

PROPOSED BILL TO INTRODUCE

TEXAS UNIFORM

PLANNED COMMUNITY

ACT

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**Texas Uniform Planned Community Act
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Texas Uniform Planned Community Act

Proposed as Chapter 83, Texas Property Code

By _____

_____ B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to the adoption of the Texas Uniform Planned Community Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. PURPOSE. The Texas legislature hereby finds:

(1) That it is in the best interests of the state and its citizens to establish a clear, comprehensive, and uniform framework for the creation and operation of residential planned communities which, unlike condominiums, are not subject to a Texas enabling statute;

(2) That it is in the best interests of the state and its citizens to have the same legal framework for residential planned communities in every part of this state, without bracketed exceptions for particular developments or regions;

(3) That it is in the best interests of this state and its citizens to encourage owners associations to communicate effectively with their members, to treat their members fairly, and to try to resolve disputes with members without the use of litigation;

(4) That it is the best interests of this state's local governments and their citizens to promote the financial strength and stability of owners associations in residential planned communities, which perform functions that may otherwise become a public responsibility and expense;

(5) That it is the policy of this state to give real estate developers and home builders flexible development rights with specific obligations within a uniform structure of development of a planned community that extends through the transition to owner control;

(6) That the continuation of the economic prosperity of this state depends on the viability of residential planned communities and the ability of owners associations to protect property values by maintaining neighborhood standards;

(7) That it is the policy of this state to promote effective and efficient property

1 management through defined operational requirements that preserve flexibility for owners
2 associations;

3
4 (8) That it is the policy of this state to promote the availability of funds for financing
5 homes in planned communities by enabling lenders to extend their financial services to a greater
6 market on a safer, more predictable basis because of standardized practices and prudent insurance
7 and risk management obligations.

8
9 **SECTION 2.** The name of Title 7, Property Code, is amended as follows:

10
11 Title 7. Condominiums and Planned Communities

12
13 **SECTION 3.** Title 7, Property Code, is amended by adding Chapter 83 to read as follows:

14
15 **CHAPTER 83. TEXAS UNIFORM PLANNED COMMUNITY ACT**

16
17 **SUBCHAPTER A. GENERAL PROVISIONS**

18 [Sections 83.001 - 83.050]

19
20 **Sec. 83.001. SHORT TITLE.** This chapter may be cited as the Texas Uniform Planned
21 Community Act.

22
23 **Sec. 83.002. APPLICABILITY.** Applicability of this chapter is governed by Subchapter F.

24
25 **Sec. 83.003. DEFINITIONS.** (a) In the governing documents, unless specifically provided
26 otherwise or the context otherwise requires, and in this chapter:

27
28 (1) "Affiliate of a declarant" means any person who controls, is controlled by, or is
29 under common control with a declarant. A person "controls" a declarant if the person is a general
30 partner, officer, director, or employer of the declarant; directly or indirectly or acting in concert with
31 one or more other persons, or through one or more subsidiaries, owns, controls, holds with power
32 to vote or holds proxies representing more than 20 percent of the voting interests in the declarant;
33 determines in any manner the election of a majority of the directors of the declarant; or has
34 contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a
35 declarant if the declarant is a general partner, officer, director, or employer of the person; directly
36 or indirectly or acting in concert with one or more other persons, or through one or more
37 subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20
38 percent of the voting interests in the person; determines in any manner the election of a majority of
39 the directors of the person; or has contributed more than 20 percent of the capital of the person.

40
41 (2) "Allocated interests" means the common expense liability and votes in the
42 association allocated to each lot.

43
44 (3) "Assessment" means an amount due to the association by the owner or levied

1 against the lot by the association pursuant to the governing documents or this chapter, such as
2 regular and special assessments, dues, fees, charges, interest, late fees, fines, costs of collection or
3 enforcement, including reasonable attorney's fees, and any special purpose assessment provided in
4 the governing documents.

5
6 (4) "Association" means the owners association organized under Section 83.101.

7
8 (5) "Board" means the board of directors or the body, regardless of name, designated
9 by a governing document to act on behalf of the association.

10
11 (6) "Builder" means a person who purchases, or contracts to purchase, one or more
12 unimproved or improved lots for the purpose of constructing or completing the initial improvements
13 on the lot for marketing and/or sale to homeowners, or who purchases land within the planned
14 community for further subdivision, development, and/or sale in the ordinary course of business.

15
16 (7) "Bylaws" means any instrument, however denominated, which is adopted by or
17 for the association for the regulation, administration, and management of the association.

18
19 (8) "Common area" or "area of common responsibility" means:

20
21 (A) any real property within a planned community which is owned or leased by the
22 association, other than a lot;

23
24 (B) any area or improvement in or appurtenant to the planned community for which
25 the association has maintenance responsibility, even if located on a lot or public right of way; or

26
27 (C) any other interest in real property held by the association for the benefit of lot
28 owners.

29
30 (9) "Common expenses" means expenditures made by, or financial liabilities of, the
31 association, together with any allocation to reserves.

32
33 (10) "Common expense liability" means the liability for common expenses allocated
34 to each lot pursuant to Section 83.054[Allocation of Votes and Common Expense Liabilities].

35
36 (11) "Declarant" means the person who is so designated in the declaration, or the
37 person who executes the declaration if no declarant is designated, or a person who succeeds to
38 special declarant rights. If the planned community is not yet created, the term refers to any person,
39 or group of persons acting in concert, who, as part of a common promotional plan, offers to dispose
40 of the person's interest in a lot not previously disposed of. The term excludes a person holding
41 interest in the real estate solely as security for an obligation, a person whose interest in the real estate
42 will not be conveyed to lot owners, and, in the case of a leasehold planned community, a lessor who
43 possesses no special declarant rights.

1 (12) "Declarant control period" means the period of time stated in the declaration
2 during which the declarant controls the operation and management of the association, as
3 distinguished from the development period. Regardless of the period provided by the declaration,
4 a period of declarant control terminates not later than the 120th day after conveyance to homeowners
5 of 75 percent of the lots that may be created in the fully expanded and platted planned community.
6

7 (13) "Declaration" means any instrument, however denominated, that creates a planned
8 community, other than the plat.
9

10 (14) "Dedictory instrument" means the plat and declaration.
11

12 (15) "Development period" means the period of time stated in the declaration during
13 which the declarant may exercise development rights and special declarant rights, as distinguished
14 from the declarant control period. If no period is stated, the period is 7 years from the date the
15 declaration is recorded.
16

17 (16) "Development right" means a right or combination of rights related to the size and
18 composition of a planned community that are reserved by a declarant in the declaration to:
19

20 (A) add real property to a planned community;

21 (B) create lots, common areas, or limited common areas within a planned community;

22 (C) subdivide lots, combine lots, reconfigure lots, or convert lots into common areas;

23
24 or
25

26 (D) withdraw real property from a planned community.
27
28

29 (17) "Governing document" means a document that governs the creation, use, or
30 operation of the planned community, including the plat, declaration, bylaws, articles of
31 incorporation, and rules. As used in this chapter, "governing document" does not refer to
32 agreements negotiated between the association and individual owners, agreements between the
33 association and non-owners, and individual lot restrictions that are not part of a general development
34 plan for the planned community.
35

36 (18) "Homeowner" means a lot owner other than a declarant, an affiliate of a declarant,
37 a builder, or a person in the business of selling lots for his own account.
38

39 (19) "Institutional lender" means the Federal National Mortgage Association, the
40 Federal Home Loan Mortgage Corporation, the Government National Mortgage Corporation, the
41 Federal Housing Administration, or the U. S. Department of Veteran Affairs.
42

43 (20) "Limited common area" means a common area or a portion of a common area
44 allocated by a dedicatory instrument for the exclusive use of one or more but fewer than all of the

1 lots.

