4) Section 209.0058;
(5) Section 209.00592; and
(6) Section 209.0062.

Added by Acts 2001, 77th Leg., ch. 926, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1367 (H.B. 3674), Sec. 7, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 1, eff. January 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 1142 (H.B. 1821), Sec. 6, eff. January 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 1217 (S.B. 472), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1282 (H.B. 1228), Sec. 1, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 17.002(a), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 17.002(b), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 5, eff. September 1, 2015.

Sec. 209.004. MANAGEMENT CERTIFICATES. (a) A property owners' association shall record in each county in which any portion of the residential subdivision is located a management certificate, signed and acknowledged by an officer or the managing agent of the association, stating:

(1) the name of the subdivision;

(2) the name of the association;

(3) the recording data for the subdivision;

(4) the recording data for the declaration;

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

(6) the name and mailing address of the person managing the association or the association's designated representative; and

(7) other information the association considers appropriate.

(a-1) The county clerk of each county in which a management certificate is filed as required by this section shall record the management certificate in the real property records of the county and index the document as a "Property Owners' Association Management Certificate."

(b) The 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 any information in the recorded certificate required by Subsection (a).

(c) Except as provided under Subsections (d) and (e), the property owners' association and its officers, directors, employees, and agents are not subject to liability to any person for a delay in recording or failure to record a management certificate, unless the delay or failure is wilful or caused by gross negligence.

(d) If a property owners' association fails to record a management certificate or an amended management certificate under this section, the purchaser, lender, or title insurance company or its agent in a transaction involving property in the property owners' association is not liable to the property owners' association for:

(1) any amount due to the association on the date of a transfer to a bona fide purchaser; and

(2) any debt to or claim of the association that accrued before the date of a transfer to a bona fide purchaser.

(e) A lien of a property owners' association that fails to file a management certificate or an amended management certificate under this section to secure an amount due on the effective date of a

transfer to a bona fide purchaser is enforceable only for an amount incurred after the effective date of sale.

(f) For purposes of this section, "bona fide purchaser" means:

(1) a person who pays valuable consideration without notice of outstanding rights of others and acts in good faith; or

(2) a third-party lender who acquires a security interest in the property under a deed of trust.

Added by Acts 2001, 77th Leg., ch. 926, Sec. 1, eff. Jan. 1, 2002. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 148 (S.B. 1919), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1108 (H.B. 3800), Sec. 1, eff. September 1, 2013.

Sec. 209.0041. ADOPTION OR AMENDMENT OF CERTAIN DEDICATORY INSTRUMENTS. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1183 , Sec. 24, eff. September 1, 2015.

(b) This section applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association.

(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.

(d) This section does not apply to the amendment of a declaration during a development period.

(e) This section applies to a dedicatory instrument regardless of the date on which the dedicatory instrument was created.

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

(g) To the extent of any conflict with another provision of this title, this section prevails.

(h) Except as provided by Subsection (h-1) or (h-2), a declaration may be amended only by a vote of 67 percent of the total votes allocated to property owners entitled to vote on the amendment of the declaration, in addition to any governmental approval required by law.

(h-1) If the declaration contains a lower percentage than prescribed by Subsection (h), the percentage in the declaration

controls.

(h-2) If the declaration is silent as to voting rights for an amendment, the declaration may be amended by a vote of owners owning 67 percent of the lots subject to the declaration.

(i) A bylaw may not be amended to conflict with the declaration.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1217 (S.B. 472), Sec. 2, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 6, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 24, eff. September 1, 2015.

Sec. 209.0042. METHODS OF PROVIDING NOTICES TO OWNERS. (a) Subject to this section, a property owners' association may adopt a method that may be used by the association to provide a notice from the association to a property owner.

(b) A property owners' association may use an alternative method of providing notice adopted under this section to provide a notice for which another method is prescribed by law only if the property owner to whom the notice is provided has affirmatively opted to allow the association to use the alternative method of providing notice to provide to the owner notices for which another method is prescribed by law.

(c) A property owners' association may not require an owner to allow the association to use an alternative method of providing notice adopted under this section to provide to the owner any notice for which another method of providing notice is prescribed by law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 7, eff. September 1, 2015.

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.

Added by Acts 2001, 77th Leg., ch. 926, Sec. 1, eff. Jan. 1, 2002. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1367 (H.B. 3674), Sec. 6, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 2, eff. January 1, 2012.

Sec. 209.0051. OPEN BOARD MEETINGS. (a) This section does not apply to a property owners' association that is subject to Chapter 551, Government Code, by application of Section 551.0015, Government Code.

(b) In this section, "board meeting":

(1) means a deliberation between a quorum of the voting board of the property owners' association, or between a quorum of the voting board and another person, during which property owners' association business is considered and the board takes formal action; and

(2) does not include the gathering of a quorum of the board 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, ceremonial event, or press conference, if formal action is not taken and any discussion of association business is incidental to the social function, convention, ceremonial event, or press conference.

(c) 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. Following an executive session, 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.

(c-1) Except for a meeting held by electronic or telephonic means under Subsection (c-2), a board meeting must be held in a county in which all or part of the property in the subdivision is located or in a county adjacent to that county.

(c-2) A board meeting may be held by electronic or telephonic means provided that:

(1) each board member may hear and be heard by every other board member;

(2) except for any portion of the meeting conducted in executive session:

(A) all owners in attendance at the meeting may hear all board members; and

(B) owners are allowed to listen using any electronic or telephonic communication method used or expected to be used by a board member to participate; and

(3) the notice of the meeting includes instructions for owners to access any communication method required to be accessible under Subdivision (2)(B).

(d) The board shall keep a record of each regular or special board meeting in the form of written minutes of the meeting. The board shall make meeting records, including approved minutes, available to a member for inspection and copying on the member's written request to the property owners' association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the board.

(e) 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.

(f) It is an owner's duty to keep an updated e-mail address registered with the property owners' association under Subsection (e)(2)(B).

(g) If the board recesses a regular or special board meeting to continue the following regular business day, the board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special board meeting is continued to the following regular business day, and on that following day the board continues the meeting to another day, the board shall give notice of the continuation in at least one manner prescribed by Subsection (e)(2)(A) within two hours after adjourning the meeting being continued.

(h) Except as provided by this subsection, a board may take action outside of a meeting, including voting by electronic or telephonic means, without prior notice to owners under Subsection (e), if each board member is given a reasonable opportunity to express the board member's opinion to all other board members and to vote. Any action taken without notice to owners under Subsection (e) must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting. The board may not, unless done in an open meeting for which prior notice was given to owners under Subsection (e), 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;

(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;

(9) lending or borrowing money;

(10) the adoption or amendment of a dedicatory instrument;

(11) the approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than 10 percent;

(12) the sale or purchase of real property;

(13) the filling of a vacancy on the board;

(14) the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or

(15) the election of an officer.

(i) This section applies to a meeting of a property owners' association board during the development period only if the meeting is conducted for the purpose of:

(1) adopting or amending the governing documents, including declarations, bylaws, rules, and regulations of the association;

(2) increasing the amount of regular assessments of the association or adopting or increasing a special assessment;

(3) electing non-developer board members of the association or establishing a process by which those members are elected; or

(4) changing the voting rights of members of the association.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 3, eff. January 1, 2012.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 8, eff. September 1, 2015.

Sec. 209.0052. ASSOCIATION CONTRACTS. (a) This section does not apply to a contract entered into by an association during the development period.

(b) An association may enter into an enforceable contract with a current association board member, a person related to a current association board member within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, a company in which a current association board member has a financial interest in at least 51 percent of profits, or a company in which a person related to a current association board member within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a financial interest in at least 51 percent of profits only if the following conditions are satisfied:

(1) the board member, relative, or company bids on the proposed contract and the association has received at least two other bids for the contract from persons not associated with the board member, relative, or company, if reasonably available in the community;

(2) the board member:

(A) is not given access to the other bids;

(B) does not participate in any board discussion regarding the contract; and

(C) does not vote on the award of the contract;

(3) the material facts regarding the relationship or interest with respect to the proposed contract are disclosed to or known by the association board and the board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection; and

(4) the association board certifies that the other requirements of this subsection have been satisfied by a resolution approved by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection.

Added by Acts 2013, 83rd Leg., R.S., Ch. 863 (H.B. 503), Sec. 2, eff. September 1, 2013.

Sec. 209.0055. VOTING. (a) This section applies only to a property owners' association that:

(1) provides maintenance, preservation, and architectural control of residential and commercial property within a defined geographic area in a county with a population of 2.8 million or more

or in a county adjacent to a county with a population of 2.8 million or more; and

(2) is a corporation that:

(A) is governed by a board of trustees who may employ a general manager to execute the association's bylaws and administer the business of the corporation;

(B) does not require membership in the corporation by the owners of the property within the defined area; and

(C) was incorporated before January 1, 2006.

(b) A property owners' association described by Subsection (a) may not bar a property owner from voting in an association election solely based on the fact that:

(1) there is a pending enforcement action against the property owner; or

(2) the property owner owes the association any delinquent assessments, fees, or fines.

Added by Acts 2007, 80th Leg., R.S., Ch. 1367 (H.B. 3674), Sec. 8, eff. September 1, 2007.

Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE. (a) For an election or vote taken at a meeting of the owners, not later than the 10th day or earlier than the 60th day before the date of the 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.

(a-1) For an election or vote of owners not taken at a meeting, the property owners' association shall give notice of the election or vote to all owners entitled to vote on any matter under consideration. The notice shall be given not later than the 20th day before the latest date on which a ballot may be submitted to be

counted.

(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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 3, eff. January 1, 2012.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 9, eff. September 1, 2015.

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 later of the date of any meeting of owners at which the election or vote was held or the date of the announcement of the results of the election or vote, require a recount of the votes. A demand for a recount must be submitted in writing either:

(1) by verified mail 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.

(b-1) The property owners' association must estimate the costs for performance of the recount by a person qualified to tabulate votes under Subsection (c) and must send an invoice for the estimated costs to the requesting owner at the owner's last known address according to association records not later than the 20th day after the date the association receives the owner's demand for the recount.

(b-2) The owner demanding a recount under this section must pay the invoice described by Subsection (b-1) in full to the property owners' association on or before the 30th day after the date the

invoice is sent to the owner.

(b-3) If the invoice described by Subsection (b-1) is not paid by the deadline prescribed by Subsection (b-2), the owner's demand for a recount is considered withdrawn and a recount is not required.

(b-4) If the estimated costs under Subsection (b-1) are lesser or greater than the actual costs, the property owners' association must send a final invoice to the owner on or before the 30th business day after the date the results of the recount are provided. If the final invoice includes additional amounts owed by the owner, any additional amounts not paid 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 exceed the final invoice amount, the owner is entitled to a refund. The refund shall be paid to the owner at the time the final invoice is sent under this subsection.

(c) Following receipt of payment under Subsection (b-2), 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 each person requesting the recount.

(d) On or before the 30th day after the date of receipt of payment for a recount in accordance with Subsection (b-2), the recount must be completed and the property owners' association must provide each owner who requested the recount with notice of the results of the recount. If the recount changes the results of the election, the association shall reimburse the requesting owner for the cost of the recount not later than the 30th day after the date

the results of the recount are provided. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 3, eff. January 1, 2012.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 10, eff. September 1, 2015.

Sec. 209.0058. BALLOTS.

Text of subsection as amended by Acts 2015, 84th Leg., R.S., Ch. 249 (S.B. 864), Sec. 1

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

Text of subsection as amended by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 11

(a) Except as provided by Subsection (d), a vote cast by a member of a property owners' association must be in writing and signed by the member if the vote is cast:

(1) outside of a meeting;

(2) in an election to fill a position on the board;

(3) on a proposed adoption or amendment of a dedicatory instrument;

(4) on a proposed increase in the amount of a regular assessment or the proposed adoption of a special assessment; or

(5) on the proposed removal of a board member.

(a-1) If a property owners' association elects to use a ballot for a vote on a matter other than a matter described by Subsection (a), the ballot must be:

(1) in writing and signed by the member; or

(2) cast by secret ballot in accordance with Subsection (d).

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

(c) In a property owners' association election, written and signed ballots are not required for uncontested races.

Text of subsection as added by Acts 2015, 84th Leg., R.S., Ch. 249 (S.B. 864), Sec. 1

(d) A property owners' association may adopt rules to allow voting by secret ballot by members of the association. The association must take measures to reasonably ensure that:

(1) a member cannot cast more votes than the member is eligible to cast in an election or vote; and

(2) the association counts every vote cast by a member that is eligible to cast a vote.

Text of subsection as added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 11

(d) A property owners' association may adopt rules to allow voting by secret ballot by association members. The association must take measures to reasonably ensure that:

(1) a member cannot cast more votes than the member is eligible to cast in an election or vote;

(2) the association counts each vote cast by a member that the member is eligible to cast; and

(3) in any election for the board, each candidate may name one person to observe the counting of the ballots, provided that this does not entitle any observer to see the name of the person who cast any ballot, and that any disruptive observer may be removed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 3, eff. January 1, 2012.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 249 (S.B. 864), Sec. 1, eff. May 29, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 11, eff. September 1, 2015.

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.

(c) In a residential development with 10 or fewer lots for which the declaration was recorded before January 1, 2015, a person may not vote in a property owners' association election unless the person is subject to a dedicatory instrument governing the association through which the association exercises its authority.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 3, eff. January 1, 2012.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 12, eff. September 1, 2015.

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.

(a-1) Notwithstanding any other provision of this chapter, a property owners' association's bylaws may require one or more board members to reside in the subdivision subject to the dedicatory instruments but may not require all board members to reside in that subdivision. A requirement described by this subsection is not applicable during the development period.

(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 was convicted of a felony or crime involving moral turpitude not more than 20 years before the date the board is presented with the evidence, 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 or a builder in the business of constructing

homes who purchased the lots from the declarant for the purpose of selling completed homes built on the lots, 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 3, eff. January 1, 2012.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 649 (H.B. 1072), Sec. 1, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 13, eff. September 1, 2015.

Sec. 209.00592. VOTING; QUORUM. (a) Subject to Subsection (a-1), 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.

Text of subsection as added by Acts 2015, 84th Leg., R.S., Ch. 248 (S.B. 862), Sec. 1

(a-1) Unless a dedicatory instrument provides otherwise, a property owners' association is not required to provide an owner with more than one voting method so long as an owner may vote by absentee ballot or proxy.

Text of subsection as added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 14

(a-1) Except as provided by this subsection, unless a dedicatory instrument provides otherwise, a property owners' association is not required to provide an owner with more than one voting method. An owner must be allowed to vote by absentee ballot or proxy.

(b) 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.

(b-1) For purposes of Subsection (b), a nomination taken from the floor in a board member election is not considered an amendment to the proposal for the election.

(c) 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."

(d) For the purposes of this section, "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.

(e) 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.

(f) This section supersedes any contrary provision in a dedicatory instrument.

(g) 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 3, eff. January 1, 2012.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 248 (S.B. 862), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 14, eff. September 1, 2015.

Sec. 209.00593. ELECTION OF BOARD MEMBERS. (a) Notwithstanding any provision in a dedicatory instrument, any board member whose term has expired must be elected by owners who are members of the property owners' association. A board member may be appointed by the board to fill a vacancy on the board. A board member appointed to fill a vacant position shall serve for the remainder of the unexpired term of the position.

(a-1) At least 10 days before the date a property owners' association composed of more than 100 lots disseminates absentee ballots or other ballots to association members for purposes of voting in a board member election, the association must provide notice to the association members soliciting candidates interested in running for a position on the board. The notice must contain instructions for an eligible candidate to notify the association of the candidate's request to be placed on the ballot and the deadline to submit the candidate's request. The deadline may not be earlier than the 10th day after the date the association provides the notice required by this subsection.

(a-2) The notice required by Subsection (a-1) must be:

(1) mailed to each owner; or

(2) provided by:

(A) posting the notice in a conspicuous manner

reasonably designed to provide notice to 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.

(a-3) An association described by Subsection (a-1) shall include on each absentee ballot or other ballot for a board member election the name of each eligible candidate from whom the association received a request to be placed on the ballot in accordance with this section.

(b) The board of a property owners' association may amend the bylaws of the property owners' association to provide for elections to be held as required by Subsection (a).

(c) The appointment of a board member in violation of this section is void.

(d) This section does not apply to the appointment of a board member during a development period.

(e) This section does not apply to a representative board whose members or delegates are elected or appointed by representatives of a property owners' association who are elected by owner members of a property owners' association.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 3, eff. January 1, 2012.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1062 (H.B. 3176), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 15, eff. September 1, 2015.

Sec. 209.00594. TABULATION OF AND ACCESS TO BALLOTS. (a) Notwithstanding any other provision of this chapter or any other law, 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.

(b) A person other than a person described by Subsection (a) may tabulate votes in an association election or vote.

(b-1) A person who tabulates votes under Subsection (b) or who performs a recount under Section 209.0057(c) may not disclose to any other person how an individual voted.

(c) Notwithstanding any other provision of this chapter or any other law, only a person who tabulates votes under Subsection (b) or who performs a recount under Section 209.0057(c) may be given access to the ballots cast in the election or vote.

(d) This section may not be construed to affect a person's obligation to comply with a court order for the release of ballots or other voting records.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1217 (S.B. 472), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 16, eff. September 1, 2015.

Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION. (a) Before a property owners' association may suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, charge an owner for property damage, or levy a fine for a violation of the restrictions or bylaws or rules of the association, the association or its agent must give written notice to the owner by certified mail.

(b) The notice must:

(1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner;

(2) except as provided by Subsection (d), inform the owner that the owner:

(A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension if the violation is of a

curable nature and does not pose a threat to public health or safety;

(B) may request a hearing under Section 209.007 on or before the 30th day after the date the notice was mailed to the owner; and

(C) 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;

(3) specify the date by which the owner must cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety; and

(4) be sent by verified mail to the owner at the owner's last known address as shown on the association records.

(c) The date specified in the notice under Subsection (b)(3) must provide a reasonable period to cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety.

(d) Subsections (a) and (b) do not apply to a violation for which the owner has been previously given notice under this section and the opportunity to exercise any rights available under this section in the preceding six months.

(e) If the owner cures the violation before the expiration of the period for cure described by Subsection (c), a fine may not be assessed for the violation.

(f) For purposes of this section, a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.

(g) For purposes of this section, a violation is considered uncurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. For purposes of this subsection, the nonrepetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy.

(h) The following are examples of acts considered uncurable for purposes of this section:

(1) shooting fireworks;

(2) an act constituting a threat to health or safety;

(3) a noise violation that is not ongoing;

(4) property damage, including the removal or alteration of landscape; and

(5) holding a garage sale or other event prohibited by a dedicatory instrument.

(i) The following are examples of acts considered curable for purposes of this section:

(1) a parking violation;

(2) a maintenance violation;

(3) the failure to construct improvements or modifications in accordance with approved plans and specifications; and

(4) an ongoing noise violation such as a barking dog.

Added by Acts 2001, 77th Leg., ch. 926, Sec. 1, eff. Jan. 1, 2002. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 252 (H.B. 1127), Sec. 3, eff. January 1, 2012.

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 17, eff. September 1, 2015.

Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) A property owners' association composed of more than 14 lots shall adopt reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments to the property owners' 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) The minimum term for a payment plan offered by a property owners' association is three months.

(c) A property owners' association is not required to allow a payment plan for any amount that extends more than 18 months from the date of the owner's request for a payment plan. 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. The association is not required to make a payment plan available to an owner after the period for cure described by Section 209.0064(b)(3) expires. The association is not required to allow an owner to enter into a payment plan more than once in any 12-month period.

(d) A property owners' association shall file the association's

guidelines under this section in the real property records of each county in which the subdivision is located.

(e) A property owners' association's failure to file as required by this section the association's guidelines in the real property records of each county in which the subdivision is located does not prohibit a property owner from receiving an alternative payment schedule by which the owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties, as defined by Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1282 (H.B. 1228), Sec. 2, eff. January 1, 2012.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 18, eff. September 1, 2015.

Sec. 209.0063. PRIORITY OF PAYMENTS. (a) Except as provided by Subsection (b), 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 or third party collection costs incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;

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

(5) any fines assessed by the association; and

(6) any other amount owed to the association.

(b) If, at the time the property owners' association receives a payment from a property owner, the owner is in default under a payment plan entered into with the association:

(1) the association is not required to apply the payment in the order of priority specified by Subsection (a); and

(2) in applying the payment, a fine assessed by the association may not be given priority over any other amount owed to the association.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1282 (H.B. 1228), Sec. 2,

eff. January 1, 2012.

Sec. 209.0064. THIRD PARTY COLLECTIONS. (a) In this section, "collection agent" means a debt collector, as defined by Section 803 of the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692a).

(b) A property owners' association may not hold an owner liable for fees of a collection agent retained by the association unless the association first provides written notice to the owner by certified mail that:

(1) specifies each delinquent amount and the total amount of the payment required to make the account current;

(2) if the association is subject to Section 209.0062 or the association's dedicatory instruments contain a requirement to offer a payment plan, describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding availability of a payment plan through the association; and

(3) provides a period of at least 30 days for the owner to cure the delinquency before further collection action is taken.

(c) 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.

(d) The agreement between the property owners' 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.

(e) A property owners' association may not sell or otherwise transfer any interest in the association's accounts receivables for a purpose other than as collateral for a loan.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1282 (H.B. 1228), Sec. 2,

eff. January 1, 2012.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 19, eff. September 1, 2015.

Sec. 209.007. HEARING BEFORE BOARD; ALTERNATIVE DISPUTE RESOLUTION. (a) If the owner is entitled to an opportunity to cure the violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in 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) If a hearing is to be held before a committee, the notice prescribed by Section 209.006 must state that the owner has the right to appeal the committee's decision to the board by written notice to the board.

(c) 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 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. The owner or the association may make an audio recording of the meeting.

(d) The notice and hearing provisions of Section 209.006 and this section do not apply if the association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action. If a suit is filed relating to a matter to which those sections apply, a party to the suit may file a motion to compel mediation. The notice and hearing provisions of Section 209.006 and this section do not apply to a temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the subdivision. The temporary suspension is effective until the board makes a final determination on the suspension action after following the procedures prescribed by this section.

(e) An owner or property owners' association may use alternative dispute resolution services.

Added by Acts 2001, 77th Leg., ch. 926, Sec. 1, eff. Jan. 1, 2002.

Sec. 209.008. ATTORNEY'S FEES. (a) A property owners' association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the association relating to collecting amounts, including damages, due the association for enforcing restrictions or the bylaws or rules of the association only if the owner is provided a written notice that attorney's fees and costs will be charged to the owner if the delinquency or violation continues after a date certain.

(b) An owner is not liable for attorney's fees incurred by the association relating to a matter described by the notice under Section 209.006 if the attorney's fees are incurred before the conclusion of the hearing under Section 209.007 or, if the owner does not request a hearing under that section, before the date by which the owner must request a hearing. The owner's presence is not required to hold a hearing under Section 209.007.

(c) All attorney's fees, costs, and other amounts collected from an owner shall be deposited into an account maintained at a financial institution in the name of the association or its managing agent. Only members of the association's board or its managing agent or employees of its managing agent may be signatories on the account.

(d) On written request from the owner, the association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the association seeks reimbursement of fees and costs.

(e) The notice provisions of Subsection (a) do not apply to a counterclaim of an association in a lawsuit brought against the association by a property owner.

(f) If the dedicatory instrument or restrictions of an association allow for nonjudicial foreclosure, the amount of attorney's fees that a property owners' association may include in a nonjudicial foreclosure sale for an indebtedness covered by a property owners' association's assessment lien is limited to the greater of:

(1) one-third of the amount of all actual costs and

assessments, excluding attorney's fees, plus interest and court costs, if those amounts are permitted to be included by law or by the restrictive covenants governing the property; or

(2) $2,500.

(g) Subsection (f) does not prevent a property owners' association from recovering or collecting attorney's fees in excess of the amounts prescribed by Subsection (f) by other means provided by law.

Added by Acts 2001, 77th Leg., ch. 926, Sec. 1, eff. Jan. 1, 2002.

Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES. A property owners' association may not foreclose a property owners' association's assessment lien if the debt securing the lien consists solely of:

(1) fines assessed by the association;

(2) attorney's fees incurred by the association solely associated with fines assessed by the association; or

(3) amounts added to the owner's account as an assessment under Section 209.005(i) or 209.0057(b-4).

Added by Acts 2001, 77th Leg., ch. 926, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 4, eff. January 1, 2012.

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 20, eff. September 1, 2015.

Sec. 209.0091. PREREQUISITES TO FORECLOSURE: NOTICE AND OPPORTUNITY TO CURE FOR CERTAIN OTHER LIENHOLDERS. (a) A property owners' association may not file an application for an expedited court order authorizing foreclosure of the association's assessment lien as described by Section 209.0092(a) or a petition for judicial foreclosure of the association's assessment lien as described by Section 209.0092(d) unless the association has:

(1) provided written notice of the total amount of the delinquency giving rise to the foreclosure to any other holder of a lien of record on the property whose lien is inferior or subordinate to the association's lien and is evidenced by a deed of trust; and

(2) provided the recipient of the notice an opportunity to cure the delinquency before the 61st day after the date the association mails the notice described in Subdivision (1).

(b) Notice under this section must be sent by certified mail to the address for the lienholder shown in the deed records relating to the property that is subject to the property owners' association assessment lien.

(c) Notwithstanding any other law, notice under this section may be provided to any holder of a lien of record on the property.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1282 (H.B. 1228), Sec. 2, eff. January 1, 2012.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 21, eff. September 1, 2015.

Sec. 209.0092. JUDICIAL FORECLOSURE REQUIRED. (a) Except as provided by Subsection (c) or (d) and subject to Section 209.009, a property owners' association may not foreclose a property owners' association assessment lien unless the association first obtains a court order in an application for expedited foreclosure under the rules adopted by the supreme court under Subsection (b). A property owners' association may use the procedure described by this subsection to foreclose any lien described by the association's dedicatory instruments. A property owners' association whose dedicatory instruments grant a right of foreclosure is considered to have any power of sale required by law as a condition of using the procedure described by this subsection.

(b) The supreme court, as an exercise of the court's authority under Section 74.024, Government Code, shall adopt rules establishing expedited foreclosure proceedings for use by a property owners' association in foreclosing an assessment lien of the association. The rules adopted under this subsection must be substantially similar to the rules adopted by the supreme court under Section 50(r), Article XVI, Texas Constitution.

(c) Expedited foreclosure is not required under this section if the owner of the property that is subject to foreclosure agrees in writing at the time the foreclosure is sought to waive expedited foreclosure under this section. A waiver under this subsection may

not be required as a condition of the transfer of title to real property.

(d) A property owners' association authorized to use the procedure described by Subsection (a) may in its discretion elect not to use that procedure and instead foreclose the association's assessment lien under court judgment foreclosing the lien and ordering the sale, pursuant to Rules 309 and 646a, Texas Rules of Civil Procedure.

(e) This section does not affect any right an association that is not authorized to use the procedure described by Subsection (a) may have to judicially foreclose the association's assessment lien as described by Subsection (d).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1282 (H.B. 1228), Sec. 2, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 22, eff. September 1, 2015.

Sec. 209.0093. REMOVAL OR ADOPTION OF FORECLOSURE AUTHORITY. A provision granting a right to foreclose a lien on real property for unpaid amounts due to a property owners' association may be removed from a dedicatory instrument or adopted in a dedicatory instrument by a vote of at least 67 percent of the total votes allocated to property owners in the property owners' association. Owners holding at least 10 percent of all voting interests in the property owners' association may petition the association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1282 (H.B. 1228), Sec. 2, eff. January 1, 2012.

Sec. 209.0094. ASSESSMENT LIEN FILING. A lien, lien affidavit, 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1282 (H.B. 1228), Sec. 2, eff. January 1, 2012.

Sec. 209.010. NOTICE AFTER FORECLOSURE SALE. (a) A property owners' association that conducts a foreclosure sale of an owner's lot must send to the lot owner and to each lienholder of record, not later than the 30th day after the date of the foreclosure sale, a written notice stating the date and time the sale occurred and informing the lot owner and each lienholder of record of the right of the lot owner and lienholder to redeem the property under Section 209.011.

