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2023 TEXAS HOA LAW LEGISLATIVE UPDATE

On May 29, 2023, the Texas Legislature concluded the 2023 legislative session. Although there were a significant number of bills filed that could have had a dramatic effect on the laws governing Texas homeowners associations, similar to the 2021 legislative session, only a few bills were ultimately enacted by the 2023 Texas Legislature. The most significant of the enacted bills is Senate Bill 1668, which includes 7 separate sections that add or modify 3 chapters of the Texas Property Code. Such new and modified statutory laws are summarized as follows:

WARNING – On June 18, 2023, after publication of this Legislative Update, Governor Abbott vetoed 76 bills passed by the Texas Legislature, including Senate Bill 1668. These bills were vetoed by Governor Abbott because the Legislature had failed to pass some of his legislative priorities on property taxes and it has been implied that if the Legislature passed the applicable property tax bills at a special session called by Governor Abbott, that some or all of the 76 bills that were vetoed would be revived and signed by Governor Abbott. The Legislature passed some of the applicable property tax bill in the second called special session and it is believed by some insiders that Governor Abbott will call a third special session in September or October 2023 to allow the Legislature to repass some or all of the 76 bills that were vetoed. The substance of Senate Bill 1668 is still being included in this Legislative Update, but the modifications to Texas law made by Senate Bill 1668 will not be effective unless actually enacted again by the Legislature at a subsequent special session and not vetoed by Governor Abbott. If that were to occur, the effective date of the revived legislation will likely be in late 2023 or even sometime in 2024.

HOUSE BILL 614 – Required Enforcement Policy and Fine Schedule

House Bill 614 adds Section 209.0060 to Chapter 209 of the Texas Property, which requires all homeowners associations that administer a subdivision development and are authorized by its dedicatory instruments to levy fines to adopt an enforcement policy regarding the levying of fines. Such enforcement policy must include: (1) general categories of restrictive covenants for which the association may assess fines; (2) a schedule of fines for each category of violation; and (3) information regarding hearings described by Section 209.007 of the Texas Property Code, and it must be either posted on the homeowners association's website or sent to homeowners annually. This bill takes effect on January 1, 2024.

HOUSE BILL 886 – Required Notice of Delinquency Before Filing of Assessment Lien Notice

House Bill 886 amends Section 209.0094 of the Texas Property Code, which now requires a homeowners association that administers a subdivision development to provide two statutory notices of delinquency to a homeowner before it can file a notice of assessment lien in the official public records of the county in which the subdivision development is located. As amended, Section 209.0094 requires the homeowners association to provide a first notice of delinquency to the homeowner by first class mail or email and then a second notice of delinquency to the homeowner by certified mail, return receipt requested. Section 209.0094 provides further the second notice of delinquency cannot be sent until at least 30 days after the first notice of delinquency is sent to the homeowner and the notice of assessment lien cannot be recorded until 90 days after the second notice of assessment lien is sent to the homeowner. This Bill takes effect on September 1, 2023.

HOUSE BILL 1193 – Protection of Tenants Based on Method of Payment

House Bill 1193 adds Section 202.024 to the Texas Property Code, which prohibits all homeowners associations from including or enforcing a provision in a dedicatory instrument that restricts a property owner from renting a dwelling to a person based on the person's method of payment, including payments made in whole or in part by "Section 8" housing vouchers or any other federal or state or local housing assistance provided to a person or to a property owner on behalf of a person, including rental vouchers, rental assistance, or rental subsidies from a nongovernmental organization. This bill takes effect on September 1, 2023.

HOUSE BILL 1558 – Statutory Procedures for the Amendment of Declarations in Certain Older Subdivisions

House Bill 1558 adds Chapter 216 to the Texas Property Code, which establishes new statutory procedures for amendment of the Declaration applicable to older subdivisions (that were platted prior to 1947) in which no zoning regulations apply. This bill takes effect on September 1, 2023.

SENATE BILL 1668 – The Omnibus Bill

Senate Bill 1668 has 7 separate sections that add or modify statutory provisions in Chapters 82, 202 and 209 of the Texas Property Code. Due to the broad scope of Senate Bill 1668, it shall be summarized in separate sub-parts by topic.