2
3 (21) "Lot" means a physical portion of the planned community designated for separate
4 ownership, however denominated, such as reserve, tract, parcel, or lot. As used in this chapter, the
5 term lot:

6
7 (A) is or will be improved with an attached or detached one-to-four family dwelling,
8 such as a townhouse, patio home, single-family house, duplex, triplex, or fourplex;

9
10 (B) may consist of a platted lot or an unplatted tract or parcel that may later be
11 subdivided into additional lots and/or common areas;

12
13 (C) does not refer to a common area, although platted and numbered as a lot;

14
15 (D) may include all improvements on a lot where the context indicates or requires; and

16
17 (E) is not a condominium unit.

18
19 (22) "Lot owner" or "owner" means a person who holds recorded fee simple title to a
20 lot, such as a declarant, a builder, or a homeowner, but does not include a person having an interest
21 in a lot solely as security for an obligation.

22
23 (23) "Master association" means an organization that is authorized to exercise some
24 or all of the powers of an association as described in Section 83.102[Powers of Owners Association]
25 on behalf of or for the benefit of one or more planned communities or condominiums, whether or
26 not it is also an association described in Section 83.101[Organization of Owners Association].

27
28 (24) "Master planned community" means a planned community within which one or
29 more planned communities or condominiums are located.

30
31 (25) "Planned community" means a residential real property development with lots
32 designated for separate ownership, with respect to which the owner is or may become obligated by
33 a dedicatory instrument imposed on the owner's lot to be a member of the owners association and
34 to pay a share of the association's common expenses, such as for maintenance, management,
35 administration, and regulation of all or part of the real property. A planned community may or may
36 not have a common area. Real property is not a planned community if the common area is directly
37 owned in undivided interests by the lot owners. A planned community is not a condominium, but
38 a condominium may be on a lot in a planned community.

39
40 (26) "Planned community information statement" means the disclosures prepared by
41 the declarant for purchasers of new home sales as provided by Subchapter E.

42
43 (27) "Plat" means a publicly recorded land survey plat that depicts all or a portion of
44 a planned community in at least two dimensions.

1 (28) "Publicly recorded" means recorded in the public, official, or real property records
2 of the county or counties in which the planned community is located.

3
4 (29) "Purchaser" means a prospective homeowner, as used in Subchapter E.

5
6 (30) "Resale package" means the disclosures, including a resale certificate, prepared
7 by the association for purchasers of resales as provided by Subchapter E.

8
9 (31) "Rules" means an instrument other than the declaration, bylaws, and articles of
10 incorporation of the association, however denominated, adopted by or for the benefit of the
11 association for the guidance and management of the planned community, such as use rules and
12 architectural standards.

13
14 (32) "Special declarant rights" means a right or combination of rights reserved in the
15 declaration by a declarant, for the benefit of a declarant or builders, to facilitate the development,
16 construction, and marketing of the planned community, such as rights to:

17
18 (A) complete improvements indicated on plats or required by governmental entities;

19
20 (B) exercise any development right;

21
22 (C) maintain sales offices, management offices, leasing offices, signs advertising the
23 planned community, and models;

24
25 (D) create and use easements through the common area for the purpose of making
26 improvements within the planned community or within real property which may be added to the
27 planned community;

28
29 (E) make the planned community subject to a master association;

30
31 (F) merge or consolidate a planned community with one or more other planned
32 communities; and

33
34 (G) appoint or remove any officer or director of the association during any period of
35 declarant control.

36
37 (b) Unless the context requires something different, a document or instrument referenced
38 in this chapter includes all components of the document, such as exhibits and schedules, and all
39 changes to the document, such as amendments, supplements, and restatements.

40
41 (c) Some provisions of this chapter are intended to apply to a planned community only in
42 the absence of an equally specific provision in a governing document. As used in this chapter,
43 "unless specifically provided otherwise" means that the provision of this chapter applies to a planned
44 community if:

1 (1) the referenced governing document does not address the same issue, right, or
2 reservation; or

3
4 (2) the referenced governing document contains a provision that addresses the same
5 issue, right, or reservation; and

6
7 (3) the provision in the governing document and the corresponding provision in this
8 chapter cannot both be given effect, in which case the provision in the governing document controls.

9
10 **Sec. 83.004. RULE AGAINST PERPETUITIES.** The rule against perpetuities does not
11 apply to the declaration, to the interests created in the declaration, or to the other governing
12 documents.

13
14 **Sec. 83.005. VARIATION BY AGREEMENT.** Except as expressly provided by this
15 chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this
16 chapter may not be waived. A person may not act under a power of attorney or use any other device
17 to evade the limitations or prohibitions of this chapter or the declaration.

18
19 **Sec. 83.006. PUBLIC RECORDING.** (a) The declaration and bylaws, and amendments
20 thereof, must be publicly recorded. Other governing documents may be publicly recorded.
21 Amendments of a recorded governing document must be publicly recorded.

22
23 (b) To be enforceable against any portion of the real property in the planned community, a
24 dedicatory instrument must be publicly recorded in the county in which the real property is located,
25 except that a lot or common area that is located in two or more counties is subject in its entirety to
26 a dedicatory instrument recorded in any of the counties.

27
28 (c) An instrument creating or enforcing a property right against less than the entire planned
29 community, such as a deed, plat, easement, or lien, must be recorded in every county in which the
30 subject property is located, and need not be recorded in counties that contain other portions of the
31 planned community but none of the subject property.

32
33 (d) While the planned community is being created, neither the declarant nor the association
34 is required to record governing documents in an additional county in which future phases of the
35 planned community may be located. Recording a governing document in a county in which none
36 of the planned community is located at time of recording may not be construed as an obligation by
37 a declarant to expand the planned community to that county.

38
39 **Sec. 83.007. MORE THAN ONE COUNTY.** (a) This section applies to a planned
40 community located in more than one county:

41
42 (b) The declaration may designate one of the counties in which the planned community is
43 located as the county of record in case of inconsistencies in governing documents affecting the
44 planned community as a whole.