(b) The notice must be sent by certified mail, return receipt requested, to:

(1) the lot owner's last known mailing address, as reflected in the records of the property owners' association;

(2) the address of each holder of a lien on the property subject to foreclosure evidenced by the most recent deed of trust filed of record in the real property records of the county in which the property is located; and

(3) the address of each transferee or assignee of a deed of trust described by Subdivision (2) who has provided notice to a property owners' association of such assignment or transfer. Notice provided by a transferee or assignee to a property owners' association shall be in writing, shall contain the mailing address of the transferee or assignee, and shall be mailed by certified mail, return receipt requested, or United States mail with signature confirmation to the property owners' association according to the mailing address of the property owners' association pursuant to the most recent management certificate filed of record pursuant to Section 209.004.

(b-1) If a recorded instrument does not include an address for the lienholder, the association does not have a duty to notify the lienholder as provided by this section.

(b-2) For purposes of this section, the lot owner is deemed to have given approval for the association to notify the lienholder.

(c) Not later than the 30th day after the date the association sends the notice required by Subsection (a), the association must record an affidavit in the real property records of the county in which the lot is located, stating the date on which the notice was

sent and containing a legal description of the lot. Any person is entitled to rely conclusively on the information contained in the recorded affidavit.

(d) The notice requirements of this section also apply to the sale of an owner's lot by a sheriff or constable conducted as provided by a judgment obtained by the property owners' association.

Added by Acts 2001, 77th Leg., ch. 926, Sec. 1, eff. Jan. 1, 2002. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1176 (H.B. 3479), Sec. 2, eff. September 1, 2009.

Sec. 209.011. RIGHT OF REDEMPTION AFTER FORECLOSURE. (a) A property owners' association or other person who purchases occupied property at a sale foreclosing a property owners' association's assessment lien must commence and prosecute a forcible entry and detainer action under Chapter 24 to recover possession of the property.

(b) The owner of property in a residential subdivision or a lienholder of record may redeem the property from any purchaser at a sale foreclosing a property owners' association's assessment lien not later than the 180th day after the date the association mails written notice of the sale to the owner and the lienholder under Section 209.010. A lienholder of record may not redeem the property as provided herein before 90 days after the date the association mails written notice of the sale to the lot owner and the lienholder under Section 209.010, and only if the lot owner has not previously redeemed.

(c) A person who purchases property at a sale foreclosing a property owners' association's assessment lien may not transfer ownership of the property to a person other than a redeeming lot owner during the redemption period.

(d) To redeem property purchased by the property owners' association at the foreclosure sale, the lot owner or lienholder must pay to the association:

(1) all amounts due the association at the time of the foreclosure sale;

(2) interest from the date of the foreclosure sale to the date of redemption on all amounts owed the association at the rate

stated in the dedicatory instruments for delinquent assessments or, if no rate is stated, at an annual interest rate of 10 percent;

(3) costs incurred by the association in foreclosing the lien and conveying the property to the lot owner, including reasonable attorney's fees;

(4) any assessment levied against the property by the association after the date of the foreclosure sale;

(5) any reasonable cost incurred by the association, including mortgage payments and costs of repair, maintenance, and leasing of the property; and

(6) the purchase price paid by the association at the foreclosure sale less any amounts due the association under Subdivision (1) that were satisfied out of foreclosure sale proceeds.

(e) To redeem property purchased at the foreclosure sale by a person other than the property owners' association, the lot owner or lienholder:

(1) must pay to the association:

(A) all amounts due the association at the time of the foreclosure sale less the foreclosure sales price received by the association from the purchaser;

(B) interest from the date of the foreclosure sale through the date of redemption on all amounts owed the association at the rate stated in the dedicatory instruments for delinquent assessments or, if no rate is stated, at an annual interest rate of 10 percent;

(C) costs incurred by the association in foreclosing the lien and conveying the property to the redeeming lot owner, including reasonable attorney's fees;

(D) any unpaid assessments levied against the property by the association after the date of the foreclosure sale; and

(E) taxable costs incurred in a proceeding brought under Subsection (a); and

(2) must pay to the person who purchased the property at the foreclosure sale:

(A) any assessments levied against the property by the association after the date of the foreclosure sale and paid by the purchaser;

(B) the purchase price paid by the purchaser at the foreclosure sale;

(C) the amount of the deed recording fee;

(D) the amount paid by the purchaser as ad valorem taxes, penalties, and interest on the property after the date of the foreclosure sale; and

(E) taxable costs incurred in a proceeding brought under Subsection (a).

(f) If a lot owner or lienholder redeems the property under this section, the purchaser of the property at foreclosure shall immediately execute and deliver to the redeeming party a deed transferring the property to the lot owner. If a purchaser fails to comply with this section, the lot owner or lienholder may file an action against the purchaser and may recover reasonable attorney's fees from the purchaser if the lot owner or the lienholder is the prevailing party in the action.

(g) If, before the expiration of the redemption period, the redeeming lot owner or lienholder fails to record the deed from the foreclosing purchaser or fails to record an affidavit stating that the lot owner or lienholder has redeemed the property, the lot owner's or lienholder's right of redemption as against a bona fide purchaser or lender for value expires after the redemption period.

(h) The purchaser of the property at the foreclosure sale or a person to whom the person who purchased the property at the foreclosure sale transferred the property may presume conclusively that the lot owner or a lienholder did not redeem the property unless the lot owner or a lienholder files in the real property records of the county in which the property is located:

(1) a deed from the purchaser of the property at the foreclosure sale; or

(2) an affidavit that:

(A) states that the property has been redeemed;

(B) contains a legal description of the property; and

(C) includes the name and mailing address of the person who redeemed the property.

(i) If the property owners' association purchases the property at foreclosure, all rent and other income collected by the association from the date of the foreclosure sale to the date of redemption shall be credited toward the amount owed the association under Subsection (d), and if there are excess proceeds, they shall be refunded to the lot owner. If a person other than the association purchases the property at foreclosure, all rent and other income collected by the purchaser from the date of the foreclosure sale to

the date of redemption shall be credited toward the amount owed the purchaser under Subsection (e), and if there are excess proceeds, those proceeds shall be refunded to the lot owner.

(j) If a person other than the property owners' association is the purchaser at the foreclosure sale, before executing a deed transferring the property to the lot owner, the purchaser shall obtain an affidavit from the association or its authorized agent stating that all amounts owed the association under Subsection (e) have been paid. The association shall provide the purchaser with the affidavit not later than the 10th day after the date the association receives all amounts owed to the association under Subsection (e). Failure of a purchaser to comply with this subsection does not affect the validity of a redemption.

(k) Property that is redeemed remains subject to all liens and encumbrances on the property before foreclosure. Any lease entered into by the purchaser of property at a sale foreclosing an assessment lien of a property owners' association is subject to the right of redemption provided by this section and the lot owner's right to reoccupy the property immediately after redemption.

(l) If a lot owner makes partial payment of amounts due the association at any time before the redemption period expires but fails to pay all amounts necessary to redeem the property before the redemption period expires, the association shall refund any partial payments to the lot owner by mailing payment to the owner's last known address as shown in the association's records not later than the 30th day after the expiration date of the redemption period.

(m) If a lot owner or lienholder sends by certified mail, return receipt requested, a written request to redeem the property on or before the last day of the redemption period, the lot owner's or lienholder's right of redemption is extended until the 10th day after the date the association and any third party foreclosure purchaser provides written notice to the redeeming party of the amounts that must be paid to redeem the property.

(n) After the redemption period and any extended redemption period provided by Subsection (m) expires without a redemption of the property, the association or third party foreclosure purchaser shall record an affidavit in the real property records of the county in which the property is located stating that the lot owner or a lienholder did not redeem the property during the redemption period or any extended redemption period.

(o) The association or the person who purchased the property at the foreclosure sale may file an affidavit in the real property records of the county in which the property is located that states the date the citation was served in a suit under Subsection (a) and contains a legal description of the property. Any person may rely conclusively on the information contained in the affidavit.

(p) The rights of a lot owner and a lienholder under this section also apply if the sale of the lot owner's property is conducted by a constable or sheriff as provided by a judgment obtained by the property owners' association.

Added by Acts 2001, 77th Leg., ch. 926, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1176 (H.B. 3479), Sec. 3, eff. September 1, 2009.

Sec. 209.012. RESTRICTIVE COVENANTS GRANTING EASEMENTS TO CERTAIN PROPERTY OWNERS' ASSOCIATIONS. (a) A property owners' association may not amend a dedicatory instrument to grant the property owners' association an easement through or over an owner's lot without the consent of the owner.

(b) This section does not prohibit a property owners' association from adopting or enforcing a restriction in a dedicatory instrument that allows the property owners' association to access an owner's lot to remedy a violation of the dedicatory instrument.

Added by Acts 2007, 80th Leg., R.S., Ch. 887 (H.B. 2402), Sec. 1, eff. September 1, 2007.

Sec. 209.013. AUTHORITY OF ASSOCIATION TO AMEND DEDICATORY INSTRUMENT. (a) A dedicatory instrument created by a developer of a residential subdivision or by a property owners' association in which the developer has a majority of the voting rights or that the developer otherwise controls under the terms of the dedicatory instrument may not be amended during the period between the time the developer loses the majority of the voting rights or other form of control of the property owners' association and the time a new board of directors of the association assumes office following the loss of the majority of the voting rights or other form of control.

(b) A provision in a dedicatory instrument that violates this section is void and unenforceable.

Added by Acts 2007, 80th Leg., R.S., Ch. 887 (H.B. 2402), Sec. 2(a), eff. September 1, 2007.

Sec. 209.014. MANDATORY ELECTION REQUIRED AFTER FAILURE TO CALL REGULAR MEETING. (a) Notwithstanding any provision in a dedicatory instrument, a board of a property owners' association shall call an annual meeting of the members of the association.

(b) If a board of a property owners' 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 property owners' 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.

(c) If the board does not call a meeting of the members of the property owners' association on or before the 30th day after the date of a demand under Subsection (b), three or more owners may form an election committee. The election committee shall file written notice of the committee's formation with the county clerk of each county in which the subdivision is located.

(d) A notice filed by an election committee must contain:

(1) a statement that an election committee has been formed to call a meeting of owners who are members of the property owners' association for the sole purpose of electing board members;

(2) the name and residential address of each committee member; and

(3) the name of the subdivision over which the property owners' association has jurisdiction under a dedicatory instrument.

(e) Each committee member must sign and acknowledge the notice before a notary or other official authorized to take acknowledgments.

(f) The county clerk shall enter on the notice the date the notice is filed and record the notice in the county's real property records.

(g) Only one committee in a subdivision may operate under this section at one time. If more than one committee in a subdivision files a notice, the first committee that files a notice, after having complied with all other requirements of this section, is the committee with the power to act under this section. A committee that does not hold or conduct a successful election within four months after the date the notice is filed with the county clerk is dissolved by operation of law. An election held or conducted by a dissolved committee is ineffective for any purpose under this section.

(h) The election committee may call meetings of the owners who are members of the property owners' association for the sole purpose of electing board members. Notice, quorum, and voting provisions contained in the bylaws of the property owners' association apply to any meeting called by the election committee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 5, eff. January 1, 2012.

Sec. 209.015. REGULATION OF LAND USE: RESIDENTIAL PURPOSE. (a) In this section:

(1) "Adjacent lot" means:

(A) a lot that is contiguous to another lot that fronts on the same street;

(B) with respect to a corner lot, a lot that is contiguous to the corner lot by either a side property line or a back property line; or

(C) if permitted by the dedicatory instrument, any lot that is contiguous to another lot at the back property line.

(2) "Residential purpose" with respect to the use of a lot:

(A) means the location on the lot of any building, structure, or other improvement customarily appurtenant to a residence, as opposed to use for a business or commercial purpose; and

(B) includes the location on the lot of a garage, sidewalk, driveway, parking area, children's swing or playscape, fence, septic system, swimming pool, utility line, or water well and, if otherwise specifically permitted by the dedicatory instrument, the parking or storage of a recreational vehicle.

(b) Except as provided by this section, a property owners'

association may not adopt or enforce a provision in a dedicatory instrument that prohibits or restricts the owner of a lot on which a residence is located from using for residential purposes an adjacent lot owned by the property owner.

(c) An owner must obtain the approval of the property owners' association or, if applicable, an architectural committee established by the association or the association's dedicatory instruments, based on criteria prescribed by the dedicatory instruments specific to the use of a lot for residential purposes, including reasonable restrictions regarding size, location, shielding, and aesthetics of the residential purpose, before the owner begins the construction, placement, or erection of a building, structure, or other improvement for the residential purpose on an adjacent lot.

(d) An owner who elects to use an adjacent lot for residential purposes under this section shall, on the sale or transfer of the lot containing the residence:

(1) include the adjacent lot in the sales agreement and transfer the lot to the new owner under the same dedicatory conditions; or

(2) restore the adjacent lot to the original condition before the addition of the improvements allowed under this section to the extent that the lot would again be suitable for the construction of a separate residence as originally platted and provided for in the conveyance to the owner.

(e) An owner may sell the adjacent lot separately only for the purpose of the construction of a new residence that complies with existing requirements in the dedicatory instrument unless the lot has been restored as described by Subsection (d)(2).

(f) A provision in a dedicatory instrument that violates this section is void.

Added by Acts 2013, 83rd Leg., R.S., Ch. 219 (H.B. 35), Sec. 1, eff. June 14, 2013.

Sec. 209.016. REGULATION OF RESIDENTIAL LEASES OR RENTAL AGREEMENTS. (a) In this section, "sensitive personal information" means an individual's:

(1) social security number;

(2) driver's license number;

(3) government-issued identification number; or

(4) account, credit card, or debit card number.

(b) A property owners' association may not adopt or enforce a provision in a dedicatory instrument that:

(1) requires a lease or rental applicant or a tenant to be submitted to and approved for tenancy by the property owners' association; or

(2) requires the following information to be submitted to a property owners' association regarding a lease or rental applicant or current tenant:

(A) a consumer or credit report; or

(B) a lease or rental application submitted by the applicant, tenant, or that person's agent to the property owner or property owner's agent when applying for tenancy.

(c) If a copy of the lease or rental agreement is required by the property owners' association, any sensitive personal information may be redacted or otherwise made unreadable or indecipherable.

(d) Except as provided by Subsection (b), nothing in this section shall be construed to prohibit the adoption or enforcement of a provision in a dedicatory instrument establishing a restriction relating to occupancy or leasing.

Added by Acts 2015, 84th Leg., R.S., Ch. 1077 (H.B. 2489), Sec. 1, eff. June 19, 2015.

CHAPTER 210. EXTENSION OR MODIFICATION OF RESIDENTIAL RESTRICTIVE COVENANTS BY PETITION IN CERTAIN SUBDIVISIONS

Sec. 210.001. DEFINITIONS. In this chapter:

(1) "Dedicatory instrument" has the meaning assigned by Section 202.001.

(2) "Owner" has the meaning assigned by Section 201.003.

(3) "Property owners' association" has the meaning assigned by Section 202.001.

(4) "Residential real estate subdivision" or "subdivision" has the meaning assigned by Section 201.003, except that in a county described by Section 210.002(1) a subdivision that is a gated community with private streets need not be located in a city, town, or village or within the extraterritorial jurisdiction of a city, town, or village.

(5) "Restrictions" has the meaning assigned by Section 201.003.

Added by Acts 2005, 79th Leg., Ch. 1180 (S.B. 1018), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 821 (S.B. 1672), Sec. 2, eff. June 19, 2009.

Sec. 210.002. APPLICABILITY OF CHAPTER. This chapter applies to a residential real estate subdivision that is located in a county with a population of:

(1) more than 200,000 and less than 220,000; or

(2) more than 45,000 and less than 80,000 that is adjacent to a county with a population of more than 200,000 and less than 220,000.

Added by Acts 2005, 79th Leg., Ch. 1180 (S.B. 1018), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 111, eff. September 1, 2011.

Sec. 210.003. FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) the pending expiration of and the inability of owners to extend or modify property restrictions applicable to certain real estate subdivisions in this state creates uncertainty in living conditions and discourages investments in those subdivisions;

(2) owners of land in affected subdivisions are reluctant or unable to provide proper maintenance, upkeep, and repairs of structures because of the pending expiration of restrictions;

(3) financial institutions cannot or will not lend money for investments, maintenance, upkeep, or repairs in affected subdivisions;

(4) these conditions cause dilapidation of housing and other structures and cause unhealthful and unsanitary conditions in affected subdivisions, contrary to the health, safety, and welfare of the public; and

(5) the existence of race-related covenants in restrictions, regardless of their unenforceability, is offensive, repugnant, and harmful to members of racial or ethnic minority groups and public policy requires that those covenants be removed.

(b) The purpose of this chapter is to provide a procedure for extending or modifying residential restrictions and to provide for the removal of any restriction or other provision relating to race, religion, or national origin that is void and unenforceable under either the United States Constitution or Section 5.026.

Added by Acts 2005, 79th Leg., Ch. 1180 (S.B. 1018), Sec. 1, eff. September 1, 2005.

Sec. 210.004. EXTENSION OR MODIFICATION OF RESTRICTIONS. (a) In addition to any procedures provided in a subdivision's restrictions, a property owners' association, or a petition committee comprised of at least three owners, may circulate a petition proposing to extend or modify existing restrictions.

(b) An extension or modification of existing restrictions that is approved by the owners becomes effective when the resolution required by Section 210.008 is filed as a dedicatory instrument with the county clerk of each county in which the subdivision is located.

(c) An extension or modification of existing restrictions that is approved by the owners under this chapter is binding on all properties in the subdivision.

Added by Acts 2005, 79th Leg., Ch. 1180 (S.B. 1018), Sec. 1, eff. September 1, 2005.

Sec. 210.005. PETITION PROCEDURE. (a) The property owners' association or petition committee shall deliver to each record owner of property in the subdivision a petition describing the exact terms of the proposed extension or modification of the existing restrictions.

(b) The petition must state the date by which a response must be received in order to be counted.

(c) The petition may allow each owner to indicate approval or disapproval of:

(1) the entire proposal; or

(2) specific provisions of the proposal.

(d) Separate signature pages may be delivered if the proposed extension or modification is stated fully or referenced on each signature page. A reference may be made by the following or substantially similar wording: "We the undersigned owners of property in the _____ Subdivision indicate by our signatures on this document our approval or disapproval of the proposal(s) circulated by _____ on or about [date] to [extend or modify] our restrictive covenants. We acknowledge that we have fully reviewed the proposal(s)."

(e) The petition must be sent by certified mail, return receipt requested, to each owner's mailing address as reflected in the appraisal records maintained by the appraisal district in which the owner's property is located.

(f) The signature of an owner on the petition conclusively establishes that the owner received the petition.

Added by Acts 2005, 79th Leg., Ch. 1180 (S.B. 1018), Sec. 1, eff. September 1, 2005.

Sec. 210.006. VOTE ON PROPOSAL. (a) If the petition allows owners to indicate only approval or disapproval of the entire proposal, the proposal is adopted if owners of at least 66 percent of the real property in the subdivision vote in favor of the proposal. If the petition allows owners to indicate approval or disapproval of specific provisions of the proposal, a provision is adopted if owners of at least 66 percent of the real property in the subdivision vote in favor of the provision.

(b) The property owners' association or petition committee shall exclude votes by lienholders, contract purchasers, and owners of mineral interests.

(c) Except as provided by this subsection, the approval or disapproval of multiple owners of a property may be reflected by the signatures of a majority of the co-owners. The approval or disapproval of owners who are married may be reflected by the signature of one of those owners.

(d) An owner is considered to have cast a vote if the owner signs the petition indicating approval or disapproval of the proposal or one or more specific provisions of the proposal.

(e) The property owners' association or petition committee may only count a vote if the association or committee receives the vote before the deadline stated in the petition.

Added by Acts 2005, 79th Leg., Ch. 1180 (S.B. 1018), Sec. 1, eff. September 1, 2005.

Sec. 210.007. SUBDIVISION CONSISTING OF MULTIPLE SECTIONS. If a subdivision consisting of multiple sections, each with its own restrictions, is represented by a single property owners' association, a proposal or specific provision of a proposal is adopted if owners of at least 66 percent of the total number of properties in the subdivision vote in favor of the proposal or provision.

Added by Acts 2005, 79th Leg., Ch. 1180 (S.B. 1018), Sec. 1, eff. September 1, 2005.

Sec. 210.008. RESOLUTION CERTIFYING RESULTS OF VOTE. (a) The property owners' association or petition committee shall certify the results of a vote under this chapter by a written resolution specifying the number of votes for and against the proposal, or for and against each provision of the proposal, and shall also certify that the petition was delivered to each record owner of property in the subdivision as required by Section 210.005.

(b) The association or committee shall attach to the resolution a statement of the exact terms of the proposed extension or modification of the existing restrictions.

(c) The association or committee shall make the resolution, petition, and signature pages available to any owner on request.

Added by Acts 2005, 79th Leg., Ch. 1180 (S.B. 1018), Sec. 1, eff. September 1, 2005.

Sec. 210.009. ADDITIONAL PROCEDURES. The procedures provided by this chapter are in addition to any procedures provided in a subdivision's restrictions for the extension or modification of existing restrictions. The property owners' association or petition

committee may propose the extension or modification of restrictions either in accordance with the procedures provided by the subdivision's restrictions or the procedures provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 1180 (S.B. 1018), Sec. 1, eff. September 1, 2005.

CHAPTER 211. AMENDMENT AND ENFORCEMENT OF RESTRICTIONS IN CERTAIN SUBDIVISIONS

Sec. 211.001. DEFINITIONS. In this chapter:

(1) "Dedicatory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision or any similar planned development. The term includes a declaration or similar instrument subjecting real property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, or to all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

(2) "Lienholder," "owner," "real property records," and "restrictions" have the meanings assigned by Section 201.003.

(3) "Property owners' association" means an incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by the dedicatory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the residential subdivision or similar planned development.

(4) "Residential real estate subdivision" or "subdivision" means all land encompassed within one or more maps or plats of land that is divided into two or more parts if:

(A) the maps or plats cover land all or part of which is not located within a municipality and:

(i) for a county with a population of less than 65,000, is not located within the extraterritorial jurisdiction of a municipality;

(ii) for a county with a population of at least 65,000 and less than 135,000, is located wholly within the extraterritorial jurisdiction of a municipality; or

(iii) for a county that borders Lake Buchanan and has a population of at least 18,500 and less than 19,500, is located wholly within the extraterritorial jurisdiction of a municipality;

(B) the land encompassed within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only; and

(C) all instruments creating the restrictions are recorded in the deed or real property records of a county.

Added by Acts 2005, 79th Leg., Ch. 1077 (H.B. 1631), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1125 (H.B. 232), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1242 (S.B. 1853), Sec. 1, eff. September 1, 2013.

Sec. 211.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a residential real estate subdivision or any unit or parcel of a subdivision:

(1) all or part of which is located within an unincorporated area of a county if the county has a population of less than 65,000;

(2) all of which is located within the extraterritorial jurisdiction of a municipality located in a county that has a population of at least 65,000 and less than 135,000;

(3) all of which is located within the extraterritorial jurisdiction of a municipality located in a county that borders Lake Buchanan and has a population of at least 18,500 and less than 19,500; or

(4) all or part of which is located within a county that borders Lake Livingston and has a population of less than 50,000.

(b) This chapter applies only to restrictions that affect real property within a residential real estate subdivision or any units or parcels of the subdivision and that, by the express terms of the instrument creating the restrictions:

(1) are not subject to a procedure by which the restrictions may be amended;

(2) may not be amended without the unanimous consent of:

(A) all property owners in the subdivision; or

(B) all property owners in any unit or parcel of the subdivision; or

(3) may not be amended without a written instrument that is:

(A) signed by a majority or more than a majority of the owners of the lots in the subdivision; and

(B) filed in the real property records of each county in which all or part of the subdivision is located.

(b-1) In addition to restrictions and units or parcels of a subdivision that are subject to this chapter under Subsection (b), this chapter applies to restrictions that affect real property within a residential real estate subdivision or any units or parcels of the subdivision and that, by the express terms of the instrument creating the restrictions, provide that amendments to the restrictions are not operative or effective until a specified date or the expiration of a specified period. An amendment under this chapter of a restriction described by this subsection is effective as provided by this chapter, regardless of whether the date specified in the restrictions has occurred or the period prescribed by the restrictions has expired. This subsection expires September 1, 2019.

(c) This chapter applies to a restriction regardless of the date on which it was created.

(d) An amendment of a restriction under this chapter is effective on the filing of an instrument reflecting the amendment in the real property records of each county in which all or part of the subdivision is located after the approval of the owners in accordance with the amendment procedure adopted under Section 211.004.

Added by Acts 2005, 79th Leg., Ch. 1077 (H.B. 1631), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1125 (H.B. 232), Sec. 2, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1242 (S.B. 1853), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 901 (S.B. 1852), Sec. 1, eff. June 18, 2015.

Sec. 211.003. FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) owners of land in certain real estate subdivisions are unable to govern the subdivisions by democratic principles of self-government;

(2) requiring unanimous consent to amend or modify restrictions in affected subdivisions or units or parcels of the subdivisions is impractical and unworkable to bring needed change and improvement;

(3) the inability of owners to amend or modify property restrictions in certain real estate subdivisions in which no zoning regulations apply creates uncertainty in living conditions and discourages investments in those subdivisions;

(4) owners of land in affected subdivisions are reluctant or unable to provide proper maintenance, upkeep, and repairs of structures because of the inability to amend or modify the restrictions in response to changing circumstances;

(5) financial institutions are reluctant to or will not lend money for investments, maintenance, upkeep, or repairs in affected subdivisions;

(6) these conditions will cause dilapidation of housing and other structures and cause unhealthful and unsanitary conditions in affected subdivisions, contrary to the health, safety, and welfare of the public; and

(7) the existence of race-related covenants in restrictions, regardless of their unenforceability, is offensive, repugnant, and harmful to members of racial or ethnic minority groups and public policy requires that those covenants be removed.

(b) The purpose of this chapter is to provide a procedure for creating, modifying, or adding to residential restrictions and to provide for the removal of any restriction or other provision relating to race, religion, or national origin that is void and unenforceable under either the United States Constitution or Section 5.026.

Added by Acts 2005, 79th Leg., Ch. 1077 (H.B. 1631), Sec. 1, eff. September 1, 2005.

Sec. 211.004. CREATION OR MODIFICATION OF PROCEDURE TO AMEND

RESTRICTIONS. (a) A property owners' association by a two-thirds vote of the association's governing body may submit a procedure for amending restrictions to a vote of the property owners in the subdivision or in the unit or parcel of the subdivision governed by restrictions.

(b) An amendment procedure submitted to a vote under Subsection (a) binds all property owners in the subdivision or the unit or parcel of the subdivision to which the procedure applies if more than two-thirds of the voting property owners vote in favor of the procedure.

(c) Not later than the 30th day before the date a ballot for a vote under this section must be received to be counted, the property owners' association shall mail to each affected property owner a notice that includes:

(1) the exact wording of the amendment procedure; and

(2) the date by which a property owner's ballot must be received to be counted.

(d) The property owners' association shall pay all costs of:

(1) printing and mailing the required notices and ballots; and

(2) canvassing, tabulating, and certifying the vote.

(e) A property owner may not cast more than one vote, regardless of the number of lots the person owns. If more than one person owns an interest in a lot, the owners may cast only one vote for that lot. A person may not vote if the person has an interest in a lot only by virtue of being a lienholder.

(f) A ballot cast under this section is secret and may not be counted unless it is placed inside an unmarked envelope that is placed inside another envelope that bears the signature and printed name of the property owner casting the enclosed ballot.

(g) The presiding officer of the property owners' association shall appoint an election canvassing committee and a committee chairperson to canvass and count the votes and determine the outcome.

(h) If the amendment procedure receives the number of votes required under Subsection (b), the election canvassing committee chairperson shall certify the result to the presiding officer of the property owners' association. The presiding officer shall file in the real property records of each county in which all or part of the subdivision is located an instrument that indicates that the procedure was adopted.