Senate Bill 1668 adds Section 82.1142 to Chapter 82 of the Texas Property Code (aka, the Texas Uniform Condominium Act), which only applies to condominium associations with at least 60 units or that is managed by a management company. New Section 82.1142 now requires such applicable condominium associations to

maintain an internet website and to publish its Dedicatory Instruments on such internet website. This provision takes effect on September 1, 2023.

Senate Bill 1668 amends Section 82.116 of the Texas Property Code, which governs the filing of a management certificate by a condominium association. As amended, Section 82.116 now requires the management certificate to identify the recording data for the governing Declarations and all amendments thereto, the mailing address, telephone and email address for the person managing the condominium association, the website address for the internet website on which the condominium association's Dedicatory Instruments are published, and the amount and description of any fees charged by the condominium association related to the transfer of a unit. Section 82.116 now also requires the management certificate to be filed at the Texas Real Estate Commission within 7 days from the date it is recorded in the official public records of the county in which the condominium development is located and restricts a condominium association from holding a property owner liable for attorneys fees incurred in the collection of unpaid assessments or interest on the unpaid assessments if the condominium association has not timely recorded an up-to-date management certificate in the county's official public records or filed the management certificate with the Texas Real Estate Commission. This provision takes effect on September 1, 2023, however, if a condominium association has already recorded a management certificate or amended management certificate in compliance with Section 82.116 on or before September 1, 2023, then it is not required to electronically file a duplicate management certificate or amended management certificate with the Texas Real Estate Commission until March 1, 2024.

Senate Bill 1668 modifies Section 82.157 of the Texas Property Code, which governs the production of resale certificates by a condominium association. As amended, Section 82.157 now restricts the maximum amount that a condominium association may charge for a resale certificate to \$375. This provision takes effect on September 1, 2023.

Senate Bill 1668 modifies Section 202.023 of the Texas Property Code, which prohibits a homeowners association that administers a subdivision development from adopting or enforcing any restrictive covenant that prevents a property owner from building or installing security measures, including but not limited to a security camera, motion detector, or perimeter fence and was enacted in 2021. As amended, Section 202.023 now permits homeowners associations to: (1) prohibit the placement of fencing that obstructs a license area, as defined by a written license agreement or plat; a sidewalk in the public right-of-way or otherwise installed for public or community use, or a drainage easement or drainage area; (2) require a driveway gate to be set back at least 10 feet from the right-of-way if the driveway intersects with a laned roadway, as defined by Section 541.302 of the Transportation Code; and (3) if provided by a restrictive covenant, prohibit the installation of fencing in front of the front-most building line of a dwelling. Notwithstanding, any homeowner who has constructed perimeter fencing or

fencing in front of a dwelling's front-most building line before September 1, 2023, is grandfathered from any new permitted rules regulating the location of front yard fences. In addition, the new permitted front yard fencing rules are not enforceable against homeowners if the homeowner's residential address is exempt from public disclosure under state or federal law or the homeowner provides to the homeowners association documentation from a law enforcement agency of the homeowner's need for enhanced security measures. This provision takes effect on September 1, 2023.

Senate Bill 1668 adds Sections 209.00506 and 209.00507 to Chapter 209 of the Texas Property Code. Section 209.00507 requires homeowners associations that administer subdivision developments consisting of more than 40 lots to now solicit candidates for appointment or election to the architectural committee at least 10 days before the homeowners association or its board of directors may appoint or elect new members to the architectural committee. The candidate-solicitation notice must be provided to all homeowners either: (1) by mail; or (2) by posting the candidate-solicitation notice in a conspicuous manner in a physical place in the subdivision or on an internet website and emailing the candidate-solicitation notice to all homeowners who have registered an email address with the homeowners association. The candidate-solicitation notice must also contain instructions for a person to notify the homeowners association of their interest in serving on the architectural committee, including the date by which the person's notification must be received by the homeowners association, which must not be less than 10 days from the date the candidate-solicitation was provided to the homeowners. Section 209.00506 prohibits a person from being appointed or elected to serve on an architectural committee unless such person timely notified the homeowners association of the person's interest in serving on the architectural committee unless vacancies on the architectural committee remain open after the homeowners association has appointed or elected all persons who timely notified the homeowners association of the interest in serving on the architectural committee. This provision takes effect on September 1, 2023.

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