1 (c) A reference to a governing document recorded in more than one county is not invalid
2 if it recites the recording data for the county of record or for any one county, but fails to recite the
3 recording data for the other county or counties in which the governing document is recorded.
4

5 (d) If a governing document is recorded in more than one county, a requirement of this
6 chapter to provide a copy of the governing document does not require a copy of each county's public
7 record.
8

9 (e) If this chapter or a governing document requires that a governing document be recorded
10 in more than one county, the failure to record the governing document in every county so required
11 does not alter the effectiveness of the governing document for each county in which the governing
12 document is recorded.
13

14 (f) The recording of a declaration in one county is constructive notice in that county of
15 governing documents that may be recorded in any other county named in the declaration as a county
16 in which the planned community is or will be located.
17

18 **Sec. 83.008. RIGHTS OF LOCAL GOVERNMENT.** (a) Except as provided by
19 Subsection (b), this chapter does not invalidate or modify any provision of a building code, zoning,
20 subdivision, or other real estate use law, ordinance, rule, or regulation governing the use of real
21 estate, and does not affect or diminish the rights of local governments to approve plats of
22 subdivisions and enforce building codes as may be authorized or required by law.
23

24 (b) A building code may not impose any requirement upon any structure in a planned
25 community which it would not impose upon a physically identical improvement in a different type
26 of development.
27

28 (c) In addition to other rights and remedies available to each local government in whose
29 jurisdiction the planned community is located, the governmental entity with responsibility for code
30 enforcement in the planned community has the right but not the duty to access common areas within
31 its jurisdiction:
32

33 (1) to enforce applicable ordinances of the governmental entity;
34

35 (2) to preserve or maintain public property; or
36

37 (3) to restore a common area to a standard acceptable to the governmental entity after
38 the governmental entity gives a written demand for maintenance and a reasonable period in which
39 to perform the maintenance to the association and to any other party named in the dedicatory
40 instrument as responsible for maintaining the common area.
41

42 **Sec. 83.009. CONDEMNATION.** (a) If a lot is acquired by condemnation, or if part of a
43 lot is acquired by condemnation leaving the owner with a remnant that may not practically or
44 lawfully be used for any purpose permitted by the declaration, the condemnation award must

1 compensate the owner for the entire lot. Upon acquisition, unless the decree specifically provides
2 otherwise, the condemned lot's entire allocated interests are automatically reallocated to the
3 remaining lots in proportion to the respective allocated interests of those lots before the taking, and
4 the association may prepare, execute, and have publicly recorded an amendment to the declaration
5 reflecting the reallocations.
6

7 (b) Except as provided by Subsection (a), if part of a lot is acquired by condemnation, the
8 award must compensate the owner for the reduction in value of the lot. Unless the allocated interests
9 are uniform for all lots in the planned community, the condemned lot's allocated interests may be
10 reduced in proportion to the reduction in the size of the lot, or on any other basis specified by the
11 declaration, and the portion of the allocated interests divested from the partially acquired lot may
12 be automatically reallocated to that lot and the remaining lots in proportion to the respective
13 allocated interests of those lots before the taking, with the partially acquired lot participating in the
14 reallocation on the basis of its reduced allocated interests.
15

16 (c) If part of the common area is acquired by condemnation, the award must be paid to the
17 association, as trustee for the lot owners, and to persons holding liens on the condemned property,
18 as their interests may appear. The association shall divide any portion of the award not used for
19 restoration or repair of the remaining common area among the lot owners in proportion to their
20 respective allocated interests before the taking, but the portion of the award attributable to the
21 acquisition of a limited common area must be equally divided among the owners of the lots to which
22 that limited common area was allocated at the time of acquisition, or in any manner the declaration
23 provides.
24

25 (d) The court decree shall be publicly recorded.
26

27 **Sec. 83.010. VENUE.** Venue for an action to enforce a right or obligation arising under a
28 governing document is in the county in which the planned community is located. If the planned
29 community is located in more than one county, unless the declaration specifically provides
30 otherwise:
31

32 (1) the venue for an action pertaining to the entire planned community is in any
33 county in which any part of the planned community is located; and
34

35 (2) the venue for an action pertaining to specific real property within the planned
36 community is in the county or any county in which the specific real property is located.
37

38 **Sec. 83.011. CONSTRUCTION AGAINST IMPLICIT REPEAL.** This chapter is intended
39 to be a unified coverage of its subject matter, and no part of this chapter may be construed to be
40 impliedly repealed by subsequent legislation if that construction can reasonably be avoided.
41

42 **Sec. 83.012. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This chapter
43 shall be applied and construed so as to effectuate its general purpose to make uniform the law with
44 respect to the subject of this chapter within this state and among states enacting it. Any amendment

1 of the chapter that purports to limit the applicability of this chapter or any of its provisions to less
2 than the entire state, such as by use of population or geographic brackets, is void.

3
4 [Sections 83.013 to 83.050 reserved for expansion]

5
6 **SUBCHAPTER B. CREATION, ALTERATION, AND**
7 **TERMINATION OF PLANNED COMMUNITIES**

8 [Sections 83.051-83.100]
9

10 **Sec. 83.051. CREATION OF PLANNED COMMUNITY.** (a) A planned community may
11 be created under this chapter only by publicly recording the plat and the declaration in the real
12 property records of each county in which any portion of the planned community is located.

13
14 (b) Before the declaration is recorded, constructive notice of a planned community is
15 provided by:

16
17 (1) a publicly recorded plat containing text or a notation that a portion of the real
18 property shown on the plat is to be owned, regulated, or maintained by an association of property
19 owners or collectively by all the property owners, however those concepts are expressed;

20
21 (2) a development agreement or ordinance approved by a local government that
22 requires creation of an association for the real property that will become the planned development;

23
24 (3) a zoning or platting ordinance adopted by the local government having jurisdiction
25 over a planned community that requires creation of an association of property owners to own,
26 regulate, or maintain portions of the planned community; or

27
28 (4) a publicly recorded notice of a declarant's intent to create a planned community
29 on some or all of the real property described in the notice.

30
31 (c) Any portion of a planned community that is conveyed before a declaration is recorded
32 shall become subject to the declaration at the time the declaration is recorded if:

33
34 (1) the owner has constructive or actual notice of the planned community at or prior
35 to the conveyance, and declarant publicly records a notice so stating; or

36
37 (2) the owner executes a written consent to the declaration and the consent is publicly
38 recorded.

39
40 (d) If a publicly recorded dedicatory instrument is not properly executed, that defect may
41 be cured by a subsequent execution and recording. After an execution defect is cured, the dedicatory
42 instrument is effective on the date it was first recorded.

43
44 **Sec. 83.052. PLATS.** (a) Nothing in this chapter may be construed to affect or modify the

1 state laws and local ordinances that authorize and regulate plats, such as Local Government Code
2 Chapters 212 and 232.

3
4 (b) A plat may show the intended location and dimensions of a contemplated improvement
5 to be constructed within the planned community, which may be labeled "MUST BE BUILT" or
6 "NEED NOT BE BUILT."

7
8 (c) If any improvement contemplated in a planned community is labeled "NEED NOT BE
9 BUILT" on a plat or is to be located within a portion of a planned community with respect to which
10 the declarant has reserved a development right, no promotional material that depicts the
11 improvement may be displayed or delivered to prospective purchasers unless the description or
12 depiction of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT."

13
14 (d) The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or
15 plans. The declarant is subject to liability for the prompt repair and restoration, to a condition
16 compatible with the remainder of the planned community, of any portion of the planned community
17 affected by the exercise of rights reserved pursuant to or created under this chapter.