(i) If the amendment procedure is not adopted, the property owners' association may not submit the same amendment procedure to a vote under this section on or before the first anniversary of the date the previous votes on the procedure were certified.

Added by Acts 2005, 79th Leg., Ch. 1077 (H.B. 1631), Sec. 1, eff. September 1, 2005.

Sec. 211.005. EFFECT OF ADOPTING AMENDMENT PROCEDURE. After the effective date of the adoption of the amendment procedure under this chapter, any proposed amendment to the restrictions described by Section 211.002(b) applicable to the subdivision or unit or parcel of the subdivision, as applicable, must be submitted for approval to the owners under the amendment procedure.

Added by Acts 2005, 79th Leg., Ch. 1077 (H.B. 1631), Sec. 1, eff. September 1, 2005.

CHAPTER 212. EXTENSION OF RESTRICTIONS BY MAJORITY VOTE IN CERTAIN SUBDIVISIONS

Sec. 212.001. DEFINITIONS. In this chapter, "lienholder," "owner," "restrictions," and "residential real estate subdivision" or "subdivision" have the meanings assigned by Section 201.003.

Added by Acts 2011, 82nd Leg., R.S., Ch. 954 (H.B. 1071), Sec. 2, eff. June 17, 2011.

Sec. 212.002. APPLICABILITY OF CHAPTER. This chapter applies only to a residential real estate subdivision that:

(1) is located wholly or partly in a municipality with a population of more than two million located in a county with a population of 3.3 million or more; and

(2) is subject to restrictions the terms of which:

(A) provide that the restrictions expire;

(B) permit the restrictions to be extended after the initial restriction period expires if a majority of the owners of lots in the subdivision, by a written instrument that is acknowledged and filed for record, signify consent to the extension of the

restrictions for a further period the maximum length of which is specified by the restrictions; and

(C) do not expressly provide for or expressly prohibit successive extensions of the restrictions after the expiration of the initial extension period.

Added by Acts 2011, 82nd Leg., R.S., Ch. 954 (H.B. 1071), Sec. 2, eff. June 17, 2011.

Sec. 212.003. PROCEDURE FOR SUCCESSIVE EXTENSIONS. (a) Restrictions may be extended under this chapter by the written consent of the owners of a majority of the lots in the subdivision, without respect to the number of lots owned by a particular owner.

(b) Consent for the purposes of this section may be reflected by an owner's signature on a petition or written ballot.

(c) Petitions, written ballots, or both may be distributed to the owners of lots in the subdivision by any method, including one or both of the following methods:

(1) by door-to-door circulation; or

(2) at a meeting of the owners of lots in the subdivision called for the purpose of voting on the proposed extension.

(d) The required signatures must be obtained during the same extension period. The petitions, written ballots, or both, as applicable, must be filed for record in the county in which the subdivision is located before the earlier of:

(1) the first anniversary of the date on which the first signature is obtained; or

(2) the expiration of the extension period during which the signatures are collected.

(e) Restrictions may be extended under this chapter only once during each unexpired extension period.

Added by Acts 2011, 82nd Leg., R.S., Ch. 954 (H.B. 1071), Sec. 2, eff. June 17, 2011.

Sec. 212.004. EFFECT OF OWNER SIGNATURE. (a) The vote of multiple owners of a lot may be reflected by the signature of one of the owners.

(b) After an owner signs a petition or ballot under Section

212.003 or 212.007, the owner's subsequent conveyance of the owner's interest in a lot or unplatted real property in the subdivision does not affect the validity of the signature for the purposes of that section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 954 (H.B. 1071), Sec. 2, eff. June 17, 2011.

Sec. 212.005. PROPERTY OWNERS' ASSOCIATION NOT REQUIRED. Restrictions may be extended under this chapter without the creation of or action by a property owners' association, homeowners association, community association, civic club, or similar organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 954 (H.B. 1071), Sec. 2, eff. June 17, 2011.

Sec. 212.006. EFFECTIVE DATE OF EXTENSION; LENGTH OF EXTENSION PERIOD. (a) An extension of restrictions under this chapter takes effect on the date the petitions, written ballots, or both, as applicable, sufficient to reflect the consent required by Section 212.003 are filed and recorded in the real property records of the county in which the subdivision is located.

(b) Subject to Section 212.007, an extension of restrictions under this chapter is for a period equal to the original term of the restrictions or a shorter period agreed to by the owners of a majority of the lots in the subdivision in the petitions, written ballots, or both, as applicable, signed under Section 212.003.

Added by Acts 2011, 82nd Leg., R.S., Ch. 954 (H.B. 1071), Sec. 2, eff. June 17, 2011.

Sec. 212.007. TERMINATION OF RESTRICTIONS. (a) Restrictions extended under this chapter may be terminated before their expiration date if:

(1) the consent of the owners of a majority of the lots in the subdivision to the termination of the restrictions on a specified date is obtained in the same manner as consent to the extension of

restrictions is obtained under this chapter; and

(2) the petitions, written ballots, or both, as applicable, sufficient to reflect the required consent to termination are filed for record in the real property records of the county in which the subdivision is located before the earlier of:

(A) the first anniversary of the date on which the first signature consenting to termination is obtained; or

(B) a date specified under Subsection (b)(2).

(b) Petitions, written ballots, or both, as applicable, used to extend restrictions under this section may provide that:

(1) the restrictions may be terminated only on one or more termination dates specified in the petitions, written ballots, or both, as applicable, used to extend the restrictions; or

(2) the petitions, written ballots, or both, as applicable, sufficient to reflect the required consent to termination must be filed for record before a time specified in the petitions, written ballots, or both, as applicable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 954 (H.B. 1071), Sec. 2, eff. June 17, 2011.

Sec. 212.008. APPLICABILITY OF EXTENDED RESTRICTIONS. (a) An extension of restrictions under this chapter is binding on all lots and all unplatted real property in the subdivision, without regard to whether the owner or owners of any individual lot or unplatted real property signify consent to extend the restrictions. Any statute authorizing a property owner to opt out of the applicability of restrictions to the owner's property does not apply to restrictions extended under this chapter.

(b) An extension of restrictions under this chapter is binding on a lienholder or a person who acquires title to property at a foreclosure sale or by deed from a foreclosing lienholder.

Added by Acts 2011, 82nd Leg., R.S., Ch. 954 (H.B. 1071), Sec. 2, eff. June 17, 2011.

Sec. 212.009. UNCONSTITUTIONAL RESTRICTIONS NOT EXTENDED. If a provision in restrictions extended under this chapter is void and unenforceable under the United States Constitution, the restrictions

are considered as if the void and unenforceable provision was never contained in the restrictions.

Added by Acts 2011, 82nd Leg., R.S., Ch. 954 (H.B. 1071), Sec. 2, eff. June 17, 2011.

Sec. 212.010. USE OF ORIGINAL EXTENSION PROCEDURE; PROCEDURES CUMULATIVE. (a) In addition to the procedure provided by this chapter for the extension of restrictions, the procedure provided by the original restrictions for the initial extension of the restrictions, including the requirement that a specified percentage of a specified class approve the extension, may be used for successive extensions of the original restrictions, provided that the approval obtained includes the approval of the owners of not less than a majority of the lots in the subdivision.

(b) An extension of the restrictions as described by Subsection (a) is for a period equal to the original term of the restrictions or a shorter period agreed to by the owners of a majority of the lots in the subdivision.

(c) The procedure provided by this chapter for the extension or termination of restrictions is cumulative of and not in lieu of any other method by which restrictions of a subdivision to which this chapter applies may be added to, modified, created, extended, or terminated.

Added by Acts 2011, 82nd Leg., R.S., Ch. 954 (H.B. 1071), Sec. 2, eff. June 17, 2011.

Sec. 212.011. CONSTRUCTION OF CHAPTER AND EXTENDED RESTRICTIONS. (a) This chapter and any petition or ballot made or action taken in connection with an attempt to comply with this chapter shall be liberally construed to effectuate the intent of this chapter and the petition, ballot, or action.

(b) A deed restriction that is extended under this chapter shall be liberally construed to give effect to the restriction's purposes and intent.

Added by Acts 2011, 82nd Leg., R.S., Ch. 954 (H.B. 1071), Sec. 2, eff. June 17, 2011.

For expiration of this chapter, see Section 213.014.

CHAPTER 213. MODIFICATION OR TERMINATION OF RESTRICTIONS IN CERTAIN REAL ESTATE DEVELOPMENTS BY PROPERTY OWNERS' ASSOCIATION OR PROPERTY OWNER PETITION

Sec. 213.001. DEFINITIONS. In this chapter:

(1) "Amenity property" means real property the use of which is restricted by a dedicatory instrument to use as a golf course or country club.

(2) "Council of owners" has the meaning assigned by Section 81.002 as it relates to an existing condominium in a development.

(3) "Dedicatory instrument" means a governing instrument that:

(A) restricts amenity property to use as amenity property;

(B) designates real property in the development, other than amenity property, as a beneficiary of a restriction described by Paragraph (A); and

(C) addresses the establishment, maintenance, and operation of amenity property.

(4) "Development" means:

(A) amenity property; and

(B) all real property designated as beneficiary property in the dedicatory instrument.

(5) "Owner" means a person, or the person's personal representative, who holds record title to:

(A) a lot or parcel of real property in a development; or

(B) a unit or apartment of a condominium in the development.

(6) "Petition circulator" means a person authorized to circulate a petition under Section 213.005.

(7) "Property owners' association" means an incorporated or unincorporated association that:

(A) is designated as the representative of the owners of lots or parcels of real property in a development;

(B) has a membership primarily consisting of those owners; and

(C) manages or regulates all or part of the development

for the benefit of those owners.

(8) "Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.

(9) "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

(10) "Unit owners' association" means an association of unit owners organized under Section 82.101 for a condominium in a development.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 23, eff. September 1, 2015.

Sec. 213.002. FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) a restriction on the use of an amenity property may create uncertainty if the owners of an amenity property are reluctant or unable to properly maintain or operate the amenity property;

(2) such uncertainty may discourage investment and negatively impact property values in the development;

(3) investors may be reluctant to or will not invest funds to revitalize an amenity property burdened with a restriction on its use;

(4) financial institutions may be reluctant to or will not provide financing to revitalize an amenity property burdened with a restriction on its use; and

(5) establishing a procedural option to allow for the modification or termination of the restriction would alleviate the uncertainty and encourage revitalization of the amenity property.

(b) The purpose of this chapter is to provide a procedural option for the modification or termination of a restriction on the use of an amenity property.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 23, eff. September 1, 2015.

Sec. 213.003. MODIFICATION OR TERMINATION BY PETITION. (a) Except as provided by Subsection (b), a restriction on the use of an amenity property may be modified or terminated by petition in accordance with this chapter.

(b) This chapter does not apply if:

(1) a dedicatory instrument includes a procedure to modify or terminate a restriction on the use of an amenity property on approval of the owners of less than 75 percent of, as applicable, the lots or parcels of land and units or apartments of condominiums in the development; or

(2) a restriction on the use of an amenity property may be modified or terminated under the procedures of Chapter 81, 82, 201, or 209.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 23, eff. September 1, 2015.

Sec. 213.004. PREREQUISITES FOR CIRCULATION. A petition may not be circulated under this chapter unless:

(1) for a continuous period of at least 36 months, the amenity property has not been in operation; and

(2) if zoning regulations apply to the amenity property, the owner of the amenity property has received all required zoning approvals for any proposed redevelopment of the amenity property.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 23, eff. September 1, 2015.

Sec. 213.005. PETITION CIRCULATOR. A petition authorized by Section 213.003 may be circulated by:

(1) an owner;

(2) a property owners' association that owns and manages the amenity property; or

(3) a unit owners' association or council of owners that owns and manages the amenity property.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 23, eff. September 1, 2015.

Sec. 213.006. CONTENTS OF PETITION. (a) The petition must include all relevant information about the proposed modification or termination, including:

(1) the name of the development, if any;

(2) the name of the amenity property, if any;

(3) the recording information of the restriction to be modified or terminated;

(4) the text of the restriction subject to modification or termination;

(5) the text of the restriction as modified or terminated; and

(6) a comparison of the original language of the restriction and the restriction as modified or terminated, showing any insertion and deletion of language or punctuation.

(b) The petition must state:

(1) reasonable times and dates the petition circulator will be available at a location in the development to receive a signed statement required by Section 213.008;

(2) a mailing address, e-mail address, and facsimile number to which a signed statement may be delivered; and

(3) the date by which a signed statement must be received to be counted.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 23, eff. September 1, 2015.

Sec. 213.007. CIRCULATION PROCEDURE. (a) A petition circulator shall deliver a copy of the petition to:

(1) all owners of:

(A) each lot or parcel of real property in the development; and

(B) each unit or apartment of each condominium, if any, in the development; and

(2) each property owners' association, unit owners' association, and council of owners in the development.

(b) The petition circulator may deliver a copy of the petition in any reasonable manner, including:

(1) by regular mail or certified mail, return receipt requested, to the last known address of the owners or entities

described by Subsections (a)(1) and (2);

(2) personal delivery to the owners or entities described by Subsections (a)(1) and (2); or

(3) at a regular meeting of a property owners' association, unit owners' association, or council of owners.

(c) If the petition circulator acts in good faith in determining ownership and delivering copies of the petition as required by this section, an owner's lack of receipt of a copy of the petition does not affect the application of a modification or termination of a restriction under this chapter to the amenity property.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 23, eff. September 1, 2015.

Sec. 213.008. VOTE ON PROPOSAL. (a) The modification or termination of the restriction is adopted if the owners of at least 75 percent of the total number, as applicable, of the lots or parcels of land and the units or apartments of condominiums in the development, including the owner of the amenity property, vote in favor of the modification or termination of the restriction.

(b) An owner may cast a vote only by delivering to the petition circulator in accordance with Section 213.009 a signed statement that includes:

(1) the owner's name, the legal description or street address of the owner's property, and the owner's mailing address;

(2) a statement that the owner holds record title to the property;

(3) if more than one person owns an interest in the property, the name and mailing address of each co-owner; and

(4) a statement indicating whether the owner is in favor of or against the modification or termination proposed by the petition.

(c) An owner may vote only in favor of or against the modification or termination as proposed in the petition.

(d) If more than one person owns an interest in a lot or parcel of land or a unit or apartment of a condominium, the owners may cast only one vote for that lot, parcel, unit, or apartment. Except as otherwise provided by this subsection, the vote of multiple owners in favor of or against the modification or termination may be reflected

by the signatures of a majority of the co-owners who return a signed statement. The vote of owners who are married may be reflected by the signature of only one of those owners.

(e) A person whose only property interest in a lot or parcel of land or unit or apartment of a condominium is that of a contract purchaser, lienholder, or mineral interest holder may not cast a vote for that property under this chapter.

(f) A vote may be counted only if the vote is received before the deadline stated in the petition as required by Section 213.006(b).

(g) The signed statement of an owner conclusively establishes that:

(1) the petition was received by the owner in accordance with Section 213.007; and

(2) the statement accurately reflects the vote of the owner.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 23, eff. September 1, 2015.

Sec. 213.009. DELIVERY OF SIGNED STATEMENT. (a) The petition circulator must accept a signed statement described by Section 213.008 that is delivered:

(1) in person under Section 213.006(b) or otherwise;

(2) by first class mail to an address stated in the petition;

(3) by e-mail to an address stated in the petition; or

(4) by facsimile to a facsimile number stated in the petition.

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 23, eff. September 1, 2015.

Sec. 213.010. CERTIFICATION OF RESULTS BY RECORDED AFFIDAVIT. (a) The petition circulator shall certify the result of the votes by filing an affidavit with the county clerk of the county in which the restriction modified or terminated is recorded.

(b) The affidavit required by Subsection (a) must state:

(1) the name of the development, if any;

(2) the name of the amenity property, if any;

(3) the recording information of the restriction that was modified or terminated;

(4) the text of the restriction before modification or termination;

(5) the text of the restriction as modified or terminated;

(6) the number of votes in favor of and against the proposed modification or termination;

(7) the name and address of the petition circulator; and

(8) the name, address, and telephone number of the person maintaining the documents in accordance with Section 213.013.

(c) The petition circulator must affirm in the affidavit that the petition was delivered in accordance with Section 213.007.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 23, eff. September 1, 2015.

Sec. 213.011. NOTICE. (a) The recording of the affidavit required by Section 213.010 constitutes notice that the restriction is modified or terminated.

(b) Notwithstanding Subsection (a), the petition circulator must deliver to each person who resides within 200 feet of the boundary of the amenity property a copy of the affidavit. The affidavit may be delivered by regular mail, by certified mail, return receipt requested, or by personal delivery.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 23, eff. September 1, 2015.

Sec. 213.012. EFFECTIVE DATE OF MODIFICATION OR TERMINATION. The modification or termination of the restriction takes effect on the later of:

(1) the date the affidavit required by Section 213.010 is filed with the county clerk; or

(2) the date, if any, specified as the effective date in the petition.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 23, eff. September 1, 2015.

Sec. 213.013. DOCUMENTATION AVAILABLE. At least one year after the date the affidavit is filed with the county clerk, the petition circulator shall make available for inspection and copying the original petition, the signed statements described by Section 213.008, and the affidavit required by Section 213.010.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 23, eff. September 1, 2015.

Sec. 213.014. EXPIRATION. This chapter expires September 1, 2021.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 23, eff. September 1, 2015.

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) "Dedicatory 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 l0th 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 l0th 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.

TITLE 12. MISCELLANEOUS SHARED REAL PROPERTY INTERESTS
CHAPTER 221. TEXAS TIMESHARE ACT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 221.001. SHORT TITLE. This chapter shall be known and may be cited as the Texas Timeshare Act.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.001 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.

Sec. 221.002. DEFINITIONS. As used in this chapter:

(1) "Accommodation" means any apartment, condominium or cooperative unit, hotel or motel room, cabin, lodge, or other private or commercial structure that:

(A) is affixed to real property;

(B) is designed for occupancy or use by one or more individuals; and

(C) is part of a timeshare plan.

(2) "Advertisement" means any written, oral, or electronic communication that is directed to or targeted at individuals in this state and contains a promotion, inducement, or offer to sell a timeshare interest, including a promotion, inducement, or offer to sell:

(A) contained in a brochure, pamphlet, or radio or television transcript;

(B) communicated by electronic media or telephone; or

(C) solicited through direct mail.

(3) "Amenities" means all common areas and includes recreational and maintenance facilities of the timeshare plan.

(4) "Assessment" means an amount assessed against or collected from a purchaser by an association or its managing entity in a fiscal year, regardless of the frequency with which the amount is assessed or collected, to cover expenditures, charges, reserves, or liabilities related to the operation of a timeshare plan or

timeshare properties managed by the same managing entity.

(5) "Association" means a council or association composed of all persons who have purchased a timeshare interest.

(5-a) "Board" means the governing body of a timeshare association designated in a project instrument to act on behalf of the association.

(6) "Commission" means the Texas Real Estate Commission.

(7) "Component site" means a specific geographic location where accommodations that are part of a multisite timeshare plan are located. Separate phases of a single timeshare property in a specific geographic location and under common management are a single component site.

(8) "Developer" means:

(A) any person, excluding a sales agent, who creates a timeshare plan or is in the business of selling timeshare interests or employs a sales agent to sell timeshare interests; or

(B) any person who succeeds in the developer's interest by sale, lease, assignment, mortgage, or other transfer if the person:

(i) offers at least 12 timeshare interests in a particular timeshare plan; and

(ii) is in the business of selling timeshare interests or employs a sales agent to sell timeshare interests.

(9) "Dispose" or "disposition" means a voluntary transfer of any legal or equitable timeshare interest but does not include the transfer or release of a real estate lien or of a security interest.

(10) "Escrow agent" means a bonded escrow company, a financial institution whose accounts are insured by a governmental agency or instrumentality, or an attorney or title insurance agent licensed in this state who is responsible for the receipt and disbursement of funds in accordance with this chapter.

(11) "Exchange company" means any person who owns or operates an exchange program.

(12) "Exchange disclosure statement" means a written statement that includes the information required by Section 221.033.

(13) "Exchange program" means any method, arrangement, or procedure for the voluntary exchange of timeshare interests among purchasers or owners.

(14) "Incidental use right" means the right to use accommodations and amenities at one or more timeshare properties that

is not guaranteed and is administered by the managing entity of the timeshare properties that makes vacant accommodations at the timeshare properties available to owners of timeshare interests in the timeshare properties.

(15) "Managing entity" means the person responsible for operating and maintaining a timeshare property.

(16) "Multisite timeshare plan" means a plan in which a timeshare purchaser has:

(A) a specific timeshare interest, which is the right to use and occupy accommodations at a specific timeshare property and the right to use and occupy accommodations at one or more other component sites created by or acquired solely through the reservation system of the timeshare plan; or

(B) a nonspecific timeshare interest, which is the right to use and occupy accommodations at more than one component site created by or acquired solely through the reservation system of the timeshare plan but which does not include a right to use and occupy a particular accommodation.

(17) "Offering" or "offer" means any advertisement, inducement, or solicitation and includes any attempt to encourage a person to purchase a timeshare interest other than as a security for an obligation.

(18) "Project instrument" means a timeshare instrument or one or more recordable documents, by whatever name denominated, applying to the whole of a timeshare project and containing restrictions or covenants regulating the use, occupancy, or disposition of units in a project, including a declaration for a condominium, association articles of incorporation, association bylaws, and rules for a condominium in which a timeshare plan is created.

(19) "Promotion" means any program, activity, contest, or gift, prize, or other item of value used to induce any person to attend a timeshare sales presentation.

(20) "Purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare interest other than as a security for an obligation.

(21) "Reservation system" means the method, arrangement, or procedure by which a purchaser, in order to reserve the use and occupancy of an accommodation of a multisite timeshare plan for one

or more timeshare periods, is required to compete with other purchasers in the same multisite timeshare plan, regardless of whether the reservation system is operated and maintained by the multisite timeshare plan, a managing entity, an exchange company, or any other person. If a purchaser is required to use an exchange program as the purchaser's principal means of obtaining the right to use and occupy the accommodations and facilities of the plan, the arrangement is considered a reservation system. If the exchange company uses a mechanism to exchange timeshare periods among members of the exchange program, the use of the mechanism is not considered a reservation system of the multisite timeshare plan.

(22) "Single-site timeshare plan" means a timeshare plan in which a timeshare purchaser's right to use and occupy accommodations is limited to a single timeshare property. A single-site timeshare plan that includes an incidental use right or a program under which the owner of a timeshare interest at a specific timeshare property may exchange a timeshare period for another timeshare period at the same or another timeshare property under common management does not transform the single-site timeshare plan into a multisite timeshare plan.

(23) "Timeshare disclosure statement" means a written statement that includes the information required by Section 221.032.

(24) "Timeshare estate" means an arrangement under which the purchaser receives a right to occupy a timeshare property and an estate interest in the real property.

(25) "Timeshare interest" means a timeshare estate or timeshare use.

(26) "Timeshare instrument" means a master deed, master lease, declaration, or any other instrument used in the creation of a timeshare plan.

(27) "Timeshare period" means the period within which the purchaser of a timeshare interest is entitled to the exclusive possession, occupancy, and use of an accommodation.

(28) "Timeshare plan" means any arrangement, plan, scheme, or similar method, excluding an exchange program but including a membership agreement, sale, lease, deed, license, or right-to-use agreement, by which a purchaser, in exchange for consideration, receives an ownership right in or the right to use accommodations for a period of time less than a year during a given year, but not necessarily consecutive years.

(29) "Timeshare property" means:

(A) one or more accommodations and any related amenities subject to the same timeshare instrument; and

(B) any other property or property rights appurtenant to the accommodations and amenities.

(30) "Timeshare use" means any arrangement under which the purchaser receives a right to occupy a timeshare property, but under which the purchaser does not receive an estate interest in the timeshare property.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.002 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 443, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 1, eff. January 15, 2006.

Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 3, eff. September 1, 2013.

Sec. 221.003. APPLICABILITY. (a) This chapter applies to all timeshare properties that are located in this state or offered for sale in this state.

(b) Timeshare properties located outside this state are subject only to Subchapters C through H and J.

(c) This chapter applies to any timeshare property in existence on or after August 26, 1985, but does not affect a timeshare contract in existence before that date.

(d) A timeshare property subject to this chapter is not subject to:

(1) Section 5.008 or 5.012;

(2) Chapter 202;

(3) Chapter 207; or

(4) Chapter 209, unless an individual timeshare owner continuously occupies a single timeshare property as the owner's primary residence 12 months of the year.

(e) If a person with a specific program that might otherwise be subject to this chapter received from the commission, before January 31, 2005, a written determination that the program is exempt from

this chapter as the chapter existed when the determination was made, the program remains exempt from this chapter if:

(1) the program does not vary materially from the terms on which the exemption was granted; or

(2) the program varies materially from the terms on which the exemption was granted, but the person receives from the commission a new written determination that the program is exempt from this chapter.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.003 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 2, eff. January 15, 2006.

Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 4, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 554 (H.B. 2261), Sec. 1, eff. September 1, 2015.

Sec. 221.004. CONFLICTS OF LAW. (a) The provisions of this chapter prevail over a conflicting or inconsistent provision of law applicable to timeshare owners' associations.

(b) Provisions of this code relating to property owners' associations do not apply to an association subject to this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 5, eff. September 1, 2013.

SUBCHAPTER B. CREATION OF TIMESHARE REGIME

Sec. 221.011. DECLARATION. (a) The developer of a timeshare plan any part of which is located in this state must record the timeshare instrument in this state. When a person expressly declares an intent to subject the property to a timeshare plan through the recordation of a timeshare instrument that sets forth the information provided in Subsection (b), that property shall be established thenceforth as a timeshare plan.

(b) The declaration made in a timeshare instrument recorded under this section must include:

(1) a legal description of the timeshare property, including a ground plan indicating the location of each existing or proposed building included in the timeshare plan;

(2) a description of each existing or proposed accommodation, including the location and square footage of each unit and an interior floor plan of each existing or proposed building;

(3) a description of any amenities furnished or to be furnished to the purchaser;

(4) a statement of the fractional or percentage part that each timeshare interest bears to the entire timeshare plan;

(5) if applicable, a statement that the timeshare property is part of a multisite timeshare plan;

(6) any additional provisions that are consistent with this section; and

(7) the provisions required by Subchapter I to be included in a project instrument unless the provisions are included in one or more other project instruments.

(c) Any timeshare interest created under this section is subject to Section 1101.002(5), Occupations Code, but Sections 1101.351(a)(1) and (c), Occupations Code, do not apply to the acts of an exchange company in exchanging timeshare periods.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.011 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 443, Sec. 2, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.809, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 3, eff. January 15, 2006.

Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 6, eff. September 1, 2013.

Sec. 221.012. CONVEYANCE AND ENCUMBRANCE. Once the property is established as a timeshare plan, each timeshare interest may be individually conveyed or encumbered and shall be entirely independent of all other timeshare interests in the same timeshare property. Any title or interest in a timeshare interest may be recorded.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1,

1987. Renumbered from Sec. 201.012 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 3, eff. January 15, 2006.

Sec. 221.013. COMMON OWNERSHIP. (a) Any timeshare interest may be jointly or commonly owned by more than one person.
(b) A timeshare estate may be jointly or commonly owned in the same manner as any other real property interest in this state.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.013 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b) eff. Aug. 28, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 3, eff. January 15, 2006.

Sec. 221.014. PARTITION. An action for partition of a timeshare interest may not be maintained during the term of a timeshare plan.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.014 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 3, eff. January 15, 2006.

SUBCHAPTER C. REGISTRATION

Sec. 221.021. REGISTRATION REQUIRED. (a) Except as provided by Subsection (b) or (d) of this section or another provision of this chapter, a person may not offer or dispose of a timeshare interest unless the timeshare plan is registered with the commission.
(b) Before a registration application for a timeshare plan is submitted or completed, a developer or any person acting on the developer's behalf may accept a reservation and a deposit from a prospective purchaser if the deposit is placed in a segregated escrow

account with an independent escrow agent and if the deposit is fully refundable at any time at the request of the purchaser. The deposit may not be forfeited unless the purchaser affirmatively creates a binding obligation by a subsequent written instrument.

(c) A developer or any person acting on the developer's behalf may not offer or dispose of a timeshare interest during any period within which there is in effect an order by the commission or by any court of competent jurisdiction revoking or suspending the registration of the timeshare plan of which such timeshare interest is a part.

(d) At the developer's request, the commission may authorize the developer to conduct presales before a timeshare plan is registered if the registration application is administratively complete, as determined by the commission or as established by commission rule. The authorization for presales permits the developer to offer and dispose of timeshare interests during the period the application is in process. To obtain a presales authorization, the developer must:

(1) submit a written request to the commission for an authorization to conduct presales;

(2) submit an administratively complete application for registration, including appropriate fees and exhibits required by the commission; and

(3) provide evidence acceptable to the commission that all funds received by the developer will be placed with an escrow agent with instructions requiring the funds to be retained until a registration application is complete as determined by the commission.

(e) During the presales authorization period, the developer must:

(1) provide to each purchaser and prospective purchaser a copy of the proposed timeshare disclosure statement that the developer submitted to the commission with the initial registration application; and

(2) offer each purchaser the opportunity to cancel the purchase contract as provided by Section 221.041.

(f) After the final timeshare disclosure statement is approved by the commission, the developer must:

(1) give each purchaser and prospective purchaser a copy of the final timeshare disclosure statement; and

(2) if the commission determines that a materially adverse

change exists between the disclosures contained in the proposed timeshare disclosure statement and the final timeshare disclosure statement, provide the purchaser a second opportunity to cancel the purchase contract as provided by Section 221.041.

(g) The requirements of this subchapter remain in effect during the period the developer offers or disposes of timeshare interests of the timeshare plan registered with the commission. The developer must notify the commission in writing when all of the timeshare interests of a timeshare plan have been disposed of.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.021 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 4, eff. January 15, 2006.

Sec. 221.022. APPLICATION FOR REGISTRATION. (a) An application for registration filed under this section must include a timeshare disclosure statement and any required exchange disclosure statement required by Section 221.033, recorded copies of all timeshare instruments, and other information as may be required by the commission. If the timeshare property is a newly developed property, recorded copies of the timeshare instruments must be provided promptly after recorded copies are available from the entity with which the instruments are recorded. If existing or proposed accommodations are in a condominium, an applicant who complies with this section is not required to prepare or deliver a condominium information statement or a resale certificate as described by Chapter 82.

(b) If existing or proposed accommodations are in a condominium or similar development, the application for registration must contain the project instruments of that development and affirmatively indicate that the creation and disposition of timeshare interests are not prohibited by those instruments. If the project instruments do not expressly authorize the creation and disposition of timeshare interests, the application must contain evidence that existing owners of the condominium development were provided written notice, at least 60 days before the application for registration, that timeshare

interests would be created and sold. If the project instruments prohibit the creation or disposition of timeshare interests, the application must contain a certification by the authorized representative of all existing owners that the project instruments have been properly amended to permit that creation and disposition.

(c) The commission may accept an abbreviated registration application from a developer of a timeshare plan for any accommodations in the plan located outside this state. The developer must file written notice of the intent to register under this section not later than the 15th day before the date the abbreviated application is submitted.

(d) A developer of a timeshare plan with any accommodation located in this state may not file an abbreviated application unless:

(1) the developer is a:

(A) successor in interest after a merger or acquisition; or

(B) joint venture in which the previous developer or its affiliate is a partner or a member; and

(2) the previous developer registered the timeshare plan in this state preceding the merger, acquisition, or joint venture.

(e) A developer filing an abbreviated application must provide:

(1) the legal name and any assumed names and the principal office location, mailing address, telephone number, and primary contact person of the developer;

(2) the name, location, mailing address, telephone number, and primary contact person of the timeshare plan;

(3) the name and address of the developer's authorized or registered agent for service of process in this state;

(4) the name, primary office location, mailing address, and telephone number of the managing entity of the timeshare plan;

(5) the certificate or other evidence of registration from any jurisdiction in which the timeshare plan is approved or accepted;

(6) the certificate or other evidence of registration from the appropriate regulatory agency of any other jurisdiction in the United States in which some or all of the accommodations are located;

(7) a declaration stating whether the timeshare plan is a single-site timeshare plan or a multisite timeshare plan;

(8) if the plan is a multisite timeshare plan, a declaration stating whether the plan consists of specific timeshare interests or nonspecific timeshare interests;

(9) a disclosure of each jurisdiction in which the developer has applied for registration of the timeshare plan and whether the timeshare plan, the developer, or the managing entity used were denied registration or, during the five-year period before the registration application date, were the subject of a final adverse disposition in a disciplinary proceeding;

(10) if requested by the commission, copies of any disclosure documents required to be provided to purchasers or filed with any jurisdiction that approved or accepted the timeshare plan;

(11) the appropriate filing fee; and

(12) any other information reasonably requested by the commission or required by commission rule.

(f) A foreign jurisdiction providing evidence of registration as provided by Subsection (e)(6) must have registration and disclosure requirements that are substantially similar to or stricter than the requirements of this chapter.

(g) The commission shall investigate all matters relating to the application and may in its discretion require a personal inspection of the proposed timeshare property by any persons designated by it. All direct expenses incurred by the commission in inspecting the property shall be borne by the applicant. The commission may require the applicant to pay an advance deposit sufficient to cover those expenses.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.022 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 4, eff. January 15, 2006.

Acts 2009, 81st Leg., R.S., Ch. 279 (S.B. 1036), Sec. 1, eff. September 1, 2009.

Sec. 221.023. AMENDMENT OF REGISTRATION. The developer shall file amendments to the registration reporting to the commission any materially adverse change in any document contained in the registration not later than the 30th day after the date the developer knows or reasonably should know of the change. The developer may continue to offer and dispose of timeshare interests under the

existing registration pending review of the amendments by the commission if the materially adverse change is disclosed to prospective purchasers.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.023 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 4, eff. January 15, 2006.

Sec. 221.024. POWERS OF COMMISSION. (a) The commission may prescribe and publish forms and adopt rules necessary to carry out the provisions of this chapter and may suspend or revoke the registration of any developer, place on probation the registration of a developer that has been suspended or revoked, reprimand a developer, impose an administrative penalty of not more than $10,000, or take any other disciplinary action authorized by this chapter if, after notice and hearing, the commission determines that a developer has materially violated this chapter, the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), or the Contest and Gift Giveaway Act (Chapter 621, Business & Commerce Code).

(b) The commission:

(1) shall authorize the State Office of Administrative Hearings to conduct hearings in contested cases; and

(2) may establish reasonable fees for forms and documents it provides to the public and for the filing or registration of documents required by this chapter.

(c) If the commission initiates a disciplinary proceeding under this chapter, the person is entitled to a hearing before the State Office of Administrative Hearings. The commission by rule shall adopt procedures to permit an appeal to the commission from a determination made by the State Office of Administrative Hearings in a disciplinary action.

(d) The commission shall set the time and place of the hearing.

(e) A disciplinary procedure under this chapter is governed by the contested case procedures of Chapter 2001, Government Code.

(f) The commission may file a suit in a district court of

Travis County to prevent a violation of this chapter or for any other appropriate relief.

(g) Judicial review of a commission order imposing an administrative penalty is:

(1) instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) by trial de novo.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.024 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 381, Sec. 1, eff. June 14, 1989; Acts 1999, 76th Leg., ch. 62, Sec. 7.87, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 4, eff. January 15, 2006.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.34, eff. April 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 8, eff. May 12, 2009.

Sec. 221.025. EFFECT OF REGISTRATION ON OTHER LAWS: EXEMPTION FROM CERTAIN LAWS. (a) A developer's compliance with this chapter exempts the developer's offer and disposition of timeshare interests subject to this chapter from securities and dealer registration under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

(b) A timeshare plan created as a condominium regime before January 1, 1994, that complies with this chapter is exempt from the requirements of Section 81.112 relating to club membership.

(c) A timeshare plan subject to Chapter 82 that complies with this chapter is exempt from the requirements of:

(1) Section 82.0675 relating to club membership; and

(2) Sections 82.103(c)-(e) relating to declarant control.

(c-1) The exemption provided by Subsection (c)(2) applies to a timeshare plan created before September 1, 2013, and to the project instrument governing the timeshare property subject to the timeshare plan only if the developer and the association agree to the application of the exemption in writing and the project instrument is

amended to provide for the application of the exemption. If the conditions provided by this subsection are not satisfied, a timeshare plan created before September 1, 2013, and the timeshare property subject to the timeshare plan are governed by any developer control provisions provided in the project instrument, notwithstanding any other law.

(d) A developer's compliance with this chapter as to any timeshare plan exempts any company, as defined by Chapter 181, Finance Code (Texas Trust Company Act), that holds title to the timeshare interests in the timeshare plan from compliance with the Texas Trust Company Act as to the company's activities relating to the holding of that title.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.025 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 4, eff. January 15, 2006.

Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 7, eff. September 1, 2013.

Sec. 221.026. ISSUANCE AND RENEWAL OF REGISTRATION. (a) The commission by rule shall adopt requirements for the issuance and renewal of a developer's registration under this chapter, including:

(1) the form required for application for registration or a renewal of registration; and

(2) any supporting documentation required for registration or renewal of registration.

(b) The commission shall issue or renew a registration under this chapter for a period not to exceed 24 months.

(c) The commission may assess and collect a fee for the issuance or renewal of a registration under this chapter.

(d) The commission may assess and collect a late fee if the commission has not received the fee or any supporting documentation required before the 61st day after the date a registration is issued or renewed under this section.

(e) Failure to pay a renewal fee or late fee is a violation of this chapter.

Added by Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 4, eff. January 15, 2006.

Sec. 221.027. TEMPORARY SUSPENSION. (a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether the registration for a timeshare plan under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a timeshare plan registered under this chapter would, by the continued disposition of the timeshare property, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the registration of the timeshare plan.

(c) A registration may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 58, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 9, eff. May 12, 2009.

SUBCHAPTER D. DISCLOSURE

Sec. 221.031. ADVERTISEMENTS AND PROMOTIONS. (a) At any time, the commission may request a developer to file for review by the commission any advertisement used in this state by the developer in connection with offering a timeshare interest. The developer shall provide the advertisement not later than the 15th day after the date the commission makes the request. If the commission determines that

the advertisement violates this chapter or Chapter 621, Business & Commerce Code, the commission shall notify the developer in writing, stating the specific grounds for the commission's determination not later than the 15th day after the date the commission makes its determination. The commission may grant the developer provisional approval for the advertisement if the developer agrees to correct the deficiencies identified by the commission. A developer, on its own initiative, may submit any proposed advertisement to the commission for review and approval by the commission.

(b) Any advertisement that contains a promotion in connection with the offering of a timeshare interest must comply with Chapter 621, Business & Commerce Code.

(c) As provided by Subsections (d) and (e), an advertisement that contains a promotion in connection with the offering of a timeshare interest must include, in addition to any disclosures required under Chapter 621, Business & Commerce Code, the following:

(1) a statement to the effect that the promotion is intended to solicit purchasers of timeshare interests;

(2) if applicable, a statement to the effect that any person whose name is obtained during the promotion may be solicited to purchase a timeshare interest;

(3) the full name of the developer of the timeshare property; and

(4) if applicable, the full name and address of any marketing company involved in the promotion of the timeshare property, excluding the developer or an affiliate or subsidiary of the developer.

(d) An advertisement containing the disclosures required by Chapter 621, Business & Commerce Code, and Subsection (c) must be provided in writing or electronically:

(1) at least once before a scheduled sales presentation; and

(2) in a reasonable period before the scheduled sales presentation to ensure that the recipient receives the disclosures before leaving to attend the sales presentation.

(e) The developer is not required to provide the disclosures required by this section in every advertisement or other written, oral, or electronic communication provided or made to a recipient before a scheduled sales presentation.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.031 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 381, Sec. 2, eff. June 14, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 5, eff. January 15, 2006.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.35, eff. April 1, 2009.

Sec. 221.032. TIMESHARE DISCLOSURE STATEMENT. (a) Before the signing of any agreement to acquire a timeshare interest, the developer shall provide a timeshare disclosure statement to the prospective purchaser and shall obtain from the purchaser a written acknowledgement of receipt of the timeshare disclosure statement.

(b) The timeshare disclosure statement for a single-site timeshare plan or a multisite timeshare plan that includes a specific timeshare interest must include:

(1) the type of timeshare plan offered and the name and address of:

(A) the developer; and

(B) the single site or specific site offered for the multisite timeshare plan;

(2) a description of the duration and operation of the timeshare plan;

(3) a description of the existing or proposed accommodations, including the type and number of timeshare interests in the accommodations expressed in periods of seven-day use availability or other time increment applicable to the timeshare plan. The description of each type of accommodation included in the timeshare plan shall be categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and shall include a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator. If the accommodations are proposed or incomplete, a schedule for commencement, completion, and availability of the accommodations shall be provided;

(4) a description of any existing or proposed amenities of the timeshare plan and, if the amenities are proposed or incomplete,

a schedule for commencement, completion, and availability of the amenities;

(5) the extent to which financial arrangements have been provided for the completion of all promised accommodations and amenities that are committed to be built;

(6) a description of the method and timing for performing maintenance of the accommodations;

(7) a statement indicating that, on an annual basis, the sum of the nights that purchasers are entitled to use the accommodations does not exceed the number of nights the accommodations are available for use by the purchasers;

(8) a description of the method by which purchasers' use of the accommodations is scheduled;

(9) a statement that an association exists or is expected to be created or that such an association does not exist and is not expected to be created and, if such an association exists or is reasonably contemplated, a description of its powers and responsibilities;

(10) relating to the single-site timeshare plan or the specific timeshare interest of a multisite timeshare plan, copies of the following documents, if applicable, including any amendments to the documents, unless separately provided to the purchaser simultaneously with the timeshare disclosure statement:

(A) the declaration;

(B) the association articles of incorporation;

(C) the association bylaws;

(D) the association rules; and

(E) any lease or contract, excluding the purchase contract and other loan documents required to be signed by the purchaser at closing;

(11) the name and principal address of the managing entity and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it;

(12) the current annual budget, if available, or the projected annual budget for the timeshare plan or timeshare properties managed by the same managing entity if assessments are deposited in a common account. The budget must include:

(A) a statement of the amount reserved or budgeted for repairs, replacements, and refurbishment;

(B) the projected common expense liability, if any, by category of expenditure for the timeshare plan or timeshare properties managed by the same managing entity; and

(C) the assumptions on which the operating budget is based;

(13) the projected assessments and a description of the method for calculating and apportioning those assessments among purchasers;

(14) any initial fee or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(15) a description of any lien, defect, or encumbrance on or affecting title to the timeshare interest and, if applicable, a copy of each written warranty provided by the developer;

(16) a description of any bankruptcy that is pending or that has occurred within the past five years, pending civil or criminal suit, adjudication, or disciplinary actions material to the timeshare plan of which the developer has knowledge;

(17) a description of any financing offered by or available through the developer;

(18) any current or anticipated fees or charges to be paid by timeshare purchasers for the use of any accommodations or amenities related to the timeshare plan, and a statement that the fees or charges are subject to change;

(19) a description and amount of insurance coverage provided for the protection of the purchaser;

(20) the extent to which a timeshare interest may become subject to a tax lien or other lien arising out of claims against purchasers of different timeshare interests;

(21) a description of those matters required by Section 221.041;

(22) a statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a timeshare interest;

(23) a statement disclosing that any deposit made in connection with the purchase of a timeshare interest must be held by an escrow agent until expiration of any right to cancel the contract and that any deposit must be returned to the purchaser if the purchaser elects to exercise the right of cancellation; or, if the commission accepts from the developer a surety bond, irrevocable

letter of credit, or other form of financial assurance instead of an escrow deposit, a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other form of financial assurance in an amount equal to or in excess of the funds that would otherwise be held by an escrow agent and that the deposit must be returned if the purchaser elects to exercise the right of cancellation;

(24) if applicable, a statement that the assessments collected from the purchasers may be placed in a common account with the assessments collected from the purchasers of other timeshare properties managed by the same managing entity;

(25) if the timeshare plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program; and

(26) any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this chapter.

(c) A developer who offers a specific timeshare interest in a multisite timeshare plan also must fully disclose the following information in written, graphic, or tabular form:

(1) a description of each component site, including the name and address of each component site;

(2) a description of each type of accommodation in each component site, categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator;

(3) a description of the amenities at each component site available for use by the purchasers;

(4) a description of the reservation system, which must include:

(A) the entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system;

(B) a summary or the rules governing access to and use of the reservation system; and

(C) the existence of and explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-

come, first-served basis;

(5) the name and principal address of the managing entity for the multisite timeshare plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it;

(6) a description of any right to make additions to, substitutions in, or deletions from accommodations, amenities, or component sites, and a description of the basis on which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite timeshare plan;

(7) a description of the purchaser's liability for any fees associated with the multisite timeshare plan;

(8) the location of each component site of the multisite timeshare plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite timeshare plan during such 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multisite timeshare plan; and

(9) any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this chapter.

(d) A developer who offers a nonspecific timeshare interest in a multisite timeshare plan must disclose the following information in written, graphic, or tabular form:

(1) the name and address of the developer;

(2) a description of the type of interest and the usage rights the purchaser will receive;

(3) a description of the duration and operation of the timeshare plan;

(4) a description of the type of insurance coverage provided for each component site;

(5) an explanation of who holds title to the accommodations of each component site;

(6) a description of each component site, including the name and address of each component site;

(7) a description of the existing or proposed accommodations, expressed in periods of seven-day use availability or any other time increment applicable to the timeshare plan. The

description of each type of accommodation included in the timeshare plan shall be categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and shall include a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator. If the accommodations are proposed or incomplete, a schedule for commencement, completion, and availability of the accommodations shall be provided;

(8) a statement that an association exists or is expected to be created or that such an association does not exist and is not expected to be created and, if such an association exists or is reasonably contemplated, a description of its powers and responsibilities;

(9) if applicable, copies of the following documents applicable to the multisite timeshare plan, including any amendments to the documents, unless separately provided to the purchaser simultaneously with the timeshare disclosure statement:

(A) the declaration;

(B) the association articles of incorporation;

(C) the association bylaws;

(D) the association rules; and

(E) any lease or contract, excluding the purchase contract and other loan documents required to be signed by the purchaser at closing;

(10) a description of the method and timing for performing maintenance of the accommodations;

(11) a statement indicating that, on an annual basis, the sum of the nights that purchasers are entitled to use the accommodations does not exceed the number of nights the accommodations are available for use by the purchasers;

(12) a description of each type of accommodation included in the timeshare plan, categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator;

(13) a description of amenities available for use by the purchaser at each component site;

(14) the location of each component site of the multisite timeshare plan, the historical occupancy of each component site for

the prior 12-month period, if the component site was part of the multisite timeshare plan during such 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multisite timeshare plan;

(15) a description of the right to make any additions, substitutions, or deletions of accommodations, amenities, or component sites, and a description of the basis upon which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite timeshare plan;

(16) a description of the reservation system that shall include all of the following:

(A) the entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system;

(B) a summary of the rules governing access to and use of the reservation system; and

(C) the existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come, first-served basis;

(17) the name and principal address of the managing entity for the multisite timeshare plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it, and a description of the relationship between the multisite timeshare plan managing entity and the managing entity of the component sites of the multisite timeshare plan, if different from the multisite timeshare plan managing entity;

(18) the current annual budget of the multisite timeshare plan, if available, or the projected annual budget for the multisite timeshare plan, which must include:

(A) a statement of the amount reserved or budgeted for repairs, replacements, and refurbishment;

(B) the projected common expense liability, if any, by category of expenditure for the multisite timeshare plan; and

(C) the assumptions on which the operating budget is based;

(19) the projected assessments and a description of the method for calculating and apportioning those assessments among

purchasers of the multisite timeshare plan;

(20) if applicable, a statement that the assessments collected from the purchasers may be placed in a common account with the assessments collected from the purchasers of other timeshare properties managed by the same managing entity;

(21) any current fees or charges to be paid by timeshare purchasers for the use of any amenities related to the timeshare plan and a statement that the fees or charges are subject to change;

(22) any initial or special fee due from the purchaser at closing, together with a description of the purpose of and method of calculating the fee;

(23) a description of the purchaser's liability for any fees associated with the multisite timeshare plan;

(24) a description of any lien, defect, or encumbrance on or affecting title to the timeshare interest and, if applicable, a copy of each written warranty provided by the developer;

(25) the extent to which a timeshare interest may become subject to a tax lien or other lien arising out of claims against purchasers of different timeshare interests;

(26) a description of those matters required by Section 221.041;

(27) a description of any financing offered by or available through the developer;

(28) a description of any bankruptcy that is pending or that has occurred within the past five years, pending civil or criminal suits, adjudications, or disciplinary actions material to the timeshare plan of which the developer has knowledge;

(29) a statement disclosing any right of first refusal or other restraint on the transfer of all or a portion of a timeshare interest;

(30) a statement disclosing that any deposit made in connection with the purchase of a timeshare interest must be held by an escrow agent until expiration of any right to cancel the contract and that any deposit must be returned to the purchaser if the purchaser elects to exercise the right of cancellation; or, if the commission accepts from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance instead of an escrow deposit, a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other form of financial assurance in an amount equal to or in excess of the

funds that would otherwise be held by an escrow agent and that the deposit must be returned if the purchaser elects to exercise the right of cancellation;

(31) if the timeshare plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program; and

(32) any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this chapter.

(e) A developer may include any other information in a timeshare disclosure statement required by this section on approval by the commission.

(f) If a timeshare plan is located wholly outside this state, the commission may permit the developer to submit a timeshare disclosure statement the developer is currently providing purchasers or an equivalent timeshare disclosure statement filed for the timeshare plan in another state if the current statement or the equivalent statement substantially complies with the requirements of this subchapter. This subsection does not exempt the developer from other requirements of this chapter.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.032 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 443, Sec. 3, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 5, eff. January 15, 2006.

Acts 2009, 81st Leg., R.S., Ch. 279 (S.B. 1036), Sec. 2, eff. September 1, 2009.

Sec. 221.033. EXCHANGE DISCLOSURE STATEMENT. (a) Before the signing of any agreement to purchase a timeshare interest in which a prospective purchaser is also offered participation in any exchange program, the developer shall also deliver to the prospective purchaser the exchange disclosure statement of any exchange company whose service is advertised or offered by the developer or other person in connection with the disposition.

(b) If participation in an exchange program is offered for the first time after a disposition has occurred, any person offering that participation shall also deliver an exchange disclosure statement to the purchaser before the execution by the purchaser of any instrument relating to participation in the exchange program.

(c) In all cases, the person offering participation in the exchange program shall obtain from the purchaser a written acknowledgement of receipt of the exchange disclosure statement.

(d) The exchange disclosure statement must include the following information:

(1) the name and address of the exchange company;

(2) if the exchange company is not the developer, a statement describing the legal relationship, if any, between the exchange company and the developer;

(3) a statement indicating the conditions under which the exchange program might terminate or become unavailable;

(4) whether membership or participation or both in the exchange program is voluntary or mandatory;

(5) a complete description of the required procedure for executing an exchange of timeshare periods;

(6) the fee required for membership or participation or both in the program and whether the fee is subject to change;

(7) a statement to the effect that participation in the exchange program is conditioned on compliance with the terms of a contract between the exchange company and the purchaser;

(8) a statement in conspicuous and bold-faced print to the effect that all exchanges are arranged on a space-available basis and that neither the developer nor the exchange company guarantees that a particular timeshare period can be exchanged; and

(9) a description of seasonal demand and unit occupancy restrictions employed in the exchange program.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.033 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 6, eff. January 15, 2006.

Sec. 221.034. EXEMPT OFFERINGS AND DISPOSITIONS; COMMUNICATIONS. (a) An offering or disposition is exempt from this chapter if it is:

(1) a gratuitous offering or disposition of a timeshare interest;

(2) a disposition pursuant to a court order;

(3) a disposition by a governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure;

(5) an offering or disposition by an association of its own timeshare interest acquired through foreclosure, deed in lieu of foreclosure, or gratuitous transfer;

(6) an offering or disposition of all timeshare interests in a timeshare plan to not more than five persons;

(7) an offering or disposition of a timeshare interest in a timeshare property situated wholly outside this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state;

(8) an offering or disposition of a timeshare interest to a purchaser who is not a resident of this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state;

(9) the offering or redisposition of a timeshare interest by a purchaser who acquired the interest for the purchaser's personal use; or

(10) the offering or disposition of a rental of an accommodation for a period of three years or less.

(b) If a developer has a timeshare plan registered under this chapter and is subject to Section 221.024, the developer may offer or dispose of an interest in a timeshare plan that is not registered under this chapter to a person who is the owner of a timeshare interest in a timeshare plan created by the developer. A developer under this subsection is exempt from Sections 221.021, 221.022, 221.023, 221.032, 221.041, 221.042, 221.043, 221.061, 221.071(a)(1) and (8), 221.074, and 221.075 if the developer:

(1) permits the purchaser to cancel the purchase contract before the sixth day after the date the contract is signed; and

(2) provides the purchaser all timeshare disclosure documents required by law to be provided in the jurisdiction in which the timeshare property is located.

(c) The following communications are not advertisements under this chapter:

(1) any stockholder communication, including an annual report or interim financial report, proxy material, registration statement, securities prospectus, timeshare disclosure statement, or other material required to be delivered to a prospective purchaser by a state or federal governmental entity;

(2) any oral or written statement disseminated by a developer to broadcast or print media, excluding:

(A) paid advertising or promotional material relating to plans for acquiring or developing timeshare property; and

(B) the rebroadcast or other dissemination of any oral statements by a developer to a prospective purchaser or the distribution or other dissemination of written statements, including newspaper or magazine articles or press releases, by a developer to prospective purchasers;

(3) the offering of a timeshare interest in a national publication or by electronic media that is not directed to or targeted at any individual located in this state;

(4) any audio, written, or visual publication or material relating to the availability of any accommodations for transient rental if:

(A) a sales presentation is not a term or condition of the availability of the accommodations; and

(B) the failure of the transient renter to take a tour of the timeshare property or attend a sales presentation does not result in a reduction in the level of services or an increase in the rental price that would otherwise be available to the renter; or

(5) any follow-up communication with a person relating to a promotion if the person previously received an advertisement relating to the promotion that complied with Section 221.031.

(d) The following communications are exempt from this chapter if they are delivered to a person who has previously executed a contract for the purchase of or is an owner of a timeshare interest in a timeshare plan:

(1) any communication addressed to and relating to the account of the person; or

(2) any audio, written, or visual publication or material relating to an exchange company or program if the person is a member of that exchange company or program.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.034 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 7, eff. January 15, 2006.

Sec. 221.035. SUPERVISORY DUTIES OF DEVELOPER. Notwithstanding obligations placed upon any other persons by this chapter, the developer shall supervise, manage, and control all aspects of the offering of a timeshare interest, including but not limited to promotion, advertising, contracting, and closing. Any violation of this chapter which occurs during such offering activities is considered to be a violation by the developer as well as by the person actually committing the violation.

Added by Acts 1989, 71st Leg., ch. 381, Sec. 3, eff. June 14, 1989.

Sec. 221.036. DEVELOPER PREPARATION AND COMPLETION OF DOCUMENTS. (a) A developer may charge a reasonable fee for completion of a contract form, closing document, or disclosure document required for the sale, exchange, option, lease, or rental of a timeshare interest.

(b) The action of a developer under Subsection (a) does not constitute the unauthorized or illegal practice of law in this state if the contract or document has been:

(1) accepted by the commission for use in the particular type of transaction involved; or

(2) prepared by an attorney licensed to practice law in this state for use in the particular type of transaction involved.

Added by Acts 2003, 78th Leg., ch. 1244, Sec. 1, eff. June 20, 2003.