18
19 **Sec. 83.053. CONTENTS OF DECLARATION.** The declaration for a planned community
20 must contain:

- 21
- 22 (1) the name of the planned community;
 - 23
 - 24 (2) a statement that the planned community is subject to this chapter;
 - 25
 - 26 (3) the name of the association;
 - 27
 - 28 (4) the name of the declarant;
 - 29
 - 30 (5) a legally sufficient description of the real property included in the planned
31 community;
 - 32
 - 33 (6) a description of any limited common area not designated on the plat as a limited
34 common area;
 - 35
 - 36 (7) a description of any common area not designated on the plat as a common area;
 - 37
 - 38 (8) a description of any real property, except real property subject to development
39 rights, that may be allocated subsequently as a limited common area, together with a statement that
40 the property may be so allocated;
 - 41
 - 42 (9) the allocation of interests and the formula or basis used to establish the allocations,
43 or a statement that the allocations are uniform for all lots;
 - 44

1 (10) any restriction on use, occupancy, or alienation of the lots, including any
2 restriction on leasing;

3
4 (11) the method of amending the declaration;

5
6 (12) the duration of the planned community, which is perpetual unless the declaration
7 states a shorter period of time;

8
9 (13) the duration of the declarant control period;

10
11 (14) the duration of the development period during which development rights and
12 special declarant rights may be exercised;

13
14 (15) a description of all development rights reserved by the declarant;

15
16 (16) a description of all special declarant rights reserved by the declarant;

17
18 (17) all matters required by this chapter to be stated in the declaration; and

19
20 (18) any other matter the declarant considers appropriate.
21

22 **Sec. 83.054. ALLOCATION OF VOTES AND COMMON EXPENSE LIABILITIES.**

23 (a) The declaration shall allocate to each lot a fraction or percentage of the common expenses of
24 the association and a portion of the votes in the association. The declaration may establish a uniform
25 allocation of common expenses and votes. If the basis for the common expense allocation or the
26 vote allocation is other than uniform for all lots, the declaration shall also state the formula or basis
27 used to establish each allocation.

28
29 (b) The declaration may provide:

30
31 (1) one or more types of assessment to which certain lots or types of lot are subject
32 because the common expense liabilities pertaining to those lots are different;

33
34 (2) that different allocations of votes must be made to the lots on particular matters
35 specified in the governing documents; and

36
37 (3) for class voting on specified issues affecting the class if necessary to protect valid
38 interests of the class.
39

40 **Sec. 83.055. LIMITED COMMON AREAS.** (a) A plat or a provision of the declaration
41 relating to the nature or use of a limited common area may be amended, provided the amendment
42 is approved by the association and by an owner of each lot to which the common area is limited, if
43 not more than 5 lots share use of the limited common area. If use of the limited common area is
44 shared by more than 5 lots, the amendment must be approved by owners of three-fourths of the

1 sharing lots.
2

3 (b) Unless specifically provided otherwise by the declaration and subject to board approval,
4 a limited common area may be reallocated by an amendment to the declaration or plat, executed by
5 the lot owners between or among whose lots the reallocation is made, and delivered to the board.
6 If the amendment is acceptable to the board, the association will deliver it to the county clerk to be
7 publicly recorded at the expense of the reallocating lot owners.
8

9 (c) A common area not previously allocated as a limited common area may not be allocated
10 except by amendment to the declaration or plat.
11

12 (d) This section does not apply to an easement, lease, or license on a common area.
13

14 **Sec. 83.056. EXERCISE OF DEVELOPMENT RIGHTS.** (a) The declaration may
15 reserve development rights for declarant without describing specific real property to which the rights
16 attach.
17

18 (b) If the right to add real property is reserved by declarant in the declaration, the declarant
19 may amend or supplement the declaration at any time during the development period to add real
20 property to the planned community. To add real property to a planned community, the declarant
21 must prepare, execute, and publicly record a declaration amendment or supplemental declaration that
22 describes the additional real property.
23

24 (c) Declarant may create lots, subdivide lots, combine lots, and reconfigure lots in the
25 planned community by any method permitted by state law and any applicable local ordinance.
26

27 (d) Real property in the planned community becomes a common area or limited common
28 area by any of the following methods:
29

30 (1) A notation on a recorded plat that designates the real property as common area or
31 limited common area;

32 (2) A provision in the declaration or in an amendment or supplement of the
33 declaration;

34 (3) A recorded deed, executed by the declarant, conveying real property to the
35 association for use as common area; or
36

37 (4) A recorded deed, executed by the declarant, conveying a lot to a builder or to a
38 homeowner and specifically describing a portion of the common area as a limited common area of
39 the lot being conveyed.
40

41 (e) Declarant may subdivide, combine, and reconfigure common areas by any method for
42 creating lots permitted by state law and any applicable local ordinance.
43
44

1 (f) The development right of withdrawal is the declarant's right to remove real property
2 from the effect of the declaration and the other governing documents by publicly recording an
3 instrument executed by declarant and by every owner of real property to be withdrawn, if any. If
4 the declaration provides that the planned community is subject to the development right of
5 withdrawal, the declarant may withdraw the entire planned community, or any portion thereof,
6 provided withdrawal occurs prior to the date on which a lot has been conveyed to a homeowner.
7 After a lot has been conveyed to a homeowner, the declarant may withdraw any of the following real
8 property, provided the withdrawal does not significantly disadvantage or isolate a remaining portion
9 of the planned community:

10
11 (1) any phase or section of the planned community if no lot in the phase or section has
12 been conveyed to a homeowner;

13
14 (2) any real property to be conveyed to a governmental entity, such as land that may
15 be used as public park or school site;

16
17 (3) any real property the use of which is inconsistent with the purposes of the planned
18 community;

19
20 (4) any real property for which withdrawal is deemed by the declarant to be in the best
21 interests of the association; and

22
23 (5) any real property for which declarant gives builders and homeowners specific
24 notice of intent to withdraw in the planned community information statement or in the declaration.
25

26 (g) Development rights and special declarant rights reserved in the declaration are applied
27 automatically to real property added to the planned community. This provision does not extend the
28 time limit on the exercise of development rights and special declarant rights imposed by the
29 declaration.
30

31 (h) If the exercise of a development right increases or decreases the number of lots, the
32 declaration amendment or supplement must reallocate the interests allocated to the lots unless the
33 allocations are uniform for all lots.
34

35 (i) Rights reserved by declarant in the declaration and other governing documents for the
36 duration of the development period and are not affected by termination of the declarant control
37 period, whether the termination is voluntary or by operation of law.
38

39 **Sec. 83.057. TRANSFER OF SPECIAL DECLARANT RIGHTS.** (a) This section applies
40 during the development period to real property owned by declarant, either within the planned
41 community or eligible for annexation to the planned community.
42

43 (b) Special declarant rights created or reserved under this chapter may not be transferred
44 except by a publicly recorded instrument evidencing the transfer. The instrument is not effective

1 unless executed by the transferee.
2

3 (c) On transfer of any special declarant right, a transferor is not relieved of an obligation
4 or liability arising before the transfer. A transferor is not liable for an act or omission or a breach
5 of an obligation arising from the exercise of a special declarant right by a successor declarant who
6 is not an affiliate of the transferor.
7

8 (d) In the event of an involuntary conveyance of declarant's real property, such as by tax
9 sale, judicial sale, nonjudicial sale by a trustee under a deed of trust, or sale under Bankruptcy Code
10 or receivership proceedings:

11 (1) the declarant ceases to have any special declarant rights;

12 (2) a person acquiring title to the real property being foreclosed or sold may succeed
13 to all or certain special declarant rights reserved in the declaration as evidenced by:

14 (A) a written instrument executed by the person and publicly recorded within 90 days
15 after the person acquires title;