Sec. 221.037. ALTERNATIVE TERMINOLOGY OR NAME. (a) In providing the disclosures required by this chapter, the use of the terms "vacation ownership interest" or "vacation ownership plan" to refer to the timeshare interest or plan offered by the developer, or the use of other terms that are substantially similar and that are

regularly used by the developer to denote a timeshare interest or plan, is sufficient and complies with the requirements of this chapter.

(b) In providing the full name of a developer or a marketing company as required by this chapter, the disclosure of an assumed name of the developer or the marketing company, if the entity has complied with the requirements of the applicable assumed business names statutes or other laws regarding the use of the assumed name, is sufficient and complies with this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 279 (S.B. 1036), Sec. 3, eff. September 1, 2009.

SUBCHAPTER E. CANCELLATION OF PURCHASE CONTRACT

Sec. 221.041. PURCHASER'S RIGHT TO CANCEL. (a) A purchaser may cancel a purchase contract before the sixth day after the date the purchaser signs and receives a copy of the purchase contract or receives the required timeshare disclosure statement, whichever is later.

(b) A purchaser may not waive the right of cancellation under this section. A contract containing a waiver is voidable by the purchaser.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.041 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 381, Sec. 4, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 443, Sec. 4, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 8, eff. January 15, 2006.

Sec. 221.042. NOTICE; REFUND. (a) If a purchaser elects to cancel a purchase contract under Section 221.041, the purchaser may do so by hand-delivering notice of cancellation to the developer, by mailing notice by prepaid United States mail to the developer or to the developer's agent for service of process, or by providing notice by overnight common carrier delivery service to the developer or the developer's agent for service of process.

(b) Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded on or before the 30th day after the date on which the developer receives a timely notice of cancellation or on or before the fifth day after the date the developer receives good funds from the purchaser, whichever is later.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.042 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 8, eff. January 15, 2006.

Sec. 221.043. CONTRACT REQUIREMENTS. (a) Each purchase contract shall contain the following information. The statements required by this subsection and Subsection (c)(8) shall be provided in a conspicuous manner and in the exact language set forth in this section with the developer's name and address, the date of the last day of the fiscal year, and the address of the managing entity inserted where indicated:

"PURCHASER'S RIGHT TO CANCEL.

"(1) BY SIGNING THIS CONTRACT YOU ARE INCURRING AN OBLIGATION TO PURCHASE A TIMESHARE INTEREST. YOU MAY, HOWEVER, CANCEL THIS CONTRACT WITHOUT PENALTY OR OBLIGATION BEFORE THE SIXTH DAY AFTER THE DATE YOU SIGN AND RECEIVE A COPY OF THE PURCHASE CONTRACT, OR RECEIVE THE REQUIRED TIMESHARE DISCLOSURE STATEMENT, WHICHEVER IS LATER.

"(2) IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MAY DO SO BY EITHER HAND-DELIVERING NOTICE OF CANCELLATION TO THE DEVELOPER, BY MAILING NOTICE BY PREPAID UNITED STATES MAIL TO THE DEVELOPER OR THE DEVELOPER'S AGENT FOR SERVICE OF PROCESS, OR BY PROVIDING NOTICE BY OVERNIGHT COMMON CARRIER DELIVERY SERVICE TO THE DEVELOPER OR THE DEVELOPER'S AGENT FOR SERVICE OF PROCESS. YOUR NOTICE OF CANCELLATION IS EFFECTIVE ON THE DATE SENT OR DELIVERED TO (INSERT NAME OF DEVELOPER) AT (INSERT ADDRESS OF DEVELOPER). FOR YOUR PROTECTION, SHOULD YOU DECIDE TO CANCEL YOU SHOULD EITHER SEND YOUR NOTICE OF CANCELLATION BY CERTIFIED MAIL WITH A RETURN RECEIPT REQUESTED OR OBTAIN A SIGNED AND DATED RECEIPT IF DELIVERING IT IN

PERSON OR BY OVERNIGHT COMMON CARRIER.

"(3) A PURCHASER SHOULD NOT RELY ON STATEMENTS OTHER THAN THOSE INCLUDED IN THIS CONTRACT AND THE DISCLOSURE STATEMENT."

(b) Immediately following the required statements in Subsection (a) shall be a space reserved for the signature of the purchaser.

(c) The purchase contract must also include the following:

(1) the name and address of the developer and the address of the timeshare property or the address of any available timeshare interest being offered;

(2) an agreement describing the cancellation policy prescribed by Section 221.041;

(3) the name of the person or persons primarily involved in the sales presentation on behalf of the developer;

(4) a statement disclosing the amount of the periodic assessments currently assessed against or collected from the purchasers of the timeshare interest, immediately followed by a statement providing that collected assessments will be used by the managing entity to pay for expenditures, charges, reserves, or liabilities relating to the operation of the timeshare plan or timeshare properties managed by the managing entity;

(5) the date the purchaser signs the contract; and

(6) the following statement:

"AS A TIMESHARE OWNER, YOU HAVE A RIGHT TO REQUEST A WRITTEN ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NOT LATER THAN FIVE MONTHS AFTER (INSERT THE DATE OF THE LAST DAY OF THE FISCAL YEAR). YOU MAY REQUEST THE STATEMENT BY WRITING TO (INSERT NAME AND ADDRESS OF THE MANAGING ENTITY)."

(d) The information required to be provided by this section may be provided in the purchase contract or in an exhibit to the purchase contract, or it may be provided in part in both if all of the information is provided.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.043 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 381, Sec. 5, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 443, Sec. 5, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 8, eff. January

15, 2006.

Acts 2009, 81st Leg., R.S., Ch. 279 (S.B. 1036), Sec. 4, eff. September 1, 2009.

SUBCHAPTER F. EXCHANGE PROGRAM

Sec. 221.051. OPERATION REQUIREMENT. An exchange company shall employ seasonal demand and unit occupancy restrictions in the operation of its exchange program.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.051 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.

Sec. 221.052. LIABILITY OF DEVELOPER AND EXCHANGE COMPANY. (a) A developer does not incur any liability arising out of the use, delivery, or publication to a purchaser of written information or audio-visual materials provided to it by the exchange company in accordance with Subchapter D, unless the developer knows or has reason to know that the materials are inaccurate or false.

(b) No exchange company shall have any liability with respect to any violation under this chapter arising out of the use by a developer of information relating to an exchange program other than that provided to the developer by the exchange company.

(c) An exchange company that denies exchange privileges to an owner whose use of accommodations in the owner's timeshare plan is denied is not liable to any member of the exchange company or exchange program or any third party because of the denial of the owner's exchange privileges.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.052 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 9, eff. January 15, 2006.

Sec. 221.053. EXCHANGE COMPANY LIABILITY. Except for written information or audio-visual materials provided to a developer by an

exchange company, an exchange company does not incur liability as a result of:

(1) a representation made by a developer that relates to any exchange program or exchange company; or

(2) the use, delivery, or publication by a developer of information that relates to an exchange program or exchange company.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.053 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.

SUBCHAPTER G. ESCROW DEPOSITS

Sec. 221.061. ESCROW OR TRUST ACCOUNT REQUIRED. (a) A developer or escrow agent of a timeshare plan shall deposit in an escrow or trust account in a federally insured depository 100 percent of all funds received during the purchaser's cancellation period.

(b) An escrow agent owes the purchaser a fiduciary duty.

(c) The escrow agent and the developer shall execute an agreement that includes a statement providing that:

(1) funds may be disbursed to the developer from the escrow or trust account by the agent only:

(A) after the purchaser's cancellation period has expired; and

(B) as provided by the purchase contract, subject to this subchapter; and

(2) if the purchaser cancels the purchase contract as provided by the contract, the funds must be paid to:

(A) the purchaser; or

(B) the developer if the purchaser's funds have been refunded previously by the developer.

(d) If a developer contracts to sell a timeshare interest and the construction of the building in which the timeshare interest is located has not been completed when the cancellation period expires, the developer shall continue to maintain all funds received from the purchaser under the purchase agreement in the escrow or trust account until construction of the building is completed. The documentation required for evidence of completion of construction includes:

(1) a certificate of occupancy;

(2) a certificate of substantial completion;

(3) evidence of a public safety inspection equivalent to Subdivision (1) or (2) from a government agency in the applicable jurisdiction; or

(4) any other evidence acceptable to the commission.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.061 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 10, eff. January 15, 2006.

Sec. 221.062. RELEASE OF ESCROW. (a) The funds or property constituting the escrow or trust deposit may be released from escrow only in accordance with this section.

(b) If the purchaser cancels the purchase contract as provided by the contract, the funds shall be paid to:

(1) the purchaser; or

(2) the developer if the purchaser's funds have been refunded previously by the developer.

(c) If the purchaser defaults in the performance of obligations under the terms of the purchase contract, the funds shall be paid to the developer.

(d) If the developer defaults in the performance of obligations under the purchase contract, the funds shall be paid to the purchaser.

(e) If the funds of the purchaser have not been disbursed previously as provided by Subsections (a)-(d), the funds may be disbursed to the developer by the escrow or trust agent if acceptable evidence of completion of construction is provided.

(f) If there is a dispute relating to the funds in the escrow or trust account, the agent shall maintain the funds in the account until:

(1) the agent receives written directions agreed to and signed by all parties; or

(2) a civil action relating to the disputed funds is filed.

(g) If a civil action is filed under Subsection (f)(2), the escrow or trust account agent shall deposit the funds with the court in which the action is filed.

(h) Excluding any encumbrance placed against the purchaser's timeshare interest that secures the purchaser's payment of purchase money financing for the purchase, the developer is not entitled to the release of any funds escrowed with respect to each timeshare interest until the developer has provided the commission with satisfactory evidence that:

(1) the timeshare interest and any other property or rights to property appurtenant to the timeshare interest, including any amenities represented to the purchaser as being part of the timeshare plan, are free and clear of any of the claims of the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the timeshare interest or appurtenant property or property rights;

(2) the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the timeshare interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the timeshare plan, has recorded a subordination and notice to creditors document in the jurisdiction in which the timeshare interest is located that expressly and effectively provides that the interest holder's right, lien, or encumbrance does not adversely affect and is subordinate to the rights of the owners of the timeshare interests in the timeshare plan, regardless of the date of purchase, on and after the effective date of the subordination document;

(3) the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the timeshare interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the timeshare plan, has transferred the subject accommodations or amenities or all use rights therein to a nonprofit organization or an owners' association to be held for the use and benefit of the purchasers of the timeshare plan, which entity shall act as a fiduciary to the purchasers, provided that the developer has transferred control of that entity to the purchasers or does not exercise its voting rights in that entity with respect to the subject accommodations or amenities and, prior to the transfer, any lien or other encumbrance against the accommodation or facility is subject to a subordination

and notice to creditors instrument pursuant to this subsection; or

(4) alternative arrangements have been made that are adequate to protect the rights of the purchasers of the timeshare interests and are approved by the commission.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.062 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 10, eff. January 15, 2006.

Acts 2009, 81st Leg., R.S., Ch. 279 (S.B. 1036), Sec. 5, eff. September 1, 2009.

Sec. 221.063. ALTERNATIVE TO ESCROW OR TRUST ACCOUNT: FINANCIAL ASSURANCE. (a) Instead of the deposit of funds in an escrow or trust account as provided by Section 221.061, the commission may accept from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance, including financial assurance posted in another state or jurisdiction.

(b) The amount of the financial assurance provided under this section must be an amount equal to or more than the amount of funds that would otherwise be placed in an escrow or trust account under Section 221.061(a).

(c) The amount of the financial assurance provided under this section for timeshare property under construction as provided by Section 221.061(d) must be the lesser of:

(1) an amount equal to or more than the amount of funds that would otherwise be placed in an escrow or trust account under that subsection; or

(2) the amount necessary to assure completion of the building in which the timeshare interest is located.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.063 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 10, eff. January 15, 2006.

Sec. 221.064. DOCUMENTATION REQUIRED. The escrow or trust account agent or developer shall make documents related to the escrow or trust account or the financial assurance provided available to the commission at the commission's request.

Added by Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 10, eff. January 15, 2006.

SUBCHAPTER H. MISCELLANEOUS PROVISIONS

Sec. 221.071. DECEPTIVE TRADE PRACTICES. (a) A developer or other person commits a false, misleading, or deceptive act or practice within the meaning of Subsections (a) and (b) of Section 17.46 of the Texas Deceptive Trade Practices-Consumer Protection Act (Article 17.46 et seq., Business & Commerce Code), by engaging in any of the following acts:

(1) failing to disclose information concerning a timeshare interest required by Subchapter D;

(2) making false or misleading statements of fact concerning the characteristics of accommodations or amenities available to a consumer;

(3) predicting specific or immediate increases in the value of a timeshare interest without a reasonable basis for such predictions;

(4) making false or misleading statements of fact concerning the duration that accommodations or amenities will be available to a consumer;

(5) making false or misleading statements of fact concerning the conditions under which a purchaser of a timeshare interest may exchange the right to occupy a unit for the right to occupy a unit in the same or another timeshare property;

(6) representing that a prize, gift, or other benefit will be awarded in connection with a promotion with the intent not to award that prize, gift, or benefit in the manner represented;

(7) failing to provide a copy of the purchase contract to the purchaser at the time the contract is signed by the purchaser;

(8) failing to provide the annual statement as required by Section 221.074(a); or

(9) exceeding a one-to-one purchaser-to-accommodation ratio for a timeshare plan during a consecutive 12-month period, as

determined under Subsection (c).

(b) The provisions of this section are not exclusive and are in addition to provisions provided for in any other law.

(c) A developer complies with the one-to-one purchaser-to-accommodation ratio referred to in Subsection (a)(9) if the total number of purchasers eligible to use the accommodations of the timeshare plan during a consecutive 12-month period never exceeds the total number of accommodations available for use in the timeshare plan during that same period. A purchaser-to-accommodation ratio is computed by dividing the number of purchasers eligible to use an accommodation in a timeshare plan on any given day by the number of accommodations within the plan available for use on that day. For purposes of computing the purchaser-to-accommodation ratio:

(1) each purchaser is counted at least once each consecutive 12-month period;

(2) each accommodation is counted not more than 365 times each consecutive 12-month period, excluding a leap year, in which each accommodation may be counted 366 times; and

(3) a purchaser who is delinquent in paying timeshare assessments is considered eligible to use timeshare plan accommodations.

(d) If a developer has substantially complied with this chapter in good faith, a nonmaterial error or omission is not actionable. Any nonmaterial error or omission is not sufficient to permit a purchaser to cancel a purchase contract after the period provided for cancellation expires under this chapter.

(e) A person, other than an owner of a timeshare interest who purchased the interest from a developer for the person's own personal use and occupancy, commits a false, misleading, or deceptive act or practice within the meaning of Sections 17.46(a) and (b), Business & Commerce Code, and an unconscionable action or course of action as defined by Section 17.45, Business & Commerce Code, by knowingly participating, for consideration or with the expectation of consideration, in any plan or scheme a purpose of which is to transfer a timeshare interest to a transferee who does not have the ability, means, or intent to pay all assessments and taxes for the timeshare interest. An association or other managing entity does not commit an act or action as described by this subsection by performing administrative acts and collecting fees or expenses as customary or required by law or under the project instruments in connection with a

transfer by an owner of a timeshare interest in the timeshare property.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.071 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 443, Sec. 6, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 11, eff. January 15, 2006.
Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 8, eff. September 1, 2013.

Sec. 221.072. INSURANCE. Before the disposition of any timeshare interest, the developer or managing entity shall maintain the following insurance with respect to the timeshare property:

(1) property insurance on the timeshare property and any personal property for use by purchasers, other than personal property separately owned by a purchaser, insuring against all risks of direct physical loss commonly insured against, in a total amount, after application of deductibles, of the full replacement cost of the accommodations and amenities of the timeshare property; and

(2) liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, and maintenance of the timeshare property.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.072 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 12, eff. January 15, 2006.

Sec. 221.073. PENALTY. (a) A developer subject to this chapter commits an offense if the developer offers or disposes of a timeshare interest in a timeshare property which has not been registered with the commission.

(b) It is not a violation of this section for a developer

subject to this chapter to accept reservations and deposits from prospective purchasers in accordance with Section 221.021(b) or (d).

(c) An offense under this section is a Class A misdemeanor. A person may not be prosecuted for more than one offense involving the same promotion, even if mailed or distributed to more than one person.

Added by Acts 1989, 71st Leg., ch. 381, Sec. 6, eff. June 14, 1989. Amended by Acts 1999, 76th Leg., ch. 1382, Sec. 9, eff. June 19, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 13, eff. January 15, 2006.

Sec. 221.074. ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. (a) Notwithstanding any contrary provision of the required timeshare disclosure statement, project instrument, timeshare instrument, or bylaws adopted pursuant to a timeshare instrument, the managing entity shall make a written annual accounting of the operation of the timeshare properties managed by the managing entity to each purchaser who requests an accounting not later than five months after the last day of each fiscal year. The statement shall fairly and accurately represent the collection and expenditure of assessments and include:

(1) a balance sheet;

(2) an income and expense statement;

(3) the current budget for the timeshare property, timeshare properties managed by the same managing entity, or multisite timeshare plan required by Section 221.032(b)(12); and

(4) the name, address, and telephone number of a designated representative of the managing entity.

(b) On the request of an owner, the managing entity of the timeshare plan shall provide the owner with the name and address of each member of the board of directors of the owners' association, if one exists.

(c) A developer or managing entity shall have an annual independent audit of the financial statements of the timeshare plan or timeshare properties managed by the managing entity performed by a certified public accountant or an accounting firm. The audit must be:

(1) conducted in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, the United States General Accounting Office, or other professionally recognized entities that prescribe auditing standards; and

(2) completed not later than five months after the last day of the fiscal year of the timeshare plan or timeshare property.

(d) Knowingly furnishing false information in the annual timeshare fee and expense statement is a violation of the Deceptive Trade Practices-Consumer Protection Act (Section 17.41 et seq., Business & Commerce Code).

(e) The managing entity of any accommodation located in this state shall post prominently in the registration area of the accommodations the following notice, with the date of the last day of the current fiscal year and the address of the managing entity inserted where indicated:

"AS A TIMESHARE OWNER YOU HAVE A RIGHT TO REQUEST A WRITTEN ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NO LATER THAN FIVE MONTHS FOLLOWING (INSERT THE DATE OF THE LAST DAY OF THE CURRENT FISCAL YEAR). YOU MAY REQUEST THE STATEMENT, BY WRITING TO (INSERT ADDRESS OF THE MANAGING ENTITY)."

Added by Acts 1993, 73rd Leg., ch. 443, Sec. 7, eff. Jan. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 14, eff. January 15, 2006.

Sec. 221.075. CIVIL PENALTY FOR LATE STATEMENT; INJUNCTION. (a) On receipt of a written request filed with the commission by a managing entity before the date on which the statement required by Section 221.074 must be made available, the commission for good cause shown may grant the managing entity an extension of no more than 30 days in which to provide the statement.

(b) If the statement required by Section 221.074 is late and an extension has not been granted under Subsection (a), the managing entity required to provide the statement is liable to the state for a civil penalty not to exceed:

(1) $500 per day for each of the first 10 days that the statement is late; and

(2) $1,500 per day for each day after the 10th day, until the managing entity has complied with Section 221.074.

(c) In no event shall the civil penalties exceed $30,000 for any one statement period.

(d) A managing entity may not assess against or collect from the purchasers of a timeshare property the amount of a penalty incurred under this section.

(e) If it appears that a managing entity has violated Section 221.074, the attorney general may institute an action for injunctive relief, a civil penalty, or both.

Added by Acts 1993, 73rd Leg., ch. 443, Sec. 7, eff. Jan. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1382, Sec. 10, eff. June 19, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 15, eff. January 15, 2006.

Sec. 221.076. MANAGING ENTITIES THAT MANAGE MORE THAN ONE TIMESHARE PROPERTY. (a) A managing entity that manages two or more single-site timeshare plans may commingle the assessments collected from purchasers of one timeshare plan with the assessments collected from purchasers of any other single-site plan for which it is the managing entity only if the practice is disclosed in the timeshare disclosure statement for each timeshare property and the appropriate statement is included in the declaration for each timeshare property as required by Subchapter B.

(b) A managing entity which manages a multisite timeshare plan may deposit assessments collected from purchasers of one timeshare property into a common account with assessments collected from purchasers of other timeshare properties participating in the same multisite timeshare plan only if the practice is disclosed in the timeshare disclosure statement for each timeshare property in the multisite timeshare plan and the appropriate statement is included in the declaration for each timeshare plan as required by Subchapter B.

(c) Nothing in this section shall be construed to allow a managing entity to commingle assessments of a multisite timeshare

plan with the assessments of a separate multisite timeshare plan or a timeshare plan that is not a part of the multisite timeshare plan.

Added by Acts 1993, 73rd Leg., ch. 443, Sec. 8, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 16, eff. January 15, 2006.

Sec. 221.077. AVAILABILITY OF BOOKS AND RECORDS; RECORDS RETENTION. (a) A developer or managing entity, on written request of an owner, shall make available for examination at its registered office or principal place of business and at any reasonable time or times the relevant books and records relating to the collection and expenditure of assessments.

(b) A developer or managing entity shall maintain in its records a copy of each purchase contract for an accommodation sold by the developer for a timeshare period unless the contract has been canceled. If a sale of the timeshare estate is pending, the developer shall retain a copy of the contract until a deed of conveyance, agreement for deed, or lease is recorded in the real property records of the county in which the timeshare property is located.

Added by Acts 1993, 73rd Leg., ch. 443, Sec. 8, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 539 (H.B. 1045), Sec. 16, eff. January 15, 2006.

SUBCHAPTER I. TIMESHARE OWNERS' ASSOCIATIONS

Sec. 221.081. APPLICABILITY. (a) Except as provided by this section, this subchapter applies to a timeshare plan, the project instrument governing the timeshare property subject to the timeshare plan, and the association related to the timeshare plan, regardless of the date on which the timeshare plan was created.

(b) Except as provided by Section 221.083(f), this subchapter applies to a timeshare plan, the project instrument governing the timeshare property subject to the timeshare plan, and the association related to the timeshare plan, created before September 1, 2013, unless the project instrument is amended before September 1, 2013, to

provide that this subchapter does not apply.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 2, eff. September 1, 2013.

Sec. 221.082. POWERS AND LIMITATIONS OF BOARD. (a) An association may be governed by a board of directors. Except as provided in the project instrument, or this chapter, the board may act in all instances on behalf of the association.

(b) Except as expressly authorized in the project instrument or otherwise permitted by the association, the board may not act on behalf of the association to:

(1) amend the project instrument;

(2) terminate the timeshare plan;

(3) elect or remove board members; or

(4) determine the qualifications, powers, duties, or terms of office of board members.

(c) Subject to the project instrument, the board may appoint a member to fill a vacancy on the board and the member appointed serves for the unexpired portion of the term of the predecessor board member.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 2, eff. September 1, 2013.

Sec. 221.083. PERIOD OF DEVELOPER CONTROL. (a) Except as otherwise provided in this section, the project instrument may provide for a period of developer control of an association during which the developer, or a person designated by the developer, may appoint and remove board members and officers of the association.

(b) Regardless of the period of developer control provided in the project instrument, that period expires not later than the earlier of:

(1) the 120th day after the date that at least 95 percent of the timeshare interests that were created by the timeshare instrument are conveyed to owners other than the developer; or

(2) the fifth anniversary of the date the developer ceased to offer timeshare interests for sale in the ordinary course of business under the timeshare plan or under another timeshare plan in

which the timeshare interests are included, whichever date is later.

(c) A developer may voluntarily surrender the developer's right to appoint and remove board members and officers of the association during the period of developer control by executing a written instrument stating that the developer's rights are surrendered and providing a copy of the instrument to the owners. The developer may provide in the surrender instrument that, during the remaining period otherwise designated for developer control, specified actions of the association or board as described in the project instrument are effective only on approval of the developer. The surrender instrument must be recorded in the real property records of the county in which the timeshare property is located.

(d) If the project instrument provides for a developer control period of shorter duration than any period prescribed by this section, the project instrument controls.

(e) During the period of developer control and subject to the project instrument, the developer may determine all matters governing the association, including the occurrence of special or regular meetings of the members and the notice requirements and rules for those meetings.

(f) This section applies to a timeshare plan created before September 1, 2013, and to the project instrument governing the timeshare property subject to the timeshare plan only if the developer and the association agree to the application in writing and the project instrument is amended to provide for that application. If the conditions provided by this subsection are not satisfied, a timeshare plan created before September 1, 2013, and the timeshare property subject to the timeshare plan are governed by any developer control provisions provided in the project instrument, notwithstanding any other law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 2, eff. September 1, 2013.

Sec. 221.084. ELECTION OF INITIAL BOARD MEMBERS AND OFFICERS. (a) Not later than the termination, by expiration or surrender, of any period of developer control, the owners, including the developer to the extent of any developer-owned timeshare interests, must elect a board of at least three members. The board may include one or more

representatives of the developer.

(b) The board shall elect the officers of the association.

(c) The board members and officers of the association take office on election.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 2, eff. September 1, 2013.

Sec. 221.085. REMOVAL OF BOARD MEMBERS. Notwithstanding any provision of a project instrument to the contrary, the owners, by a vote of at least two-thirds of the voting rights of persons entitled to vote and voting in person or by proxy at any meeting of the owners, may remove a member of the board, with or without cause, other than a member appointed by the developer during the period of developer control under Section 221.083, provided that the developer remains in control of the association.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 2, eff. September 1, 2013.

Sec. 221.086. QUORUM. (a) Unless the project instrument provides for a larger quorum requirement, the percentage of voting interests constituting a quorum at a meeting of the members of an association is 10 percent of the voting interests of owners who are not delinquent in assessments, voting in person or by proxy.

(b) If a quorum is not present at any meeting of the association at which board members will be elected, the meeting may be adjourned and reconvened not later than the 90th day after the date of adjournment for the sole purpose of electing board members. Unless the project instrument provides for a larger quorum requirement, the quorum for the reconvened meeting is 10 percent of the voting interests of owners who are not delinquent in assessments, voting in person or by proxy.

(c) Unless the project instrument provides otherwise, a quorum of the board is considered present throughout a board meeting if the members entitled to cast a majority of the votes are present at the beginning of the meeting.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 2,

eff. September 1, 2013.

Sec. 221.087. VOTES. (a) If only one of the multiple owners of a timeshare interest is present at a meeting of the association, that owner may cast all votes allocated to that timeshare interest. If more than one of the multiple owners are present, the votes allocated to that timeshare interest may be cast only in accordance with the agreement of a majority of the timeshare interest held by the multiple owners unless the timeshare instrument expressly provides otherwise. For purposes of this subsection, there is a majority agreement if any one of the multiple owners casts the votes allocated to that timeshare interest and no protest is made promptly to the person presiding over the meeting by any of the other owners of the timeshare interest.

(b) Votes allocated to a timeshare interest may be cast under a proxy duly executed by an owner. A proxy must expressly state the dates of execution and termination. An owner may only revoke a proxy given under this section by actual notice of revocation to the person presiding over a meeting of the association. A proxy is revoked on presentation of a later dated proxy or other written revocation executed by the same owner. A proxy terminates the 25th month after the date the proxy is executed, unless the proxy specifies a shorter period or states that the proxy is coupled with an interest and is irrevocable.

(c) The project instrument for a timeshare plan may authorize votes of members of an association to be cast by mail only if:

(1) mail ballots are mailed or sent to each member in the manner prescribed for a notice of a special meeting under Section 221.089;

(2) the period for return of mail ballots is not later than the 30th day after the date the ballots are mailed or sent to members; and

(3) the required minimum number of ballots that must be returned by members for the vote to be effective represents at least the percentage of voting interests required for a quorum as prescribed by Section 221.086(a).

(d) Only timeshare interests included in the timeshare plan have voting rights.

(e) Unless the project instrument provides otherwise, owners

who are delinquent in assessments do not have the right to cast a vote. The right to cast a vote is also subject to any additional limitations provided in the project instrument.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 2, eff. September 1, 2013.

Sec. 221.088. OPEN MEETINGS; EXCEPTIONS. (a) Notwithstanding any provision in the project instrument to the contrary and except as provided in this section, after the period of developer control under Section 221.083, all meetings of the association and board are open to all members of the association and all members must be permitted to attend and listen to the deliberations and proceedings. Meetings must be conducted as provided in the project instrument. The board may adjourn a board meeting and reconvene in a closed executive session to consider:

(1) legal advice from an attorney for the board or the association;

(2) pending or contemplated litigation;

(3) financial information about an individual member of the association, an individual employee of the association, an individual employee of the managing entity, or an individual employee of a contractor for the association or managing entity; or

(4) matters relating to the job performance of, compensation of, health records of, or specific complaints against an individual employee of the association, an individual employee of the managing entity, or an individual employee of a contractor of the association or managing entity who works under the direction of the association or the managing entity.

(b) If a board meeting is closed as provided by Subsection (a)(1) or (2), the board, on final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, may disclose information about that matter in an open meeting, except to the extent that those matters are required to remain confidential by the terms of a settlement agreement or judgment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 2, eff. September 1, 2013.

Sec. 221.089. NOTICE. (a) A meeting of the members of the association must be held annually after the termination of the period of developer control under Section 221.083. Special meetings of the members of the association may be called by the president, by a majority of the board, or by owners having at least 25 percent of the votes allocated to timeshare interests in the association or any lower percentage specified in the project instrument.

(b) Unless the project instrument provides otherwise, the association or managing entity must send notice of the meeting to the mailing address of each owner on record with the association:

(1) not later than the 30th day or earlier than the 90th day before the date of an annual meeting; and

(2) not later than the 10th day or earlier than the 60th day before the date of a special meeting.

(c) The notice of a meeting of the owners must state the date, time, and place of the meeting. The notice of a special meeting of the owners must also state the purpose of the meeting. A notice of a meeting may be included in a list of upcoming meetings sent to owners, and the list is not required to be specific to one meeting. The failure of an owner to receive actual notice of a meeting of the owners does not affect the validity of any action taken at that meeting.

(d) Unless the project instrument provides otherwise, the association or managing entity must send notice of a board meeting held after the date the developer control period terminates to the mailing address of each owner on record with the association not later than the 10th day before the date of the meeting. Notice to owners of a board meeting is not required if emergency circumstances require action by the board before notice can be given. A notice of a board meeting must state the date, time, and place of the meeting. A notice of a meeting may be included in a list of upcoming meetings sent to owners, and the list is not required to be specific to one meeting. The failure of an owner to receive actual notice of a board meeting does not affect the validity of any action taken at that meeting.

(e) A notice may be provided in a newsletter or a similar mailing. Notice may be provided by prepaid United States mail, e-mail for those owners who have provided an e-mail address, or any other reasonable method selected by the board.

(f) Notwithstanding Subsections (a)-(d) or any other law

related to notice by an association, a notice to an owner may be provided by conspicuous disclosure on the association's website if the owner has consented to that alternative notice. Consent to that alternative notice must be in writing and may be revoked by the owner at any time.

(g) An affidavit of notice by an officer of the association or the managing entity is prima facie evidence that notice was provided under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 2, eff. September 1, 2013.

Sec. 221.090. DUTIES; LIST OF OWNERS. (a) The association or managing entity of the association must maintain among its records a complete and current list of the names and addresses of all owners of timeshare interests in the timeshare plan. The association or managing entity must update this list not less than quarterly.

(b) The association or managing entity may not publish the owners list or provide a copy of the list to any owner or to any third party, except:

(1) as reasonably required to conduct legitimate association business; or

(2) as authorized or required by law.

(c) On the termination of the period of developer control under Section 221.083 and on the written request of an owner, the association or managing entity shall send by first class mail to owners on the list described by Subsection (a) any materials provided by any owner if the purpose of the mailing is for legitimate association business, including a proxy solicitation for the recall of a board member elected by the owners or the discharge of the managing entity. The use of the solicited proxies must comply with the project instrument and this chapter. Materials required to be provided under this subsection must be mailed not later than the 30th day after the date the request is received from an owner.

(d) The board or the managing entity is responsible for determining the appropriateness of a mailing requested under Subsection (c) and establishing reasonable procedures for exercising rights under this section. The association or managing entity does not have an obligation to mail an item that the board or managing

entity reasonably believes based on advice of legal counsel may be libelous or otherwise actionable. An owner who requests the mailing of materials under Subsection (c) must reimburse the association or managing entity in advance for the actual costs of performing the mailing or a proportionate share of actual costs if the mailing is included in a mailing with other items.

(e) After the termination of the period of developer control under Section 221.083, it is a violation of this subchapter to refuse to mail material provided by a requesting owner who has complied with the reasonable procedures established by the board or managing entity, if:

(1) the sole purpose of the materials is to advance legitimate association business; and

(2) the requesting owner has:

(A) tendered to the association or managing entity payment of the cost under Subsection (d); or

(B) requested an invoice for that cost and has not received the invoice before the 10th day after the date the request was delivered to the association or managing entity.

(f) Except as otherwise authorized or required by law, the association or other managing entity may not furnish the name, address, telephone number, or e-mail address of any owner to any other owner or authorized agent of an owner unless the owner whose name, address, phone number, or e-mail address is requested first approves the disclosure in writing.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1352 (S.B. 1372), Sec. 2, eff. September 1, 2013.

SUBCHAPTER J. SERVICE AGREEMENTS TO TRANSFER OR TERMINATE A TIMESHARE INTEREST

Sec. 221.101. TRANSFER OR TERMINATION OF TIMESHARE INTEREST. In this subchapter:

(1) "Termination" with respect to a timeshare interest:

(A) means:

(i) the release of contractual obligations relating to a timeshare interest by the developer, association, or managing entity; or

(ii) the invalidation, cancellation, nullification,

or cessation of contractual obligations related to a timeshare interest by a judgment or court order; and

(B) does not include the cancellation of a purchase contract governed by Subchapter E.

(2) "Transfer" with respect to a timeshare interest means the conveyance of all or substantially all of a timeshare interest.

Added by Acts 2015, 84th Leg., R.S., Ch. 554 (H.B. 2261), Sec. 2, eff. September 1, 2015.

Sec. 221.102. APPLICABILITY. (a) This subchapter applies to a timeshare interest if the timeshare interest has been acquired only for the purchaser's personal, family, or household use and:

(1) the timeshare interest is owned by a resident of this state;

(2) the timeshare property is located in this state; or

(3) the timeshare interest acquired is in a multisite timeshare plan required to be registered under Subchapter C.

(b) Except as provided by Subsection (c), this subchapter applies to a person who:

(1) is acting in the ordinary course of business; and

(2) directly or indirectly, regardless of whether acting in person, by mail, by telephone, or by any mode of Internet or electronic communication, offers or advertises an offer to engage in, for consideration, the following activities:

(A) obtaining or attempting to obtain on behalf of a timeshare interest owner a termination of contractual obligations relating to a timeshare interest;

(B) selling, renting, listing, or advertising a timeshare interest on behalf of a timeshare interest owner;

(C) purchasing a timeshare interest from a timeshare interest owner; or

(D) assisting in the transfer of an owner's timeshare interest.

(c) This subchapter does not apply to:

(1) a license holder under Chapter 1101, Occupations Code, acting as a broker, agent, or salesperson under that person's license in connection with the transfer or termination of a timeshare interest;

(2) a developer, association, or managing entity for a timeshare interest to be transferred or terminated or a third party acting at the specific request of the developer, association, or managing entity; or

(3) an attorney, title agent, title company, or escrow company that:

(A) provides only closing, settlement, or other comparable transaction services in connection with the transfer or termination of a timeshare interest; and

(B) does not otherwise engage in activities described by Subsection (b).

Added by Acts 2015, 84th Leg., R.S., Ch. 554 (H.B. 2261), Sec. 2, eff. September 1, 2015.

Sec. 221.103. GENERAL DISCLOSURES REQUIRED. A person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the transfer or termination of a timeshare interest shall provide to the timeshare interest owner, before the third day before the date the timeshare interest owner enters into the agreement the following written disclosures, as applicable:

(1) the name, telephone number, and physical address of the person providing services under the agreement and any affiliate, agent, or third-party representative of that person;

(2) if the person identified in Subdivision (1), or an affiliate, agent, or third-party representative of that person providing services under the agreement, is an attorney licensed to practice law in this state, a disclosure of whether the attorney will be providing services under the agreement and representing the timeshare interest owner in connection with the transfer or termination of the timeshare interest;

(3) a description, legally sufficient for identification, of the timeshare interest to be transferred or terminated;

(4) a description of the method of transfer or termination or a copy of the instrument that will be used for transferring or terminating the timeshare interest;

(5) a description of any interest the timeshare interest owner retains after the transfer;

(6) a description of the scope of a power of attorney or other delegation of authority, if any, that the timeshare interest owner is required to give to complete the transfer of the timeshare interest;

(7) an itemized statement of any amounts the timeshare owner is required to pay as consideration or reimbursement for services provided in connection with the agreement;

(8) the name of each recipient of amounts described by Subdivision (7);

(9) the estimated date for completing all services sufficient to transfer or terminate the timeshare interest; and

(10) a statement that, on completion of the transfer or termination of the timeshare interest, the person will give written notice of the transfer or termination to:

(A) the developer, association, or managing entity, as applicable; and

(B) if applicable, the exchange company for the timeshare interest.

Added by Acts 2015, 84th Leg., R.S., Ch. 554 (H.B. 2261), Sec. 2, eff. September 1, 2015.

Sec. 221.104. DISCLOSURE OF AUTHORIZED USE OF TIMESHARE INTEREST. (a) A person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the transfer or termination of a timeshare interest shall disclose in writing to the timeshare interest owner the name of any person, other than the timeshare interest owner, who may occupy, rent, exchange, or otherwise use the timeshare interest during the term of the agreement.

(b) If a person is authorized to occupy, rent, exchange, or otherwise use the timeshare interest during the term of the agreement, the agreement must state the name of each person receiving consideration for the occupation, rent, exchange, or use of the timeshare interest.

Added by Acts 2015, 84th Leg., R.S., Ch. 554 (H.B. 2261), Sec. 2, eff. September 1, 2015.

Sec. 221.105. DISCLOSURES RELATING TO PAYMENT OF FEES FOR TRANSFER SERVICES. A person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the transfer of the timeshare interest must conspicuously disclose in writing to the timeshare interest owner that the timeshare interest owner is not required to pay any consideration or reimbursement under the agreement until the timeshare interest owner receives:

(1) a written acknowledgement from the developer, the association, or the managing entity that the person facilitating the transfer under the agreement complied with all applicable policies of the developer, association, or managing entity, if any, governing the transfer of the timeshare interest; and

(2) a copy of the instrument transferring the timeshare interest, recorded, if required by applicable law, in the real property records of the county in which the timeshare property is located.

Added by Acts 2015, 84th Leg., R.S., Ch. 554 (H.B. 2261), Sec. 2, eff. September 1, 2015.

Sec. 221.106. REQUIRED NOTICE FOR TRANSFER SERVICES. A person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the transfer of the timeshare interest must provide to the timeshare interest owner a statement printed in 14-point boldface type or 14-point uppercase typewritten letters that reads substantially similar to the following:

I (name of the person facilitating the transfer) WILL ACT IN GOOD FAITH AND IN A COMMERCIALLY REASONABLE MANNER TO COMPLETE THE TRANSFER OF OWNERSHIP OF YOUR TIMESHARE INTEREST NOT LATER THAN THE 180TH DAY AFTER THE DATE OF THIS AGREEMENT.

YOUR OBLIGATION TO PAY ALL COSTS AND FEES ASSOCIATED WITH YOUR TIMESHARE INTEREST, INCLUDING ANY REGULAR OR SPECIAL ASSESSMENTS OR REAL OR PERSONAL PROPERTY TAXES, DOES NOT CEASE BY VIRTUE OF THE EXECUTION OF THIS AGREEMENT.

IF THE TRANSFER OF YOUR TIMESHARE INTEREST IS NOT COMPLETED BEFORE THE 180TH DAY AFTER THE DATE OF THIS AGREEMENT, YOU WILL CONTINUE TO BE RESPONSIBLE FOR THE PAYMENT OF ALL COSTS AND FEES ASSOCIATED WITH YOUR TIMESHARE INTEREST, INCLUDING ANY REGULAR OR SPECIAL ASSESSMENTS OR REAL OR PERSONAL PROPERTY TAXES.

Added by Acts 2015, 84th Leg., R.S., Ch. 554 (H.B. 2261), Sec. 2, eff. September 1, 2015.

Sec. 221.107. REQUIRED NOTICE FOR TERMINATION SERVICES. A person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the termination of the timeshare interest must provide to the timeshare interest owner a statement printed in 14-point boldface type or 14-point uppercase typewritten letters that reads substantially similar to the following:

I (name of the person facilitating the termination of the timeshare interest) WILL ACT IN GOOD FAITH AND IN A COMMERCIALLY REASONABLE MANNER TO COMPLETE THE TERMINATION OF YOUR TIMESHARE INTEREST NOT LATER THAN THE 180TH DAY AFTER THE DATE OF THIS AGREEMENT BY OBTAINING:

(1) A VALID AND ENFORCEABLE RELEASE FROM THE DEVELOPER, ASSOCIATION, OR MANAGING ENTITY; OR

(2) A JUDGMENT OR COURT ORDER INVALIDATING THE PURCHASE OR OWNERSHIP OF YOUR TIMESHARE INTEREST.

YOUR OBLIGATION TO PAY ALL COSTS AND FEES ASSOCIATED WITH YOUR TIMESHARE INTEREST, INCLUDING ANY REGULAR OR SPECIAL ASSESSMENTS OR REAL OR PERSONAL PROPERTY TAXES, DOES NOT CEASE BY VIRTUE OF THE EXECUTION OF THIS AGREEMENT.

I CANNOT GUARANTEE THAT I WILL SUCCESSFULLY COMPLETE THE TERMINATION OF YOUR TIMESHARE INTEREST. IF I FAIL TO COMPLETE THE TERMINATION OF YOUR TIMESHARE INTEREST, YOU WILL CONTINUE TO BE RESPONSIBLE FOR THE PAYMENT OF ALL COSTS AND FEES ASSOCIATED WITH YOUR TIMESHARE INTEREST, INCLUDING ANY REGULAR OR SPECIAL ASSESSMENTS OR REAL OR PERSONAL PROPERTY TAXES.

Added by Acts 2015, 84th Leg., R.S., Ch. 554 (H.B. 2261), Sec. 2, eff. September 1, 2015.

Sec. 221.108. RELIANCE. In making disclosures required by this subchapter, a person facilitating the transfer or termination of a timeshare interest may rely on written information provided by the timeshare interest owner, the developer, the association, or the managing entity.

Added by Acts 2015, 84th Leg., R.S., Ch. 554 (H.B. 2261), Sec. 2, eff. September 1, 2015.

Sec. 221.109. DUTY OF GOOD FAITH REGARDING TRANSFER OR TERMINATION SERVICES. A person facilitating the transfer or termination of a timeshare interest must act in good faith to accomplish the transfer or termination not later than the 180th day after the date the person enters into an agreement with the timeshare interest owner.

Added by Acts 2015, 84th Leg., R.S., Ch. 554 (H.B. 2261), Sec. 2, eff. September 1, 2015.

Sec. 221.110. DECEPTIVE TRADE PRACTICES. A person subject to this subchapter commits a false, misleading, or deceptive act or practice within the meaning of Sections 17.46(a) and (b), Business & Commerce Code, by engaging in any of the following acts:

(1) failing to disclose information as required by this subchapter;

(2) making false or misleading statements concerning:

(A) the existence of an offer related to the purchase or rent of a timeshare interest;

(B) the likelihood of the completion or the time necessary to complete any sale, rental, transfer, or termination of a timeshare interest;

(C) the value of a timeshare interest;

(D) the current or future costs, including assessments, maintenance fees, or taxes, of owning a timeshare interest;

(E) the method by which or source from which a timeshare interest owner's name, address, telephone number, or other contact information was obtained;

(F) the identity of the person providing services to facilitate the transfer or termination of a timeshare interest or any affiliate, agent, or third-party representative of that person;

(G) the terms and conditions under which services to facilitate a transfer or termination of a timeshare interest are offered;

(H) the willingness of a developer, association, or

managing entity to:

(i) agree to the transfer or termination of a timeshare interest; or

(ii) execute instruments necessary to transfer or terminate the timeshare interest; or

(I) the manner in which consideration or reimbursements paid by a timeshare interest owner will be used or applied;

(3) encouraging or inducing a timeshare interest owner to stop paying the developer, the association, or the managing entity in violation of a contract with or any other legally enforceable obligation to the developer, the association, or the managing entity before the completion of a transfer or termination; or

(4) receiving or collecting consideration for or reimbursement related to the facilitation of the transfer of a timeshare interest before the timeshare interest owner receives the documents described by Sections 221.105(1) and (2).

Added by Acts 2015, 84th Leg., R.S., Ch. 554 (H.B. 2261), Sec. 2, eff. September 1, 2015.

Sec. 221.111. SUPERVISORY DUTIES. (a) The person who enters into an agreement to facilitate the transfer or termination of a timeshare interest shall supervise, manage, and control all aspects of the services provided under the agreement.

(b) Any violation of this subchapter that occurs during the provision of services is considered a violation by the person who enters into the agreement and any affiliate, agent, or third-party representative of that person.

(c) Section 221.035 does not apply to a person providing services under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 554 (H.B. 2261), Sec. 2, eff. September 1, 2015.

CHAPTER 222. TEXAS MEMBERSHIP CAMPING RESORT ACT

Sec. 222.001. SHORT TITLE. This chapter may be cited as the Texas Membership Camping Resort Act.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(d), eff. Aug. 28,

1989.

Sec. 222.002. APPLICATION OF CHAPTER. (a) This chapter applies to all membership camping resorts located in this state.

(b) Sections 222.003-222.013 also apply to membership camping resorts located outside this state but offered for sale in this state.

(c) This chapter does not affect a membership camping contract made before August 31, 1987.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(d), eff. Aug. 28, 1989.

Sec. 222.003. DEFINITIONS. In this chapter:

(1) "Advertising" means a direct or indirect solicitation or inducement to purchase and includes but is not necessarily limited to a solicitation or inducement made by print or electronic media, through the mail, or by personal contact.

(2) "Amenities" means all common areas of real property occupied by a membership camping resort and includes but is not necessarily limited to camping sites, swimming pools, stables, tennis courts, recreation buildings, restrooms and showers, laundry rooms, trading posts, grocery stores, and maintenance facilities.

(3) "Blanket encumbrance" means a mortgage, deed of trust, option to purchase, or vendor's lien, an interest obtained under a contract or agreement of sale, or other financing lien or encumbrance granted by an operator that secures or evidences the obligation to pay money or to sell or convey any campgrounds located in this state that are made available to purchasers by the operator, and that authorizes, permits, or requires the foreclosure or other disposition of the affected campground.

(4) "Business day" means any day other than a Saturday, Sunday, or federal holiday.

(5) "Camping site" means a space designed and promoted for the purpose of locating a trailer, tent, tent trailer, pickup camper, recreational vehicle, or similar device designed for camping.

(6) "Dispose" or "disposition" means a voluntary transfer of any membership interest or membership right but does not include

the transfer or release of a real estate lien or of a security interest.

(7) "Home resort" means the camping resort to which the purchaser has purchased a right of membership. The term does not include a resort that a purchaser may use as a result of a reciprocal program among operators.

(8) "Membership camping contract" means an agreement under which a purchaser pays for or becomes obligated to pay for a membership interest or membership right in a membership camping resort.

(9) "Membership camping contract broker" means a person who resells a membership camping contract to a new purchaser on behalf of the former purchaser. The term does not include a membership camping operator or that person's agent.

(10) "Membership camping resort disclosure statement" means a written statement that includes the information that is required by Section 222.006(b).

(11) "Membership camping resort" means real property owned or operated by a membership camping operator that is available for camping by purchasers of a membership right.

(12) "Membership interest" means a membership camping resort estate.

(13) "Membership right" means a license, contract right, or other right entitling a purchaser to use camping sites or amenities at a membership camping resort.

(14) "Offering" or "offer" means any advertisement, inducement, or solicitation and includes but is not necessarily limited to any attempt to encourage a person to purchase a membership interest or membership right.

(15) "Operator" means a person who owns or provides a camping site or an amenity to a purchaser. The term does not include:

(A) a person who owns or otherwise provides a mobile home park or a camping or recreational trailer park open to the general public with camping sites that are rented on a fee for use basis and who does not solicit purchases of membership camping contracts; or

(B) an outdoor service, facility, enterprise, or park that is owned or operated by or under the control of the United States, this state, or a political subdivision of this state.

(16) "Promotion" means any program or activity that is used to induce any person to attend a membership camping resort sales presentation.

(17) "Promotional disclosure statement" means a written statement that includes the information required by Section 222.006(a).

(18) "Purchaser" means a person, other than an operator, seller, or broker, who by means of voluntary transfer acquires a membership interest or membership right in a membership camping resort other than as security for an obligation.

(19) "Reciprocal company" means any person, including an operator, who operates a reciprocal program.

(20) "Reciprocal program disclosure statement" means a written statement that includes the information required by Section 222.006(c).

(21) "Reciprocal program" means any program under which the purchaser of a membership interest or membership right in a membership camping resort may use the facilities of a membership camping resort other than those of the purchaser's home resort.

(22) "Seller" means a person, including an operator, who in the ordinary course of business offers a membership interest or membership right for sale to the public but does not include a person who acquires a membership interest or membership right for his use and subsequently offers it for resale.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(d), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 1039, Sec. 3.20, eff. Sept. 1, 1989.

Sec. 222.004. REGISTRATION; ADMINISTRATION. (a) A person may not offer or dispose of a membership interest or membership right under a membership camping contract in this state unless the operator is registered with the secretary of state. If an operator also sells membership camping contracts, that operator must also comply with the registration requirements for membership camping contract brokers imposed by Section 222.005.

(b) A registration filed under this section must be on a form prescribed by the secretary of state and must include, to the extent applicable, the following information:

(1) the operator's name, address, and the organizational form of the operator's business, including the date and jurisdiction under which the business was organized, the name and address of each of its officers in this state, and the name and address of each membership camping resort located in this state that is owned or operated in whole or in part by the operator;

(2) a list of all owners of 10 percent or more of the capital stock of the operator's business if the operator is not required to report under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.);

(3) a brief description and certified copy of the instrument creating the operator's ownership of or other right to use the membership camping resort and the amenities that are to be available for use by purchasers, together with a copy of any lease, license, franchise, reciprocal agreement, or other agreement entitling the operator to use the membership camping resort and the amenities, and any material provision of the agreement that restricts a purchaser's use of the membership camping resort or the amenities;

(4) a sample copy of each instrument to be delivered to a purchaser to evidence the purchaser's membership in the membership camping resort and a sample copy of each agreement that a purchaser is required to execute;

(5) financial statements of the operator for the most recent fiscal quarter;

(6) a narrative description of the promotional plan for the offering of membership interests or membership rights;

(7) a copy of any agreement between the operator and any person owning, controlling, or managing the membership camping resort;

(8) a complete list of the locations and addresses of any sales offices located in this state;

(9) the names of any other states or foreign countries in which a registration of the operator or the membership camping contract has been filed;

(10) complete information concerning any adverse order, judgment, or decree entered by any court or administrative agency in connection with a membership camping resort operated by the operator or in which the operator had an interest at the time of the order, judgment, or decree;

(11) a description of any blanket encumbrance on the

membership camping resort; and

(12) a membership camping resort disclosure statement and any required reciprocal program disclosure statement required by Section 222.006.

(c) The registration must be signed by the operator, by an officer or general partner of the operator, or by another person who holds a power of attorney for this purpose from the operator. If the registration is signed under a power of attorney, a copy of the power of attorney must be included with the registration. The registration must be submitted with the registration fee set by the secretary of state pursuant to Section 222.010.

(d) The operator shall promptly file amendments to the registration reporting to the secretary of state any material and adverse change in any document contained in such registration. For the purposes of this subsection, a material and adverse change includes any change that significantly reduces or terminates either the applicant's or a purchaser's right to use the membership camping resort or any of the amenities described by the membership camping contract but does not include minor changes covering the use of the membership camping resort, its amenities, or any reciprocal program.

(e) The secretary of state shall investigate all matters relating to the registration and may in his discretion require a personal inspection of the proposed membership camping resort by any persons designated by him.

(f) The secretary of state may prescribe and publish forms necessary to carry out the provisions of this chapter. The secretary of state may not approve or disapprove any registration, and an operator may not represent to any person that the secretary of state endorses or approves the membership camping resort or membership camping contract.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(d), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 1039, Sec. 3.21, eff. Sept. 1, 1989.

Sec. 222.005. REGISTRATION OF SELLERS AND MEMBERSHIP CAMPING CONTRACT BROKERS. (a) A person may not offer a membership interest or membership right in a membership camping resort or resell membership camping contracts in this state unless the person is

registered with the secretary of state. Each application for registration as a seller or membership camping contract broker must be in writing and must be signed by the applicant.

(b) The application must state:

(1) the name and address of the applicant;

(2) the name and place of business of the applicant's employer, if any;

(3) whether the applicant has been convicted of a felony or a misdemeanor involving moral turpitude and if so, the nature of the felony, where and when it was committed, and the disposition of the conviction; and

(4) whether the applicant has been refused a real estate broker's or salesman's license or any other occupational license in this or any other state or whether the applicant's license as a real estate broker or salesman in this or any other state has been revoked or suspended.

(c) The secretary of state may require any additional information that is reasonably necessary to determine the good moral character of an applicant for registration.

(d) Each application for registration as a seller or membership camping contract broker must be accompanied by the required registration fee set by the secretary of state pursuant to Section 222.010.

(e) The secretary of state may prescribe and publish forms to carry out the provisions of this section.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(d), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 1039, Sec. 3.22, eff. Sept. 1, 1989.

Sec. 222.006. DISCLOSURE STATEMENTS. (a) Before or at the time of the use of any promotion in connection with the offering of a membership interest or membership right in a membership camping resort, the person who intends to use the promotion shall include the following information in its advertisements to the prospective purchaser:

(1) a statement to the effect that the promotion is intended to solicit purchasers of membership interests or membership rights in a membership camping resort;

(2) the full name of the operator and seller of the membership interest or membership right in the membership camping resort;

(3) if applicable, the full name and address of any marketing company involved in the promotion of the membership camping resort;

(4) the complete rules of the promotion;

(5) the method of awarding, the odds of winning, and the approximate retail value of prizes, gifts, or other benefits under the promotion and the date by which each prize, gift, or other benefit will be awarded or conferred;

(6) any restrictions, qualifications, or other conditions that the recipient must satisfy before the recipient is entitled to receive a prize, gift, or other benefit, including:

(A) any deadline by which the recipient must visit the membership camping resort, attend the sales presentation, or contact a seller in order to receive the prize, gift, or other benefit;

(B) the date on which the offer expires; and

(C) any other conditions, including minimum age qualifications, financial qualifications, or a requirement that if the recipient is married both husband and wife must be present in order to receive the prize, gift, or other benefit;

(7) if applicable, a statement that the operator or seller reserves the right to provide a certificate with which to redeem or claim the prize, gift, or other benefit awarded and that the prize, gift, or other benefit shall be shipped or delivered to the recipient within 30 days following the mailing of the certificate; and

(8) if applicable, a statement that the operator or seller reserves the right to substitute a prize, gift, or other benefit of equal value for the prize, gift, or other benefit awarded if the item is not available to the operator or seller after the purchaser or prospect has complied with the provisions of the promotion.