16 (B) a court order or judgment; or

17 (C) a publicly recorded instrument conveying title; and

18 (3) the period of declarant control terminates unless the judgment or instrument
19 conveying title provides for transfer of declarant control to a named successor declarant.
20

21 (e) The liabilities and obligations of a person who succeeds to special declarant rights are
22 as follows:

23 (1) a successor to a special declarant right who is an affiliate of a declarant is subject
24 to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

25 (2) a successor to a special declarant right, other than a successor described by
26 Subdivision (3) or (4), who is not an affiliate of a declarant, is subject to all obligations and
27 liabilities imposed on the transferor by this chapter or by the declaration;

28 (3) a successor to only a right reserved by the declaration to maintain models, offices,
29 and signs, who is not an affiliate of a declarant, may not exercise any other special declarant right,
30 and is not subject to any liability or obligation as a declarant, except the obligation to provide a
31 planned community information statement and any liability arising as a result; and

32 (4) a successor to all special declarant rights held by the successor's transferor who
33 is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of
34 foreclosure or a judgment or instrument conveying title to lots under Subsection (d) may declare the
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1 person's intention in a recorded instrument to hold those rights solely for transfer to another person.
2 Thereafter, until all special declarant rights are transferred to a person acquiring title to any lot
3 owned by the successor, or until an instrument permitting exercise of all those rights is recorded, the
4 successor may not exercise any of those rights other than any right held by the successor's transferor
5 to control the board for the duration of the period of declarant control, and an attempt to exercise
6 those rights is void. So long as a successor declarant may not exercise special declarant rights under
7 this subsection, the successor is not subject to any liability or obligation as a declarant other than
8 liability for acts and omissions under Section 83.103(d)[Officers and Directors].
9

10 (f) This section does not subject a successor to a special declarant right to any claim against
11 or other obligation of a transferor declarant, other than claims and obligations arising under this
12 chapter or the declaration.
13

14 **Sec. 83.058. CONVEYANCE OF COMMON AREA.** (a) The character of real property
15 as a common area may be determined by a dedicatory instrument, regardless of who owns the
16 common area. Unless the declaration specifically provides otherwise, the association is responsible
17 for maintaining the common area, regardless of how title is held.
18

19 (b) If a dedicatory instrument designates specific real property as common area, the
20 conveyance of that common area to the association is a ministerial task that does not require
21 acceptance or approval by the association.
22

23 (c) If a common area is conveyed to the association before the initial proposed
24 improvements, if any, are completed, the responsibility of the declarant or builder for the completed
25 improvements is not affected by the conveyance.
26

27 (d) Before conveying a common area to an association, a declarant shall have the real
28 property constituting the common area released from the following liens:
29

30 (1) any lien the foreclosure of which would deprive an owner of a right of access to
31 the common area, a right of access to the owner's lot, or an easement of support of the owner's lot;
32 and
33

34 (2) any other lien on the common area, unless the planned community information
35 statement:
36

37 (A) describes each lien to which the common area will be subject when conveyed to
38 the association;
39

40 (B) describes the monetary obligation secured by each lien; and
41

42 (C) contains an association budget that identifies the monetary obligation secured by
43 the lien.
44

1 **Sec. 83.059. DECLARANT'S EASEMENT AND USE RIGHTS.** (a) During the
2 development period, a declarant may use lots owned or leased by the declarant for purposes related
3 to the development, construction, and marketing of the planned community, such as for sales,
4 leasing, construction, or management offices and models. If permitted by the declaration as a special
5 declarant right, the declarant may have the exclusive use of common area during the development
6 period for the same purposes. A declarant may modify the exteriors of lots or buildings used for
7 these purposes, and may maintain signs on the common area that advertise the lots in the planned
8 community for sale or lease.

9
10 (b) A declarant has an easement through the common area as may be reasonably necessary
11 for discharging the declarant's obligations or exercising special declarant rights whether arising
12 under this chapter or created by the declaration.

13
14 (c) During the development period, a declarant may share the easements and rights in this
15 section with one or more builders.

16
17 **Sec. 83.060. EASEMENT FOR ENCROACHMENTS.** To the extent that a lot or common
18 area encroaches on another lot or common area, a valid easement for the encroachment exists. The
19 easement does not relieve a lot owner of liability in case of the owner's wilful misconduct nor relieve
20 a declarant or any other person of liability for failure to adhere to the plats.

21
22 **Sec. 83.061. AMENDMENT OF GOVERNING DOCUMENT.** (a) Except to the extent
23 that a governing document affirmatively states that it is not amendable, a governing document that
24 fails to include provisions permitting its amendment may be amended pursuant to the amendment
25 procedures contained in this section.

26
27 (b) Except as provided by Subsection (c), a declaration may be amended by vote or
28 agreement of lot owners to which more than 50 percent of the votes in the association are allocated,
29 or any larger percentage up to 80 percent, stated in the declaration. A stated percentage that is larger
30 than 80 percent or a statement that an amendment be approved by the owners or by all owners is
31 deemed to require the vote or agreement of lot owners of which 80 percent of the votes in the
32 association are allocated.

33
34 (c) The amendment procedures of this section do not apply to amendments that may be
35 made by:

36
37 (1) a declarant to the extent permitted by a governing document or by this chapter;

38
39 (2) the board to the extent the amendment is necessary to reallocate the allocated
40 interests after condemnation;

41
42 (3) the board to the extent permitted by this chapter; or

43
44 (4) certain lot owners to the extent permitted by this chapter.

1 (d) Notwithstanding the voting method or methods specified in a governing document, if
2 amendment of the governing document requires the approval of owners, the board may invite
3 owners to vote by authorizing the use of electronic polling or voting, written ballot, petition, any
4 other method permitted by the governing document, or any combination of these methods, provided:
5

6 (1) the association gives an owner of each lot notice of the proposed amendment
7 requiring owner approval and a copy, the text, or the substance of the proposed amendment; and
8

9 (2) the association notifies an owner of each lot of the date by which the owner's
10 ballot, petition, or proxy must be received to be counted.
11

12 (e) An amendment is effective and binding on all lots in the planned community if:
13

14 (1) the amendment is properly approved by the requisite consents;
15

16 (2) notice of the approval is given to an owner of each lot in the planned community;
17 and
18

19 (3) the amendment is publicly recorded if it amends a governing document that is
20 publicly recorded.
21

22 (f) An action to challenge the validity of an amendment adopted by the association under
23 this section must be brought before the first anniversary of the date the amendment is publicly
24 recorded.
25

26 (g) Without a declarant's express consent, an amendment may not increase or otherwise
27 modify the obligations imposed by a governing document on a declarant, or reduce or otherwise
28 modify the rights granted by a governing document to a declarant, including special declarant rights.
29

30 (h) If a planned community consisting of multiple sections, each with its own dedicatory
31 instruments, is represented by a single association, the approval requirement may be satisfied by
32 obtaining the required percentage of votes on a section-by-section basis or of the total number of
33 properties in the association's jurisdiction, provided the amendment creates a uniform provision for
34 each section's dedicatory instrument.
35

36 (i) Without a vote of the lot owners or approval of the association, the board or declarant
37 may amend the governing documents in any manner necessary to meet the requirements of an
38 institutional lender to qualify the planned community for purchase money mortgage loans on lots.
39

40 **Sec. 83.062. JUDICIAL POWERS OVER GOVERNING DOCUMENTS.** (a) A court
41 may excuse compliance with a provision in a governing document if the court finds that the
42 provision unreasonably interferes with the association's ability to manage or maintain the planned
43 community, to administer the association, or to carry out any other function required by the
44 governing document, and that compliance is not necessary to protect the legitimate interests of the

1 members or lenders holding security interests in the planned community. Examples of provisions
2 that may be excused by judicial degree include:

3
4 (1) a provision limiting the amount of an assessment or an assessment increase that
5 can be levied against the lots;

6
7 (2) a provision requiring that an amendment to the governing document be approved
8 by lenders;

9
10 (3) a provision requiring that an amendment to the governing document be signed
11 and/or acknowledged by members;

12
13 (4) a provision requiring the approval of more than a simple majority of the voting
14 powers to adopt an amendment for the following limited purposes:

15
16 (A) to extend the term of the declaration;

17
18 (B) to make administrative changes reasonably necessary for management or
19 administration of the planned community; or

20
21 (C) to prohibit or materially restrict uses of lots that threaten to harm or unreasonably
22 interfere with the reasonable use and enjoyment of other property in the planned community.

23
24 (b) The association, acting through its board, may petition any court of competent
25 jurisdiction for any county in which any portion of the planned community is located for an order
26 amending a governing document if:

27
28 (1) the association has twice sent notice of the proposed amendment to owners of all
29 lots by any means allowed for notices to members of nonprofit corporations or unincorporated
30 associations;

31
32 (2) the association has conducted at least one meeting of the association at which the
33 proposed amendment was discussed;

34
35 (3) owners of lots to which more than 50 percent of the votes are allocated have voted
36 in favor of the proposed amendment; and

37
38 (4) the association has sent notice of its intent to petition the court to an owner of each
39 lot, to any declarant or person holding special declarant rights, and to any mortgagee of a lot which
40 is entitled to vote on the proposed amendment by the terms of the declaration.

41
42 (c) The court shall grant the petition after hearing if it finds that:

43
44 (1) the association has complied with all requirements of this section;

1 (2) the court did not receive written objections to the proposed amendment, prior to
2 the hearing, from owners of lots to which more than one third of the votes are allocated;
3

4 (3) no institutional lender is entitled to approve the proposed amendment, or if so
5 entitled has not filed a written objection to the proposed amendment with the court prior to the
6 hearing;
7

8 (4) the proposed amendment does not eliminate any right or privilege designated in
9 the declaration as belonging to a declarant or no declarant has filed a written objection to the
10 proposed amendment with the court prior to the hearing;
11

12 (5) the proposed amendment does not eliminate any right or privilege designated in
13 the declaration as belonging to a mortgagee of a lot entitled by the declaration to vote on the
14 proposed amendment, or the mortgagees on no more than one-third of the lots subject to publicly
15 recorded purchase money deeds of trust have filed written objections to the proposed amendment
16 with the court prior to the hearing; and
17

18 (6) the proposed amendment does not terminate the planned community or change
19 the allocated interests of the lot owners as specified in the declaration.
20

21 (d) If the court approves the proposed amendment, the court shall enter an order requiring
22 the association to publicly record the amendment together with a copy of the court's order. The
23 recorded amendment and order shall have the same legal effect as if the amendment were adopted
24 pursuant to the applicable requirement in the governing document.
25

26 **Sec. 83.063. DURATION AND EXTENSION OF DECLARATION TERM.** (a) The
27 duration of the declaration is perpetual, unless the declaration states a shorter period.
28

29 (b) If a declaration states a term of limited years and no provision for renewal or extension
30 of the declaration term, the term of the declaration may be extended or made perpetual, if:
31

32 (1) the board adopts a resolution recommending that the term be extended or made
33 perpetual;
34

35 (2) the proposal to extend the term of the declaration or make it perpetual is submitted
36 to the lot owners, as members of the association; and
37

38 (3) the proposal to extend the term of the declaration or make it perpetual is approved
39 by vote or agreement of owners of lots to which at least a majority of the votes in the association are
40 allocated.
41

42 (c) If a declaration states a term of limited years and requires the approval of owners to
43 extend or renew the term, regardless of the requirements in the declaration, the decision to extend
44 or renew may be approved by owners representing at least a majority of the votes in the association,

1 or by owners of at least a majority of the lots in the planned community.
2

3 (d) Except for the extension or renewal of the term of a declaration as authorized by this
4 section, no other provision of a declaration may be amended pursuant to this section.
5

6 (e) For any meeting of owners at which a vote is to be taken on a proposed extension or
7 renewal of the term of a declaration as provided in this section, the board shall provide written notice
8 to an owner of each lot in the time and manner specified by the governing documents for a special
9 meeting of the association.
10

11 (f) If the extension or renewal of declaration term is approved by the requisite owners, the
12 board shall prepare, execute, and publicly record an amendment of the declaration, reciting the
13 events of the approval. The amendment shall recite the names and addresses of the association's
14 officers and directors and shall describe the method or methods by which the owners expressed their
15 approvals. On the recording of the amendment, a planned community is subject to all provisions of
16 the declaration, as extended or renewed.
17

18 **Sec. 83.064. TERMINATION OF PLANNED COMMUNITY.** (a) Except for a taking
19 of all the lots by condemnation, a planned community may be terminated only by the agreement of
20 lot owners to which not less than 80 percent of the votes in the association are allocated. A
21 declaration may require the agreement of lienholders.
22

23 (b) An agreement of lot owners to terminate a planned community must be evidenced by
24 a termination agreement:
25

26 (1) signed and acknowledged by at least two officers of the association who certify
27 that the termination agreement was approved or ratified by the required number of lot owners; and
28

29 (2) listing the names and lots of the owners who approved or ratified the termination
30 agreement.
31

32 (c) To be effective, a termination agreement must be publicly recorded in each county in
33 which a portion of the planned community is located.
34

35 (d) If, pursuant to a termination agreement, the real property constituting the planned
36 community is to be sold following termination, the termination agreement must set forth the terms
37 of the sale. If the planned community has a common area or one or more lots owned by the
38 association, the termination agreement must require the association to convey the common area and
39 association-owned lots. A termination agreement may provide for the conveyance of the common
40 area and association-owned lots only, without requiring that the other lots be conveyed.
41

42 (e) Following termination of the planned community, the proceeds of a sale of common area
43 or association owned lots, together with any other assets of the association, are held by the
44 association as trustee for lienholders and creditors of the association, and for the lot owners and

1 holders of liens on the lots as their interests may appear. Any proceeds and assets remaining after
2 payment of the association's lienholders and creditors will be distributed to the lot owners and their
3 lienholders as their interests may appear. The distribution to a lot or its owner may be reduced by
4 the amount of delinquent assessment, if any, owed to the association by the lot or its owner at the
5 time of termination.

6
7 (f) Following termination of the planned community, creditors of the association holding
8 recorded liens on the common area or on lots owned by the association, which were recorded before
9 termination, may enforce those liens in the same manner as any lienholder.

10
11 (g) By agreement of the same percentage of lot owners that is required to terminate the
12 planned community, the lot owners may rescind a termination agreement and reinstate the
13 declaration in effect immediately before the election to terminate. To be effective, the rescission
14 agreement must be in writing, must identify the lot owners who desire to rescind, must be signed and
15 acknowledged by at least two officers who certify that the rescission was approved by the required
16 number of lot owners, and must be publicly recorded within one year after the termination.