(b) Before or at the time of the signing of any agreement or membership camping contract to acquire a membership interest or membership right in a membership camping resort, the operator shall provide a membership camping resort disclosure statement to the prospective purchaser and shall obtain from the purchaser a written acknowledgement of receipt of the membership camping resort disclosure statement. The membership camping resort disclosure statement must include:

(1) the name and address of the operator and the name and specific location of the membership camping resort;

(2) a description of the amenities, membership camping resort, and any project or development within which the membership camping resort is located or of which it is a part. The disclosure statement must also state the total number of camping sites in the membership camping resort and whether and under what circumstances that number may be increased or decreased; if a membership interest or membership right includes amenities not yet in existence, the disclosure statement must provide the approximate commencement and completion schedule of those proposed amenities;

(3) a description of the membership interests and membership rights currently available for disposition;

(4) a statement that a council of purchasers exists or is expected to be created or that such a council does not exist and is not expected to be created; if such a council exists or is reasonably contemplated, the disclosure statement must contain a description of its powers and responsibilities;

(5) the name and principal address of the managing entity;

(6) a description and amount of any current or expected dues, assessments, fees, taxes, or charges to be paid by purchasers for the use of amenities or for any other purpose;

(7) a description and amount of insurance coverage provided for the protection of the purchaser; and

(8) a statement that any deposit made in connection with the purchase of a membership interest or membership right will be held until expiration of any right to cancel the contract or any later time specified in the contract and will be returned to the purchaser if he elects to exercise his right of cancellation.

(c) Before or at the time of the signing of any agreement or membership camping contract in which a prospective purchaser is also offered participation in a reciprocal program, the operator shall also deliver to the prospective purchaser the reciprocal program disclosure statement of the reciprocal company whose reciprocal program is advertised or offered by the operator or seller in connection with the disposition. If participation in a reciprocal program is offered for the first time after a disposition has occurred, any person offering the participation shall also deliver a reciprocal program disclosure statement to the purchaser before the execution by the purchaser of any instrument relating to

participation in the reciprocal program. In all cases, the person offering the participation shall obtain from the purchaser a written acknowledgement of receipt of the reciprocal program disclosure statement. The reciprocal program disclosure statement must include the following information:

(1) the name and address of the reciprocal company;

(2) if the reciprocal company is not the operator, a statement describing the legal relationship, if any, between the reciprocal company and the operator;

(3) a statement that the reciprocal program might terminate or become unavailable;

(4) whether membership or participation, or both, in the reciprocal program is voluntary or mandatory;

(5) a complete description of the required procedure for using the reciprocal program;

(6) the fee required for membership or participation, or both, in the reciprocal program and whether the fee is subject to change;

(7) a statement to the effect that participation in the reciprocal program is conditioned on compliance with the terms of a contract between the reciprocal company and the purchaser; and

(8) a statement in conspicuous and bold-faced print to the effect that all reciprocal campgrounds are arranged on a space-available basis and that neither the operator nor the reciprocal company guarantees that a particular reciprocal campground can be used.

(d) A disclosure statement need not be delivered in the case of:

(1) a gratuitous disposition of a membership interest or membership right;

(2) a disposition pursuant to a court order;

(3) a disposition by a governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure;

(5) a disposition that may be canceled by the purchaser without penalty at any time and for any reason;

(6) a disposition of a membership interest or membership right in a membership camping resort situated wholly outside this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state;

(7) a disposition of a membership interest or membership right to a purchaser who is not a resident of this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state; or

(8) the redisposition of a membership interest or membership right by a purchaser who acquired the interest or right for his personal use.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(d), eff. Aug. 28, 1989.

Sec. 222.007. CONTRACT. (a) Each sale of a membership interest or membership right in a membership camping resort must be evidenced by a membership camping contract written in the language principally used in any promotional presentation made to the purchaser. The seller must give the purchaser a copy of the contract at the time it is signed.

(b) Each contract must contain the following:

(1) the name and address of the operator and the seller and the location of the membership camping resort;

(2) the signature of the operator or seller;

(3) the signature of the purchaser;

(4) the date on which the purchaser signs the contract;

(5) the name of the person who closed the transaction described in the membership camping contract;

(6) a brief description of the nature of the purchaser's interest in and right or license to use the membership camping resort;

(7) a summary or copy of the rules, restrictions, or covenants regulating the purchaser's use of the operator's properties, including a statement of whether and how the rules, restrictions, or covenants may be changed;

(8) any restraints on the transfer of the membership camping contract;

(9) any grounds for forfeiture of a purchaser's membership camping contract;

(10) if applicable, a statement of the purchaser's right to cancel the membership camping contract as provided by Section 222.008(c);

(11) a statement of whether the purchaser visited the location of the membership camping resort before signing the contract; and

(12) if applicable, a statement by the seller that if the purchaser timely exercises any right of cancellation under the contract, all payments made by the purchaser to the seller in connection with the contract shall be returned to the purchaser before the 21st day after the seller receives notice of cancellation as required under Section 222.008.

(c) The contract must also contain a brief description of the existing amenities available for use by purchasers at the home resort and of any proposed amenities or amenities not yet complete or fully functional.

(d) The contract must also contain a brief statement of the operator's ownership of or other right to use the camping properties represented to be available for use by purchasers, together with the duration of any lease, license, franchise, or reciprocal program entitling the operator to use the property, and material provisions of any agreements that restrict a purchaser's use of the property.

(e) The contract must be revised annually to include any changes to the information required by this section, if applicable.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(d), eff. Aug. 28, 1989.

Sec. 222.008. PURCHASER'S RIGHT TO CANCEL. (a) A purchaser may cancel a membership camping contract to purchase a membership interest or membership right before the fourth business day after the contract is executed if the purchaser did not visit the location of the membership camping resort being offered for sale before the contract was signed. A purchaser may not waive his right of cancellation under this section. A contract containing a waiver is voidable by the purchaser.

(b) If a purchaser elects to cancel a membership camping contract under Subsection (a), he may do so by hand delivering notice of cancellation to the seller or by mailing notice by prepaid United States mail to the seller or to the seller's agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded before the 21st

day after the date on which the seller receives notice of cancellation.

(c) If applicable, immediately before the space reserved in the contract for the signature of the purchaser, in bold-faced and conspicuous type or print that is larger than the type of print in the remaining text of the contract, substantially the following statement must appear:

"If you have not visited the location of the membership camping resort in which you are acquiring an interest or membership right, you may cancel this contract without penalty or obligation before the fourth business day after the date on which you signed this contract.

If you decide to cancel this contract, you may do so by hand delivering notice of cancellation to the seller or by mailing notice by prepaid United States mail to the seller or the seller's agent for service of process. Your notice of cancellation is effective on the date sent or delivered to (name of seller) at (address of seller). A purchaser should not rely on statements other than those included in this contract and the disclosure statement."

Added by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(d), eff. Aug. 28, 1989.

Sec. 222.009. RECIPROCAL PROGRAM. An operator does not incur any liability arising out of use, delivery, or publication by the operator to the purchaser of written information or audio-visual materials provided to it by the reciprocal company pursuant to Section 222.006; provided, however, that an operator is subject to liability arising out of the use, delivery, or publication to the purchaser of materials provided by the reciprocal company if the operator knows that the materials are inaccurate or false.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(d), eff. Aug. 28, 1989.

Sec. 222.010. FEES. (a) The secretary of state shall set all fees imposed by this chapter in amounts reasonable and necessary to cover the costs of administering this chapter.

(b) The secretary of state shall deposit all fees received under this chapter in the state treasury to the credit of a special

fund to be used in the administration of this chapter.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(d), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 1039, Sec. 3.23, eff. Sept. 1, 1989.

Sec. 222.011. VIOLATIONS. (a) A person commits a false, misleading, or deceptive act or practice within the meaning of Subsections (a) and (b), Section 17.46, Deceptive Trade Practices-Consumer Protection Act (Section 17.46, Business & Commerce Code), by engaging in any of the following acts:

(1) failing to disclose information concerning a membership interest or membership right required by Section 222.006;

(2) failing to provide a purchaser with a copy of the membership camping contract and any other document signed by the purchaser or the operator in connection with the purchase of a membership interest or membership right;

(3) making false or misleading statements of a material nature concerning camping sites or amenities available to the purchaser;

(4) predicting specific or immediate increases in the value of a membership interest or membership right without a reasonable basis for such predictions;

(5) making false or misleading statements of a material nature concerning the conditions under which a purchaser of a membership interest or membership right may use or occupy other membership camping resort camping sites or amenities;

(6) representing that a prize, gift, or other benefit will be awarded in connection with a promotion with intent not to award that prize, gift, or other benefit;

(7) representing that registration with the secretary of state under Section 222.004 constitutes approval or endorsement by the secretary of state of the operator, the membership camping contract, or the membership camping resort;

(8) offering or disposing of a membership interest or membership right under a membership camping contract without having complied with the registration requirements under Section 222.004; and

(9) offering for sale a membership interest or membership

right in a membership camping resort without having complied with the registration requirements under Section 222.005.

(b) The provisions of this section are not exclusive and are in addition to provisions provided for in any other law.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(d), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg. ch. 1039, Sec. 3.24, eff. Sept. 1, 1989.

Sec. 222.012. INSURANCE. Before the disposition of any membership interest or membership right in a membership camping resort, the operator shall maintain the following insurance with respect to the membership camping resort:

(1) property insurance on any personal property for use by purchasers, other than personal property separately owned by a purchaser, insuring against all risks of direct physical loss commonly insured against in a total amount, after application of deductibles, of the insurable value of the personal property of the membership camping resort; and

(2) liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, and maintenance of the membership camping resort.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(d), eff. Aug. 28, 1989.

Sec. 222.013. EXEMPT FROM SECURITIES ACT. The filing of a registration under this chapter exempts the sale of a membership interest or membership right in a membership camping resort subject to this chapter from registration under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

Added by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(d), eff. Aug. 28, 1989.

TITLE 13. DISCLAIMER OF PROPERTY INTERESTS

CHAPTER 240. TEXAS UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 240.001. SHORT TITLE. This chapter may be cited as the Texas Uniform Disclaimer of Property Interests Act.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.002. DEFINITIONS. In this chapter:

(1) "Current beneficiary" and "presumptive remainder beneficiary" have the meanings assigned by Section 112.071.

(2) "Disclaim" means to refuse to accept an interest in or power over property, including an interest or power the person is entitled to:

(A) by inheritance;

(B) under a will;

(C) by an agreement between spouses for community property with a right of survivorship;

(D) by a joint tenancy with a right of survivorship;

(E) by a survivorship agreement, account, or interest in which the interest of the decedent passes to a surviving beneficiary;

(F) by an insurance, annuity, endowment, employment, deferred compensation, or other contract or arrangement;

(G) under a pension, profit sharing, thrift, stock bonus, life insurance, survivor income, incentive, or other plan or program providing retirement, welfare, or fringe benefits with respect to an employee or a self-employed individual; or

(H) by an instrument creating a trust.

(3) "Disclaimant" means:

(A) the person to whom a disclaimed interest or power would have passed had the disclaimer not been made;

(B) the estate to which a disclaimed interest or power would have passed had the disclaimer not been made by the personal representative of the estate; or

(C) the trust into which a disclaimed interest or power would have passed had the disclaimer not been made by the trustee of the trust.

(4) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

(5) "Disclaimed power" means the power that would have been possessed by the disclaimant had the disclaimer not been made.

(6) "Disclaimer" means the refusal to accept an interest in or power over property.

(7) "Estate" has the meaning assigned by Section 22.012, Estates Code.

(8) "Fiduciary" means a personal representative, a trustee, an attorney in fact or agent acting under a power of attorney, or any other person authorized to act as a fiduciary with respect to the property of another person.

(9) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

(10) Notwithstanding Section 311.005, Government Code, "person" means an individual, corporation, including a public corporation, business trust, partnership, limited liability company, association, joint venture, governmental entity, including a political subdivision, agency, or instrumentality, or any other legal entity.

(11) "Personal representative" has the meanings assigned by Sections 22.031 and 1002.028, Estates Code.

(12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a state.

(13) "Survivorship property" means property held in the name of two or more persons under an arrangement in which, on the death of one of the persons, the property passes to and is vested in the other person or persons. The term includes:

(A) property held by an agreement described in Section 111.001, Estates Code;

(B) property held by a community property survivorship agreement defined in Section 112.001, Estates Code; and

(C) property in a joint account held by an agreement described in Section 113.151, Estates Code.

(14) "Trust" has the meaning assigned by Section 111.003.

(15) "Ward" has the meaning assigned by Section 22.033, Estates Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.003. APPLICABILITY OF CHAPTER. This chapter applies to disclaimers of any interest in or power over property, whenever created.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.004. CHAPTER SUPPLEMENTED BY OTHER LAW. (a) Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a statute other than this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.005. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law, with respect to the subject matter of this chapter, among states that enact a law based on the uniform act on which this chapter is based.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.006. POWER TO DISCLAIM BY PERSON OTHER THAN FIDUCIARY. (a) A person other than a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment.

(b) A person other than a fiduciary may disclaim an interest or power under this section even if the creator of the interest or power imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.007. POWER TO DISCLAIM POWER HELD IN FIDUCIARY CAPACITY BY PERSON DESIGNATED TO SERVE AS OR SERVING AS FIDUCIARY. (a) Subject to Subsection (b) and except to the extent the person's right to disclaim is expressly restricted or limited by a law of this state or by the instrument creating the fiduciary relationship, a person designated to serve or serving as a fiduciary may disclaim, in whole or in part, any power over property, including a power of appointment and the power to disclaim, held in a fiduciary capacity.

(b) If a power being disclaimed under Subsection (a) by a person designated to serve or serving as a trustee affects the distributive rights of any beneficiary of the trust:

(1) the person may disclaim only on or after accepting the trust;

(2) the disclaimer must be compatible with the trustee's fiduciary obligations; and

(3) if the disclaimer is made on accepting the trust, the trustee is considered to have never possessed the power disclaimed.

(c) A person designated to serve or serving as a fiduciary may disclaim a power under this section even if the creator of the power imposed a spendthrift provision or similar restriction on transfer.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.008. POWER TO DISCLAIM BY FIDUCIARY ACTING IN FIDUCIARY CAPACITY. (a) Subject to this section and except to the extent the fiduciary's right to disclaim is expressly restricted or limited by a law of this state or by the instrument creating the fiduciary relationship, a fiduciary acting in a fiduciary capacity may disclaim, in whole or in part, any interest in or power over property, including a power of appointment and the power to disclaim, that would have passed to the ward, estate, trust, or principal with respect to which the fiduciary was acting had the disclaimer not been made even if:

(1) the creator of the interest or power imposed a

spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim; or

(2) an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(b) Except as provided by Subsection (c), (d), or (f), a disclaimer by a fiduciary acting in a fiduciary capacity does not require court approval to be effective unless the instrument that created the fiduciary relationship requires court approval.

(c) The following disclaimers by a fiduciary acting in a fiduciary capacity are not effective unless approved by a court of competent jurisdiction:

(1) a disclaimer by a personal representative who is not an independent administrator or independent executor;

(2) a disclaimer by the trustee of a management trust created under Chapter 1301, Estates Code;

(3) a disclaimer by the trustee of a trust created under Section 142.005; or

(4) a disclaimer that would result in an interest in or power over property passing to the person making the disclaimer.

(d) A trustee acting in a fiduciary capacity may not disclaim an interest in property that would cause the interest in property not to become trust property unless:

(1) a court of competent jurisdiction approves the disclaimer; or

(2) the trustee provides written notice of the disclaimer in accordance with Section 240.0081.

(e) In the absence of a court-appointed guardian, without court approval, a natural guardian as described by Section 1104.051, Estates Code, may disclaim on behalf of a minor child of the natural guardian, in whole or in part, any interest in or power over property, including a power of appointment, that the minor child is to receive solely as a result of another disclaimer, but only if the disclaimed interest or power does not pass to or for the benefit of the natural guardian as a result of the disclaimer.

(f) Unless a court of competent jurisdiction approves the disclaimer, a disclaimer by a fiduciary acting in a fiduciary capacity must be compatible with the fiduciary's fiduciary obligations. A disclaimer by a fiduciary acting in a fiduciary capacity is not a per se breach of the fiduciary's fiduciary

obligations.

(g) Possible remedies for a breach of fiduciary obligations do not include declaring an otherwise effective disclaimer void or granting other legal or equitable relief that would make the disclaimer ineffective.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.0081. NOTICE REQUIRED BY TRUSTEE DISCLAIMING CERTAIN INTERESTS IN PROPERTY; EFFECT OF NOTICE. (a) A trustee acting in a fiduciary capacity may disclaim an interest in property that would cause the interest in property not to become trust property without court approval if the trustee provides written notice of the disclaimer to all of the current beneficiaries and presumptive remainder beneficiaries of the trust.

(b) For the purpose of determining who is a current beneficiary or presumptive remainder beneficiary entitled to the notice under Subsection (a), a beneficiary is determined as of the date the notice is sent.

(c) In addition to the notice required under Subsection (a), the trustee shall give written notice of the trustee's disclaimer to the attorney general if:

(1) a charity is entitled to notice;

(2) a charity entitled to notice is no longer in existence;

(3) the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or

(4) the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

(d) If the beneficiary has a court-appointed guardian or conservator, the notice required to be given by this section must be given to that guardian or conservator. If the beneficiary is a minor for whom no guardian or conservator has been appointed, the notice required to be given by this section must be given to a parent of the minor.

(e) The trustee is not required to provide the notice to a beneficiary who:

(1) is known to the trustee and cannot be located by the trustee after reasonable diligence;

(2) is not known to the trustee;

(3) waives the requirement of the notice under this section; or

(4) is a descendant of a beneficiary to whom the trustee has given notice if the beneficiary and the beneficiary's ancestor have similar interests in the trust and no apparent conflict of interest exists between them.

(f) The notice required under Subsection (a) must:

(1) include a statement that:

(A) the trustee intends to disclaim an interest in property;

(B) if the trustee makes the disclaimer, the property will not become trust property and will not be available to distribute to the beneficiary from the trust;

(C) the beneficiary has the right to object to the disclaimer; and

(D) the beneficiary may petition a court to approve, modify, or deny the disclaimer;

(2) describe the interest in property the trustee intends to disclaim;

(3) specify the earliest date the trustee intends to make the disclaimer;

(4) include the name and mailing address of the trustee;

(5) be given not later than the 30th day before the date the disclaimer is made; and

(6) be sent by personal delivery, first-class mail, facsimile, e-mail, or any other method likely to result in the notice's receipt.

(g) A beneficiary is not considered to have accepted the disclaimed interest solely because the beneficiary acts or does not act on receipt of a notice provided under this section.

(h) If the trustee makes the disclaimer for which notice is provided under this section, the beneficiary does not lose the beneficiary's right, if any, to sue the trustee for breach of the trustee's fiduciary obligations in connection with making the disclaimer. Section 240.008(g) applies to remedies sought in connection with the alleged breach.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.009. POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN IRREVOCABLE. (a) To be effective, a disclaimer must:

(1) be in writing;

(2) declare the disclaimer;

(3) describe the interest or power disclaimed;

(4) be signed by the person making the disclaimer; and

(5) be delivered or filed in the manner provided by Subchapter C.

(b) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(c) A disclaimer is irrevocable on the later of the date the disclaimer:

(1) is delivered or filed under Subchapter C; or

(2) takes effect as provided in Sections 240.051-240.056.

(d) A disclaimer made under this chapter is not a transfer, assignment, or release.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

SUBCHAPTER B. TYPE AND EFFECT OF DISCLAIMER

Sec. 240.0501. DEFINITION. In this subchapter, "future interest" means an interest that:

(1) takes effect in possession or enjoyment, if at all, later than the time at which the instrument creating the interest becomes irrevocable; and

(2) passes to the holder of the interest at the time of the event that causes the taker of the interest to be finally ascertained and the interest to be indefeasibly vested.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.051. DISCLAIMER OF INTEREST IN PROPERTY. (a) This

section and Sections 240.0511 and 240.0512 apply to a disclaimer of an interest in property other than a disclaimer subject to Section 240.052 or 240.053.

(b) If an interest in property passes because of the death of a decedent:

(1) a disclaimer of the interest:

(A) takes effect as of the time of the decedent's death; and

(B) relates back for all purposes to the time of the decedent's death; and

(2) the disclaimed interest is not subject to the claims of any creditor of the disclaimant.

(c) If an interest in property passes because of an event not related to the death of a decedent:

(1) a disclaimer of the interest:

(A) takes effect:

(i) as of the time the instrument creating the interest became irrevocable; or

(ii) in the case of an irrevocable transfer made without an instrument, at the time of the irrevocable transfer; and

(B) relates back for all purposes to the time the instrument became irrevocable or the time of the irrevocable transfer, as applicable; and

(2) the disclaimed interest is not subject to the claims of any creditor of the disclaimant.

(d) A disclaimed interest passes according to any provision in the instrument creating the interest that provides for:

(1) the disposition of the interest if the interest were to be disclaimed; or

(2) the disposition of disclaimed interests in general.

(e) If the instrument creating the disclaimed interest does not contain a provision described by Subsection (d) and:

(1) if the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist; or

(2) if the disclaimant is an individual:

(A) except as provided by Section 240.0511, if the interest is passing because of the death of a decedent, the disclaimed interest passes as if the disclaimant had died immediately before the time as of which the disclaimer takes effect under Subsection (b); or

(B) except as provided by Section 240.0512, if the interest is passing because of an event not related to the death of a decedent, the disclaimed interest passes as if the disclaimant had died immediately before the time as of which the disclaimer takes effect under Subsection (c).

(f) A disclaimed interest that passes by intestacy passes as if the disclaimant died immediately before the decedent.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.0511. DISPOSITION OF INTEREST PASSING BECAUSE OF DECEDENT'S DEATH AND DISCLAIMED BY INDIVIDUAL. (a) Subject to Subsection (b):

(1) if by law or under the instrument creating the disclaimed interest the descendants of a disclaimant of an interest passing because of the death of a decedent would share in the disclaimed interest by any method of representation under Section 240.051(e)(2)(A), the disclaimed interest passes only to the descendants of the disclaimant who survive the decedent; or

(2) if the disclaimed interest would have passed to the disclaimant's estate under Section 240.051(e)(2)(A), the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the decedent.

(b) If no descendant of the disclaimant survives the decedent, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died immediately before the decedent, except that if the transferor's surviving spouse is living but remarried before the decedent's death, the transferor is considered to have died unmarried immediately before the decedent's death.

(c) On the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died immediately before the decedent, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15,

eff. September 1, 2015.

Sec. 240.0512. DISPOSITION OF INTEREST PASSING BECAUSE OF EVENT OTHER THAN DECEDENT'S DEATH AND DISCLAIMED BY INDIVIDUAL. (a) Subject to Subsection (b):

(1) if by law or under the instrument creating the disclaimed interest the descendants of a disclaimant of an interest passing because of an event not related to the death of a decedent would share in the disclaimed interest by any method of representation under Section 240.051(e)(2)(B), the disclaimed interest passes only to the descendants of the disclaimant living at the time of the event that causes the interest to pass; or

(2) if the disclaimed interest would have passed to the disclaimant's estate under Section 240.051(e)(2)(B), the disclaimed interest instead passes by representation to the descendants of the disclaimant living at the time of the event that causes the interest to pass.

(b) If no descendant of the disclaimant is living at the time of the event described by Subsection (a)(1), the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died immediately before the event described by Subsection (a)(1), except that if the transferor's surviving spouse is living but remarried before the event, the transferor is considered to have died unmarried immediately before the event.

(c) On the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died immediately before the time the disclaimer takes effect under Section 240.051(c)(1)(A), but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.052. DISCLAIMER OF RIGHTS IN SURVIVORSHIP PROPERTY.

(a) On the death of a holder of survivorship property, a surviving holder may disclaim, in whole or in part, an interest in the property of the deceased holder that would have otherwise passed to the surviving holder by reason of the deceased holder's death.

(b) If an interest in survivorship property is disclaimed by a surviving holder of the property:

(1) the disclaimer:

(A) takes effect as of the time of the deceased holder's death; and

(B) relates back for all purposes to the time of the deceased holder's death; and

(2) the disclaimed interest is not subject to the claims of any creditor of the disclaimant.

(c) An interest in survivorship property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.053. DISCLAIMER OF INTEREST BY TRUSTEE. (a) If a trustee disclaims an interest in property that otherwise would have become trust property:

(1) the interest does not become trust property;

(2) the disclaimer:

(A) takes effect as of the time the trust became irrevocable; and

(B) relates back for all purposes to the time the trust became irrevocable; and

(3) the disclaimed interest is not subject to the claims of any creditor of the trustee, the trust, or any trust beneficiary.

(b) If the instrument creating the disclaimed interest contains a provision that provides for the disposition of the interest if the interest were to be disclaimed, the disclaimed interest passes according to that provision.

(c) If the instrument creating the disclaimed interest does not contain a provision described by Subsection (b), the disclaimed interest passes as if:

(1) all of the current beneficiaries, presumptive remainder

beneficiaries, and contingent beneficiaries of the trust affected by the disclaimer who are individuals died before the trust became irrevocable; and

(2) all beneficiaries of the trust affected by the disclaimer who are not individuals ceased to exist without successor organizations and without substitution of beneficiaries under the cy pres doctrine before the trust became irrevocable.

(d) Subsection (c) applies only for purposes of determining the disposition of an interest in property disclaimed by a trustee that otherwise would have become trust property and applies only with respect to the trust affected by the disclaimer. Subsection (c) does not apply with respect to other trusts governed by the instrument and does not apply for other purposes under the instrument or under the laws of intestacy.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.054. DISCLAIMER OF POWER OF APPOINTMENT OR OTHER POWER NOT HELD IN FIDUCIARY CAPACITY. (a) If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, this section applies.

(b) If the holder:

(1) has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable; or

(2) has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(c) The instrument creating the power is construed as if the power had expired when the disclaimer became effective.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.055. DISCLAIMER BY APPOINTEE OF, OR OBJECT OR TAKER IN DEFAULT OF EXERCISE OF, POWER OF APPOINTMENT. (a) A disclaimer of an interest in property by an appointee of a power of appointment takes

effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.056. DISCLAIMER OF POWER HELD IN FIDUCIARY CAPACITY. (a) If a person designated to serve or serving as a fiduciary disclaims a power held or to be held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a person designated to serve or serving as a fiduciary disclaims a power held or to be held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer subject to this section is effective as to another person designated to serve or serving as a fiduciary if:

(1) the disclaimer provides that it is effective as to another person designated to serve or serving as a fiduciary; and

(2) the person disclaiming has the authority to bind the estate, trust, or other person for whom the person is acting.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.057. TAX QUALIFIED DISCLAIMER. (a) In this section, "Internal Revenue Code" has the meaning assigned by Section 111.004.

(b) Notwithstanding any other provision of this chapter, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated under the Internal Revenue Code as never having been transferred to the disclaimant, the disclaimer or transfer is effective as a disclaimer under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.058. PARTIAL DISCLAIMER BY SPOUSE. A disclaimer by a decedent's surviving spouse of an interest in property transferred as the result of the death of the decedent is not a disclaimer by the surviving spouse of any other transfer from the decedent to or for the benefit of the surviving spouse, regardless of whether the interest that would have passed under the disclaimed transfer passes because of the disclaimer to or for the benefit of the surviving spouse by the other transfer.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

SUBCHAPTER C. DELIVERY OR FILING

Sec. 240.101. DELIVERY OR FILING GENERALLY. (a) Subject to applicable requirements of this subchapter, a disclaimant may deliver a disclaimer by personal delivery, first-class mail, facsimile, e-mail, or any other method likely to result in the disclaimer's receipt.

(b) If a disclaimer is mailed to the intended recipient by certified mail, return receipt requested, at an address the disclaimant in good faith believes is likely to result in the disclaimer's receipt, delivery is considered to have occurred on the date of mailing regardless of receipt.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.102. DISCLAIMER OF INTEREST CREATED UNDER INTESTATE SUCCESSION OR WILL. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) a disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, a disclaimer must be filed in the official public records of any county in which the decedent:

(A) was domiciled on the date of the decedent's death;

or

(B) owned real property.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.103. DISCLAIMER OF INTEREST IN TESTAMENTARY TRUST. In the case of an interest in a testamentary trust:

(1) a disclaimer must be delivered to the trustee then serving;

(2) if no trustee is then serving, a disclaimer must be delivered to the personal representative of the decedent's estate; or

(3) if no trustee or personal representative is then serving, a disclaimer must be filed in the official public records of any county in which the decedent:

(A) was domiciled on the date of the decedent's death; or

(B) owned real property.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.104. DISCLAIMER OF INTEREST IN INTER VIVOS TRUST. In the case of an interest in an inter vivos trust:

(1) a disclaimer must be delivered to the trustee then serving, or, if no trustee is then serving, a disclaimer must be filed:

(A) with a court having jurisdiction to enforce the trust; or

(B) in the official public records of the county in which:

(i) the situs of administration of the trust is maintained; or

(ii) the settlor is domiciled or was domiciled on the date of the settlor's death; and

(2) if a disclaimer is made before the time the instrument creating the trust becomes irrevocable, a disclaimer must be delivered to the settlor of a revocable trust or the transferor of the interest.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.105. DISCLAIMER OF INTEREST CREATED BY BENEFICIARY DESIGNATION. (a) In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) an annuity or insurance policy;

(2) an account with a designation for payment on death;

(3) a security registered in beneficiary form;

(4) a pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) any other nonprobate transfer at death.

(b) In the case of an interest created by a beneficiary designation that is disclaimed before the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

(c) In the case of an interest created by a beneficiary designation that is disclaimed after the designation becomes irrevocable:

(1) a disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

(2) a disclaimer of an interest in real property must be recorded in the official public records of the county where the real property that is the subject of the disclaimer is located.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.106. DISCLAIMER BY SURVIVING HOLDER OF SURVIVORSHIP PROPERTY. In the case of a disclaimer by a surviving holder of survivorship property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.107. DISCLAIMER BY OBJECT OR TAKER IN DEFAULT OF

EXERCISE OF POWER OF APPOINTMENT. In the case of a disclaimer by an object or taker in default of an exercise of a power of appointment at any time after the power was created:

(1) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) if no fiduciary is then serving, the disclaimer must be filed:

(A) with a court having authority to appoint the fiduciary; or

(B) in the official public records of the county in which the creator of the power is domiciled or was domiciled on the date of the creator's death.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.108. DISCLAIMER BY CERTAIN APPOINTEES. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) the disclaimer must be delivered to the holder, the personal representative of the holder's estate, or the fiduciary under the instrument that created the power; or

(2) if no fiduciary is then serving, the disclaimer must be filed:

(A) with a court having authority to appoint the fiduciary; or

(B) in the official public records of the county in which the creator of the power is domiciled or was domiciled on the date of the creator's death.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.109. DISCLAIMER BY CERTAIN FIDUCIARIES. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided by Section 240.102, 240.103, or 240.104 as if the power disclaimed were an interest in property.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15,

eff. September 1, 2015.

Sec. 240.110. DISCLAIMER OF POWER BY AGENT. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

Sec. 240.111. RECORDING OF DISCLAIMER. If an instrument transferring an interest in or power over property subject to a disclaimer is required or authorized by law to be filed, recorded, or registered, the disclaimer may be filed, recorded, or registered as that instrument. Except as otherwise provided by Section 240.105(c)(2), failure to file, record, or register the disclaimer does not affect the disclaimer's validity between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

SUBCHAPTER D. DISCLAIMER BARRED OR LIMITED

Sec. 240.151. WHEN DISCLAIMER BARRED OR LIMITED. (a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) the disclaimant accepts the interest sought to be disclaimed by:

(A) taking possession of the interest; or

(B) exercising dominion and control over the interest;

(2) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(3) the interest sought to be disclaimed is sold under a judicial sale.

(c) The acceptance of an interest in property by a person in the person's fiduciary capacity is not an acceptance of the interest

in the person's individual capacity and does not bar the person from disclaiming the interest in the person's individual capacity.

(d) A disclaimer, in whole or in part, of the future exercise of a power held in a fiduciary capacity is not barred by the previous exercise of the power.

(e) A disclaimer, in whole or in part, of the future exercise of a power not held in a fiduciary capacity is not barred by the previous exercise of the power unless the power is exercisable in favor of the disclaimant.

(f) A disclaimer of:

(1) a power over property that is barred by this section is ineffective; and

(2) an interest in property that is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under Subchapter B had the disclaimer not been barred.

(g) A disclaimer by a child support obligor is barred as to disclaimed property that could be applied to satisfy the disclaimant's child support obligations if those obligations have been:

(1) administratively determined by the Title IV-D agency as defined by Section 101.033, Family Code, in a Title IV-D case as defined by Section 101.034, Family Code; or

(2) confirmed and reduced to judgment as provided by Section 157.263, Family Code.

(h) If Subsection (g) applies, the child support obligee to whom child support arrearages are owed may enforce the child support obligation against the disclaimant as to disclaimed property by a lien or by any other remedy provided by law.

Added by Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 15, eff. September 1, 2015.

TITLE 15. FAIR HOUSING PRACTICES

CHAPTER 301. TEXAS FAIR HOUSING ACT

SUBCHAPTER A. TITLE, PURPOSE, AND DEFINITIONS

Sec. 301.001. SHORT TITLE. This chapter may be cited as the Texas Fair Housing Act.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.0015. TEXAS WORKFORCE COMMISSION. The powers and duties exercised by the Commission on Human Rights under this chapter are transferred to the Texas Workforce Commission. A reference in this chapter to the "commission" means the Texas Workforce Commission.

Added by Acts 2003, 78th Leg., ch. 302, Sec. 3, eff. March 19, 2004. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 29, eff. September 1, 2015.

Sec. 301.002. PURPOSES. The purposes of this chapter are to:

(1) provide for fair housing practices in this state;

(2) create a procedure for investigating and settling complaints of discriminatory housing practices; and

(3) provide rights and remedies substantially equivalent to those granted under federal law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.003. DEFINITIONS. In this chapter:

(1) "Aggrieved person" includes any person who:

(A) claims to have been injured by a discriminatory housing practice; or

(B) believes that the person will be injured by a discriminatory housing practice that is about to occur.

(2) "Complainant" means a person, including the commission, that files a complaint under Section 301.081.

(3) Repealed by Acts 2003, 78th Leg., ch. 302, Sec. 4(3).

(4) "Conciliation" means the informal negotiations among an aggrieved person, the respondent, and the commission to resolve issues raised by a complaint or by the investigation of the complaint.

(5) "Conciliation agreement" means a written agreement resolving the issues in conciliation.

(6) "Disability" means a mental or physical impairment that substantially limits at least one major life activity, a record of

the impairment, or being regarded as having the impairment. The term does not include current illegal use or addiction to any drug or illegal or federally controlled substance and does not apply to an individual because of an individual's sexual orientation or because that individual is a transvestite.

(7) "Discriminatory housing practice" means an act prohibited by Subchapter B or conduct that is an offense under Subchapter I.

(8) "Dwelling" means any:

(A) structure or part of a structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families; or

(B) vacant land that is offered for sale or lease for the construction or location of a structure or part of a structure described by Paragraph (A).

(9) "Family" includes a single individual.

(10) "Respondent" means:

(A) a person accused of a violation of this chapter in a complaint of discriminatory housing practice; or

(B) a person identified as an additional or substitute respondent under Section 301.084 or an agent of an additional or substitute respondent.

(11) "To rent" includes to lease, sublease, or let, or to grant in any other manner, for a consideration, the right to occupy premises not owned by the occupant.

(12) "Person" means:

(A) an individual;

(B) a corporation, partnership, association, unincorporated organization, labor organization, mutual company, joint-stock company, and trust; and

(C) a legal representative, a trustee, a trustee in a case under Title 11, U.S.C., a receiver, and a fiduciary.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 17.003, eff. Sept. 1, 2001.

Sec. 301.004. FAMILIAL STATUS. A discriminatory act is committed because of familial status if the act is committed because

the person who is the subject of discrimination is:

(1) pregnant;

(2) domiciled with an individual younger than 18 years of age in regard to whom the person:

(A) is the parent or legal custodian; or

(B) has the written permission of the parent or legal custodian for domicile with that person; or

(3) in the process of obtaining legal custody of an individual younger than 18 years of age.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.005. CONSTRUCTION OF CHAPTER. The statutory civil remedies or theories of recovery created by this chapter may not be expanded beyond their express statutory terms.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

SUBCHAPTER B. DISCRIMINATION PROHIBITED

Sec. 301.021. SALE OR RENTAL. (a) A person may not refuse to sell or rent, after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or in any other manner make unavailable or deny a dwelling to another because of race, color, religion, sex, familial status, or national origin.

(b) A person may not discriminate against another in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with a sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin.

(c) This section does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.022. PUBLICATION. A person may not make, print, or publish or effect the making, printing, or publishing of a notice,

statement, or advertisement that is about the sale or rental of a dwelling and that indicates any preference, limitation, or discrimination or the intention to make a preference, limitation, or discrimination because of race, color, religion, sex, disability, familial status, or national origin.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.023. INSPECTION. A person may not represent to another because of race, color, religion, sex, disability, familial status, or national origin that a dwelling is not available for inspection for sale or rental when the dwelling is available for inspection.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.024. ENTRY INTO NEIGHBORHOOD. A person may not, for profit, induce or attempt to induce another to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, disability, familial status, or national origin.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.025. DISABILITY. (a) A person may not discriminate in the sale or rental of, or make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

(1) the buyer or renter;

(2) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(3) any person associated with the buyer or renter.

(b) A person may not discriminate against another in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of:

(1) the other person;

(2) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(3) any person associated with the other person.

(c) In this section, discrimination includes:

(1) a refusal to permit, at the expense of the person having a disability, a reasonable modification of existing premises occupied or to be occupied by the person if the modification may be necessary to afford the person full enjoyment of the premises;

(2) a refusal to make a reasonable accommodation in rules, policies, practices, or services if the accommodation may be necessary to afford the person equal opportunity to use and enjoy a dwelling; or

(3) the failure to design and construct a covered multifamily dwelling in a manner:

(A) that allows the public use and common use portions of the dwellings to be readily accessible to and usable by persons having a disability;

(B) that allows all doors designed to allow passage into and within all premises within the dwellings to be sufficiently wide to allow passage by a person who has a disability and who is in a wheelchair; and

(C) that provides all premises within the dwellings contain the following features of adaptive design:

(i) an accessible route into and through the dwelling;

(ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) reinforcements in bathroom walls to allow later installation of grab bars; and

(iv) kitchens and bathrooms that are usable and have sufficient space in which an individual in a wheelchair can maneuver.

(d) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as "ANSI A 117.1," satisfies the requirements of Subsection (c)(3)(C).

(e) Subsection (c)(3) does not apply to a building the first occupancy of which occurred on or before March 13, 1991.

(f) This section does not require a dwelling to be made available to an individual whose tenancy would constitute a direct

threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(g) In this subsection, the term "covered multifamily dwellings" means:

(1) buildings consisting of four or more units if the buildings have one or more elevators; and

(2) ground floor units in other buildings consisting of four or more units.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.026. RESIDENTIAL REAL ESTATE RELATED TRANSACTION. (a) A person whose business includes engaging in residential real estate related transactions may not discriminate against another in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, sex, disability, familial status, or national origin.

(b) In this section, "residential real estate related transaction" means:

(1) the making or purchasing of loans or the provision of other financial assistance:

(A) to purchase, construct, improve, repair, or maintain a dwelling; or

(B) to secure residential real estate; or

(2) the selling, brokering, or appraising of residential real property.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.027. BROKERAGE SERVICES. A person may not deny another access to, or membership or participation in, a multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation in such an organization, service, or facility because of race, color, religion, sex, disability, familial status, or national origin.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

SUBCHAPTER C. EXEMPTIONS

Sec. 301.041. SALES AND RENTALS EXEMPTED. (a) Subchapter B does not apply to:

(1) the sale or rental of a single-family house sold or rented by the owner if:

(A) the owner does not:

(i) own more than three single-family houses at any one time; or

(ii) own any interest in, nor is there owned or reserved on the person's behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time; and

(B) the house is sold or rented without:

(i) the use of the sales or rental facilities or services of a broker, agent, or salesperson licensed under Chapter 1101, Occupations Code, or of an employee or agent of a licensed broker, agent, or salesperson, or the facilities or services of the owner of a dwelling designed or intended for occupancy by five or more families; or

(ii) the publication, posting, or mailing of a notice, statement, or advertisement prohibited by Section 301.022; or

(2) the sale or rental of the rooms or units in a dwelling containing living quarters occupied by or intended to be occupied by not more than four families living independently of each other, if the owner maintains and occupies one of the living quarters as the owner's residence.

(b) The exemption in Subsection (a)(1) applies only to one sale or rental in a 24-month period if the owner was not the most recent resident of the house at the time of the sale or rental.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.810, eff. Sept. 1, 2003.

Sec. 301.042. RELIGIOUS ORGANIZATION, PRIVATE CLUB, AND APPRAISAL EXEMPTION. (a) This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from:

(1) limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion; or

(2) giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.

(b) This chapter does not prohibit a private club that is not open to the public and that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of the lodging to its members or from giving preference to its members.

(c) This chapter does not prohibit a person engaged in the business of furnishing appraisals of real property from considering in those appraisals factors other than race, color, religion, sex, disability, familial status, or national origin.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.043. HOUSING FOR ELDERLY EXEMPTED. The provisions of this chapter relating to familial status do not apply to housing:

(1) that the commission determines is specifically designed and operated to assist elderly individuals under a federal or state program;

(2) intended for, and solely occupied by, individuals 62 years of age or older; or

(3) intended and operated for occupancy by at least one individual 55 years of age or older for each unit as determined by commission rules.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.044. EFFECT ON OTHER LAW. (a) This chapter does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling or a restriction relating

to health or safety standards.

(b) This chapter does not affect a requirement of nondiscrimination in any other state or federal law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

SUBCHAPTER D. ADMINISTRATIVE PROVISIONS

Sec. 301.062. RULES. The commission may adopt rules necessary to implement this chapter, but substantive rules adopted by the commission shall impose obligations, rights, and remedies that are the same as are provided in federal fair housing regulations.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.063. COMPLAINTS. As provided by Subchapters E and F, the commission shall receive, investigate, seek to conciliate, and act on complaints alleging violations of this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.065. REPORTS AND STUDIES. (a) The commission shall, at least annually, publish a written report recommending legislative or other action to carry out the purposes of this chapter.

(b) The commission shall make studies relating to the nature and extent of discriminatory housing practices in this state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.066. COOPERATION WITH OTHER ENTITIES. The commission shall cooperate with and may provide technical and other assistance to federal, state, local, and other public or private entities that are designing or operating programs to prevent or eliminate discriminatory housing practices.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.067. SUBPOENAS AND DISCOVERY. (a) The commission may issue subpoenas and order discovery in investigations and hearings under this chapter.

(b) The subpoenas and discovery may be ordered to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in district court.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.068. REFERRAL TO MUNICIPALITY. The commission may defer proceedings under this chapter and refer a complaint to a municipality that has been certified by the federal Department of Housing and Urban Development as a substantially equivalent fair housing agency.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.069. GIFTS AND GRANTS. (a) The commission may accept gifts and grants from any public or private source for administering this chapter.

(b) Gifts and grants received shall be deposited to the credit of the fair housing fund in the state treasury.

(c) Money deposited to the credit of the fund may be used only for administering this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.070. ACCESSIBILITY ASSISTANCE AND INFORMATION FOR LANDLORDS. The commission shall provide to landlords technical and other assistance relating to the accessibility requirements under this chapter.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 16, eff. Sept. 1, 1999.

SUBCHAPTER E. ADMINISTRATIVE ENFORCEMENT

Sec. 301.081. COMPLAINT. (a) The commission shall investigate complaints of alleged discriminatory housing practices.

(b) A complaint must be:

(1) in writing;

(2) under oath; and

(3) in the form prescribed by the commission.

(c) An aggrieved person may file a complaint with the commission alleging the discriminatory housing practice. The commission may file a complaint.

(d) A complaint must be filed on or before the first anniversary of the date the alleged discriminatory housing practice occurs or terminates, whichever is later.

(e) A complaint may be amended at any time.

(f) On the filing of a complaint, the commission shall:

(1) give the aggrieved person notice that the complaint has been received;

(2) advise the aggrieved person of the time limits and choice of forums under this chapter; and

(3) not later than the 20th day after the date of the filing of the complaint or the identification of an additional or substitute respondent under Section 301.084, serve on each respondent:

(A) a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of a respondent under this chapter; and

(B) a copy of the original complaint.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.082. ANSWER. (a) Not later than the 10th day after the date of receipt of the notice and copy of the complaint under Section 301.081(f)(3), a respondent may file an answer to the complaint.

(b) An answer must be:

(1) in writing;

(2) under oath; and

(3) in the form prescribed by the commission.

(c) An answer may be amended at any time.

(d) An answer does not inhibit the investigation of a complaint.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.083. INVESTIGATION. (a) If the federal government has referred a complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the commission shall promptly investigate the allegations set forth in the complaint.

(b) The commission shall investigate all complaints and, except as provided by Subsection (c), shall complete an investigation not later than the 100th day after the date the complaint is filed or, if it is unable to complete the investigation within the 100-day period, shall dispose of all administrative proceedings related to the investigation not later than the first anniversary after the date the complaint is filed.

(c) If the commission is unable to complete an investigation within the time periods prescribed by Subsection (b), the commission shall notify the complainant and the respondent in writing of the reasons for the delay.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.084. ADDITIONAL OR SUBSTITUTE RESPONDENT. (a) The commission may join a person not named in the complaint as an additional or substitute respondent if during the investigation the commission determines that the person should be accused of a discriminatory housing practice.

(b) In addition to the information required in the notice under Section 301.081(f), the commission shall include in a notice to a respondent joined under this section the reasons for the determination that the person is properly joined as a respondent.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.085. CONCILIATION. (a) The commission shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the commission, to the extent feasible, engage in conciliation with respect to the complaint.

(b) A conciliation agreement between a respondent and the

complainant is subject to commission approval.

(c) A conciliation agreement may provide for binding arbitration or another method of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate relief, including monetary relief.

(d) A conciliation agreement is public information unless:

(1) the complainant and respondent agree that it is not; and

(2) the commission determines that disclosure is not necessary to further the purposes of this chapter.

(e) Statements made or actions taken in the conciliation may not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned.

(f) After completion of the commission's investigation, the commission shall make available to the aggrieved person and the respondent, at any time, information derived from the investigation and the final investigative report relating to that investigation.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.086. TEMPORARY OR PRELIMINARY RELIEF. (a) The commission may authorize a civil action for temporary or preliminary relief pending the final disposition of a complaint if the commission concludes after the filing of the complaint that prompt judicial action is necessary to carry out the purposes of this chapter.

(b) On receipt of the commission's authorization, the attorney general shall promptly file the action.

(c) A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable Texas Rules of Civil Procedure.

(d) The filing of a civil action under this section does not affect the initiation or continuation of administrative proceedings under Section 301.111.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.087. INVESTIGATIVE REPORT. (a) The commission shall prepare a final investigative report including:

(1) the names of and dates of contacts with witnesses;

(2) a summary of correspondence and other contacts with the aggrieved person and the respondent showing the dates of the correspondence and contacts;

(3) a summary description of other pertinent records;

(4) a summary of witness statements; and

(5) answers to interrogatories.

(b) A final report under this section may be amended if additional evidence is discovered.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.088. REASONABLE CAUSE DETERMINATION. (a) The commission shall determine from the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur.

(b) The commission shall make the determination under Subsection (a) not later than the 100th day after the date a complaint is filed unless:

(1) making the determination is impracticable; or

(2) the commission approves a conciliation agreement relating to the complaint.

(c) If within the period provided by Subsection (b) making the determination is impracticable, the commission shall give in writing to the complainant and the respondent the reasons for the delay.

(d) If the commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided by Section 301.090, immediately issue a charge on behalf of the aggrieved person.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.089. CHARGE. (a) A charge issued under Section 301.088:

(1) must consist of a short and plain statement of the facts on which the commission finds reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(2) must be based on the final investigative report; and

(3) is not limited to the facts or grounds alleged in the complaint.

(b) Not later than the 20th day after the date the commission issues a charge, the commission shall send a copy of the charge with information about the election under Section 301.093 to:

(1) each respondent; and

(2) each aggrieved person on whose behalf the complaint was filed.

(c) The commission shall include with a charge sent to a respondent a notice of the opportunity for a hearing under Section 301.111.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.090. LAND USE LAW. If the commission determines that the matter involves the legality of a state or local zoning or other land use law or ordinance, the commission may not issue a charge and shall immediately refer the matter to the attorney general for appropriate action.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.091. DISMISSAL. (a) If the commission determines that no reasonable cause exists to believe that a discriminatory housing practice that is the subject of a complaint has occurred or is about to occur, the commission shall promptly dismiss the complaint.

(b) The commission shall make public disclosure of each dismissal.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.092. PENDING CIVIL TRIAL. The commission may not issue a charge alleging a discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing practice.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.093. ELECTION OF JUDICIAL DETERMINATION. (a) A complainant, a respondent, or an aggrieved person on whose behalf a complaint was filed may elect to have the claims asserted in the charge decided in a civil action as provided by Section 301.131.

(b) The election must be made not later than the 20th day after the date the person having the election receives service under Section 301.089(b) or, in the case of the commission, not later than the 20th day after the date the charge is issued.

(c) The person making the election shall give notice to the commission and to all other complainants and respondents to whom the charge relates.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

SUBCHAPTER F. ADMINISTRATIVE HEARINGS

Sec. 301.111. ADMINISTRATIVE HEARING. (a) If a timely election is not made under Section 301.093, the commission shall provide for a hearing on the charge.

(b) Except as provided by Subsection (c), Chapter 2001, Government Code, governs a hearing and an appeal of a hearing.

(c) A hearing under this section on an alleged discriminatory housing practice may not continue after the beginning of the trial of a civil action commenced by the aggrieved person under federal or state law seeking relief with respect to the discriminatory housing practice.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.112. ADMINISTRATIVE PENALTIES. (a) If the commission determines at a hearing under Section 301.111 that a respondent has engaged in or is about to engage in a discriminatory housing practice, the commission may order the appropriate relief, including actual damages, reasonable attorney fees, court costs, and other injunctive or equitable relief.

(b) To vindicate the public's interest, the commission may assess a civil penalty against the respondent in an amount that does

not exceed:

(1) $10,000 if the respondent has been found by order of the commission or a court to have committed a prior discriminatory housing practice; or

(2) except as provided by Subsection (c):

(A) $25,000 if the respondent has been found by order of the commission or a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the charges; or

(B) $50,000 if the respondent has been found by the commission or a court to have committed two or more discriminatory housing practices during the seven-year period ending on the date of filing of the charge.

(c) If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has previously been found to have committed acts constituting a discriminatory housing practice, the civil penalties in Subsection (b)(2) may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.

(d) At the request of the commission, the attorney general shall sue to recover a civil penalty due under this section. Funds collected under this section shall be paid to the comptroller for deposit in the state treasury to the credit of the fair housing fund.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 16.39, eff. Sept. 1, 1997.

Sec. 301.113. EFFECT OF COMMISSION ORDER. A commission order under Section 301.112 does not affect a contract, sale, encumbrance, or lease that:

(1) is consummated before the commission issues the order; and

(2) involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge filed under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.114. LICENSED OR REGULATED BUSINESS. If the commission issues an order with respect to a discriminatory housing practice that occurs in the course of a business subject to a licensing or regulation by a governmental agency, the commission shall, not later than the 30th day after the date the order is issued:

(1) send copies of the findings and the order to the governmental agency; and

(2) recommend to the governmental agency appropriate disciplinary action.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.115. ORDER IN PRECEDING FIVE YEARS. If the commission issues an order against a respondent against whom another order was issued within the preceding five years under Section 301.112, the commission shall send a copy of each order to the attorney general.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

SUBCHAPTER G. ENFORCEMENT BY ATTORNEY GENERAL

Sec. 301.131. ATTORNEY GENERAL ACTION FOR ENFORCEMENT. (a) If a timely election is made under Section 301.093, the commission shall authorize and not later than the 30th day after the date the election is made the attorney general shall file in a district court a civil action seeking relief on behalf of the aggrieved person.

(b) Venue for an action is in the county in which the alleged discriminatory housing practice occurred or is about to occur.

(c) An aggrieved person may intervene in the action.

(d) If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under Subchapter H.

(e) If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved person has not complied with discovery orders entered by the court.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.132. PATTERN OR PRACTICE CASE. (a) On the request of the commission, the attorney general may file a civil action in district court for appropriate relief if the commission has reasonable cause to believe that:

(1) a person is engaged in a pattern or practice of resistance to the full enjoyment of a right granted under this chapter; or

(2) a person has been denied a right granted by this chapter and that denial raises an issue of general public importance.

(b) In an action under this section the court may:

(1) award preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this chapter as necessary to assure the full enjoyment of the rights granted by this chapter;

(2) award other appropriate relief, including monetary damages, reasonable attorney fees, and court costs; and

(3) to vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed:

(A) $50,000 for a first violation; and

(B) $100,000 for a second or subsequent violation.

(c) A person may intervene in an action under this section if the person is:

(1) a person aggrieved by the discriminatory housing practice; or

(2) a party to a conciliation agreement concerning the discriminatory housing practice.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.133. SUBPOENA ENFORCEMENT. The attorney general, on behalf of the commission or another party at whose request a subpoena is issued under this chapter, may enforce the subpoena in appropriate proceedings in district court.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

SUBCHAPTER H. ENFORCEMENT BY PRIVATE PERSONS

Sec. 301.151. CIVIL ACTION. (a) An aggrieved person may file a civil action in district court not later than the second year after

the date of the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.

(b) The two-year period does not include any time during which an administrative hearing under this chapter is pending with respect to a complaint or charge under this chapter based on the discriminatory housing practice. This subsection does not apply to actions arising from the breach of a conciliation agreement.

(c) An aggrieved person may file an action whether a complaint has been filed under Section 301.081 and without regard to the status of any complaint filed under that section.

(d) If the commission has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file an action with respect to the alleged discriminatory housing practice that forms the basis of the complaint except to enforce the terms of the agreement.

(e) An aggrieved person may not file an action with respect to an alleged discriminatory housing practice that forms the basis of a charge issued by the commission if the commission has begun a hearing on the record under this chapter with respect to the charge.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.152. COURT-APPOINTED ATTORNEY. On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory housing practice is alleged, the court may appoint an attorney for the person.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.153. RELIEF GRANTED. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff:

(1) actual and punitive damages;

(2) reasonable attorney fees;

(3) court costs; and

(4) subject to Section 301.154, a permanent or temporary

injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.154. EFFECT OF RELIEF GRANTED. Relief granted under this subchapter does not affect a contract, sale, encumbrance, or lease that:

(1) is consummated before the granting of the relief; and

(2) involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint or civil action under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.155. INTERVENTION BY ATTORNEY GENERAL. (a) On request of the commission, the attorney general may intervene in an action under this subchapter if the commission certifies that the case is of general public importance.

(b) The attorney general may obtain the same relief as is available to the attorney general under Section 301.132(b).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

Sec. 301.156. PREVAILING PARTY. A court in a civil action brought under this chapter or the commission in an administrative hearing under Section 301.111 may award reasonable attorney fees to the prevailing party and assess court costs against the nonprevailing party.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.

SUBCHAPTER I. CRIMINAL PENALTY

Sec. 301.171. INTIMIDATION OR INTERFERENCE. (a) A person commits an offense if the person, without regard to whether the person is acting under color of law, by force or threat of force

intentionally intimidates or interferes with a person:

(1) because of the person's race, color, religion, sex, disability, familial status, or national origin and because the person is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or

(2) because the person is or has been or to intimidate the person from:

(A) participating, without discrimination because of race, color, religion, sex, disability, familial status, or national origin, in an activity, service, organization, or facility described by Subdivision (1); or

(B) affording another person opportunity or protection to so participate; or

(C) lawfully aiding or encouraging other persons to participate, without discrimination because of race, color, religion, sex, disability, familial status, or national origin, in an activity, service, organization, or facility described by Subdivision (1).

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 40, eff. Sept. 1, 1993.