17
18 (h) This section does not apply to mergers or consolidations of planned communities.

19
20 **Sec. 83.065. RIGHTS OF SECURED LENDERS.** (a) The declaration may require that
21 all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust
22 encumbering the lots approve specified actions of the lot owners or the association as a condition
23 to the effectiveness of those actions, but a requirement for approval may not operate to:

24
25 (1) prevent the lot owners or the board from controlling the general administrative
26 affairs of the association; or

27
28 (2) prevent the association from commencing, intervening in, or settling any litigation
29 or proceeding.

30
31 (b) If a governing document or this chapter requires the consent of mortgagees to an action
32 or amendment by the association, the consent of a mortgagee may be implied when a mortgagee fails
33 to submit a written response to the association no later than the 60th day, or any shorter period
34 specified in the governing document, after the association delivers a notice of the proposed action
35 or amendment and a request for approval to the mortgagee by certified mail return receipt requested.
36 The association may not use such implied consents to weaken or eliminate a provision of the
37 governing documents that expressly benefits beneficiaries, holders, servicers, insurers, or guarantors
38 of mortgages.

39
40 **Sec. 83.066. MERGER OR CONSOLIDATION OF PLANNED COMMUNITIES.** (a)
41 Any two or more planned communities of the same form of ownership, by agreement of the lot
42 owners as provided in subsection (b), may be merged or consolidated into a single planned
43 community. In the event of a merger or consolidation, unless the agreement specifically provides
44 otherwise, the resultant planned community is the legal successor, for all purposes, of all of the

1 preexisting planned communities, and the operations and activities of all associations of the
2 preexisting planned communities are merged or consolidated into a single association that holds all
3 powers, rights, obligations, assets, and liabilities of all preexisting associations.
4

5 (b) An agreement of two or more planned communities to merge or consolidate pursuant
6 to subsection (a) must be evidenced by a recorded agreement that has been executed by an officer
7 of each of the preexisting planned communities following approval by owners of lots to which are
8 allocated the percentage of votes in each planned community required to terminate that planned
9 community. In executing the agreement, each officer must certify that requisite approvals of owners
10 were obtained. The agreement is not effective until publicly recorded.
11

12 (c) Every merger or consolidation agreement must provide for the reallocation of the
13 allocated interests in the new association among the lots of the resultant planned community either
14 by stating the reallocations or the formulas upon which they are based.
15

16 (d) An action to challenge the validity of the merger or consolidation agreement must be
17 brought before the first anniversary of the date the agreement is publicly recorded.
18

19 **Sec. 83.067. CONSTRUCTION AND VALIDITY OF GOVERNING DOCUMENTS.**

20 (a) The provisions of a governing document shall be liberally construed to give effect to its purposes
21 and intent. Limitations and prohibitions on the free and unrestricted use of real property are
22 permitted and are not disfavored. All doubts regarding a provision of a governing document,
23 including restrictions on alienation or use of land or lots, shall be resolved in favor of the operation
24 of the association and its enforcement of the governing documents, regardless which party seeks
25 enforcement.
26

27 (b) The governing documents are severable and the provisions of each governing document
28 are severable.
29

30 (c) When used in a governing document, the term "a majority of owners" means owners of
31 a majority of the lots or owners representing a majority of the votes, whichever is appropriate for
32 the context, unless the term is defined in the governing document or the context requires a different
33 interpretation.
34

35 (d) When used in a governing document, a provision that states a "percentage of owners"
36 means owners of the stated percentage of the lots or owners representing the stated percentage of
37 the votes, whichever is appropriate for the context, unless the term is defined in the governing
38 document or the context requires a different interpretation.
39

40 (e) A governing document may not be construed or enforced:

41 (1) to require the use of a wood shingle roof on residential property;

42 (2) to prevent the use of a lot as a "family home" within the meaning of the
43
44

1 Community Homes for Disabled Persons Location Act (Article 1011n, Vernon's Texas Civil
2 Statutes); or

3
4 (3) to discourage or prohibit water conservation activities within fenced or screened
5 portions of a lot, including the implementation of water conservation procedures, the installation of
6 water conservation improvements, and the maintenance of turf and landscape material that promote
7 water conservation.

8
9 (f) Except to the extent a governing document is inconsistent with this chapter, if there is
10 a conflict between the provisions of two governing documents, the document with higher authority
11 prevails. The hierarchy of authority for governing documents is the plat (highest), declaration,
12 articles of incorporation, bylaws, and rules (lowest).

13
14 (g) Title to a lot and to the common area is not made unmarketable by a provision of an
15 unrecorded governing document or by failure of a governing document or the association to comply
16 with this chapter.

17
18 [Sections 83.068 to 83.100 reserved for expansion]

19
20 **SUBCHAPTER C. MANAGEMENT OF THE PLANNED COMMUNITY**

21 [Sections 83.101 to 83.150]

22
23 **Sec. 83.101. ORGANIZATION OF OWNERS ASSOCIATION.** An association of lot
24 owners must be organized no later than 90 days after the first lot in the planned community is
25 conveyed to a homeowner. The membership of the association at all times consists exclusively of
26 all the lot owners or, following termination of the planned community, all former lot owners entitled
27 to distribution of proceeds, or the owners' heirs, successors, or assigns. The association may be
28 organized as a profit or nonprofit organization. If the association is incorporated, loss of a corporate
29 charter or corporate name does not affect the existence or legitimacy of the association which
30 derives its authority from the governing documents and this chapter.

31
32 **Sec. 83.102. POWERS OF OWNERS ASSOCIATION.** (a) Subject to the rights of owners
33 under Subchapter D and unless specifically prohibited or limited by the governing documents, the
34 association, acting through its board, may:

35
36 (1) adopt and amend bylaws;

37
38 (2) adopt and amend budgets for revenues, expenditures, and reserves, and collect
39 assessments for common expenses from lot owners;

40
41 (3) hire and terminate employees, agents, and contractors;

42
43 (4) institute, defend, intervene in, settle, or compromise litigation or administrative
44 proceedings in its own name on behalf of itself or two or more lot owners on matters affecting the

1 planned community or the association;

2
3 (5) make contracts and incur liabilities relating to the operation of the planned
4 community and the association;

5
6 (6) regulate the use, maintenance, repair, replacement, modification, and appearance
7 of the common area and the association's real and personal property;

8
9 (7) adopt and amend rules regulating the common area and, if permitted by Section
10 83.162[Reasonable Rules], the lots;

11
12 (8) cause additional improvements to be made on and to the common area;

13
14 (9) acquire, hold, and convey in its own name any right, title, or interest to real or
15 personal property;

16
17 (10) encumber any right, title, or interest to real property, such as a common area, or
18 personal property, such as the association's reserves, provided:

19
20 (A) during the period of declarant control, the intent to encumber property of the
21 association must be disclosed in the planned community information statement; and

22
23 (B) the essential terms of the encumbrance, the name of the creditor, and a disclosure
24 of the amount or percentage of each lot's assessment that is applied to payment of the encumbrance
25 must be disclosed in the planned community information statement and any resale certificate issued
26 during the term of the encumbrance.

27
28 (11) grant easements, leases, licenses, and concessions through or over the common
29 area;

30
31 (12) impose and receive payments, fees, or charges for the use, rental, or operation of
32 the common area;

33
34 (13) adopt and amend rules regulating the collection of delinquent assessments and the
35 application of payments;

36
37 (14) suspend the voting privileges or common area use by an owner delinquent for
38 more than 30 days in the payment of assessments;

39
40 (15) impose interest or late charges for late payment of assessments, and returned check
41 charges;

42
43 (16) if notice and an opportunity to be heard are given, impose reasonable fines for
44 violations of the governing documents;

1 (17) impose reasonable charges for preparing, recording, or copying instruments,
2 including governing documents, resale certificates, statements of unpaid assessments, or lien or
3 violation related instruments;

4
5 (18) purchase insurance and fidelity bonds it considers appropriate or necessary;

6
7 (19) exercise any other powers conferred by the governing documents;

8
9 (20) exercise any other powers that may be exercised in this state by legal entities of
10 the same type as the association; and

11
12 (21) exercise any other powers necessary and proper for the government and operation
13 of the planned community and the association.

14
15 (b) Powers enumerated in this section are in addition to any other powers granted to an
16 association by this chapter, other law, or its governing documents.

17
18 **Sec. 83.103. OFFICERS AND DIRECTORS.** (a) Unless specifically provided otherwise
19 by a governing document or by law, all acts of the association must be by and through the officers
20 and directors, who shall exercise the ordinary and reasonable care and loyalty required of an officer
21 or director of a corporation organized under the laws of the this state, subject to the
22 business-judgment rule.

23
24 (b) If a governing document authorizes amendment by the board without consent of the
25 owners, the board may not, without a vote of the owners, amend provisions of a governing document
26 that determine the qualifications, powers and duties, or terms of office of board members. Unless
27 specifically provided otherwise by the governing documents, the board may fill a vacancy in its
28 membership for the unexpired portion of a term, but may not otherwise elect members of the board.

29
30 (c) Unless specifically provided otherwise by the governing documents, officers and
31 directors of the association are not required to be lot owners.

32
33 (d) An officer or director of the association is not liable to the association or any lot owner
34 for monetary damages for an act or omission occurring in the person's capacity as an officer or
35 director unless the conduct of the officer or director is not exercised:

36
37 (1) in good faith;

38
39 (2) with ordinary care; and

40
41 (3) in a manner the officer or director reasonably believes to be in the best interest of
42 the association; or

43
44 (4) according to any higher standard established by the governing documents.

1 (e) Subsection (d) does not diminish a limitation of liability provided to an officer or
2 director by other laws or by the governing documents.
3

4 (f) The officers and directors of the association are not personally liable to the association
5 or to any lot owner for their individual or collective decisions on whether to commence a civil action
6 against a declarant or a builder for potential or actual defects in design or construction of the planned
7 community.
8

9 (g) The declaration may provide for a period of declarant control of the association during
10 which a declarant, or persons designated by the declarant, may appoint and remove the officers and
11 directors. A period of declarant control terminates not later than the 120th day after conveyance to
12 homeowners of 75 percent of the lots that may be created, including on land subject to annexation.
13 If declarant voluntarily transfers control of the association to the homeowners before the latest
14 possible termination date, the declarant retains the right to veto all actions and decisions of the
15 association and of the board for the duration of the period that the declarant would otherwise control.
16 The declarant may waive its right to veto specified actions in a recorded instrument. Transfer of
17 special declarant rights does not terminate or extend the period of declarant control.
18

19 (h) On termination of a period of declarant control, the declarant shall call or instruct the
20 association to call a special meeting of the association for the purpose of electing directors to replace
21 declarant's appointments to the board and to fill vacancies on the board. At this meeting, an owner
22 of each lot, including the declarant if declarant owns a lot, is eligible to vote. The persons elected
23 shall take office on election.
24

25 **Sec. 83.104. TERMINATION OF CONTRACTS AND LEASES OF DECLARANT.**
26 During the first year the association is controlled by a board elected by homeowners, the association
27 may terminate any of the following contracts or leases entered into by the declarant controlled board,
28 without penalty, by giving the other party not less than 90 days' notice of the association's intent to
29 terminate the contract or lease, or any shorter notice period provided in the contract or lease:
30

31 (1) any contract or lease between the association and a declarant or an affiliate of a
32 declarant;
33

34 (2) any management contract, employment contract, or facilities lease;
35

36 (3) any contract, or lease that is not bona fide or was unconscionable to the owners
37 at the time entered into under the circumstances then prevailing.
38

39 **Sec. 83.105. BYLAWS.** (a) The administration and operation of the planned community and
40 association are governed by the bylaws, which must provide for:
41

42 (1) the qualifications and number of directors of the association, which may not be
43 less than three;
44

1 (2) the qualifications and titles of the officers of the association, which must include
2 a president, secretary, and treasurer;

3
4 (3) terms of office of directors;

5
6 (4) the manner of electing and removing a board member or officer and filling
7 vacancies;

8
9 (5) the powers, if any, that the board or an officer may delegate to other persons or
10 to a managing agent;

11
12 (6) the method of amending the bylaws; and

13
14 (7) the manner of notice of meetings of the association.
15

16 (b) Subject to the declaration, the bylaws may provide for other matters the association
17 considers desirable, necessary, or appropriate.
18

19 **Sec. 83.106. UPKEEP OF PLANNED COMMUNITY.** Unless specifically provided
20 otherwise by a governing document, the association is responsible for maintenance, repair, and
21 replacement of the common area, and each lot owner is responsible for maintenance, repair, and
22 replacement of the owner's lot.
23

24 **Sec. 83.107. QUORUMS.** (a) Unless specifically provided otherwise by a governing
25 document, a quorum is present throughout any meeting of the association if persons entitled to cast
26 at least 10 percent of the votes that may be cast for election of the board are present in person or by
27 proxy at the beginning of the meeting. If a governing document requires a quorum greater than 51
28 percent of the votes or lots, the requirement is met with 51 percent of the votes or lots.
29

30 (b) Unless a governing document specifies a larger percentage, a quorum is present at a
31 meeting of the board if persons entitled to cast at least 50 percent of the votes on the board are
32 present. A director may not participate by proxy unless a governing document specifically permits
33 proxy participation on the board.
34

35 **Sec. 83.108. VOTING AND PROXIES.** (a) If only one of the multiple owners of a lot
36 participates, in person or by proxy, in a vote, ballot, or petition of the association, or at a meeting
37 of the association, that person may cast the vote or votes allocated to that lot. If more than one of
38 the multiple owners participates, the vote or votes allocated to that lot may be cast only in
39 accordance with the owners' unanimous agreement unless the declaration specifically provides
40 otherwise. Multiple owners are in unanimous agreement if one of the multiple owners casts the
41 votes allocated to a lot and none of the other owners makes prompt protest to the person presiding
42 over the meeting.
43

44 (b) Votes allocated to a lot may be cast under a written proxy duly executed by a lot owner.

1 An association may not prohibit the use of proxies or require use of a specified form of proxy. A
2 lot owner may not revoke a proxy given under this section except by giving actual notice of
3 revocation to the person designated by the board for this purpose, the officer designated by the
4 bylaws, or the person presiding over a meeting of the association. A later dated proxy constitutes
5 notice of revocation of a prior dated proxy for the same purpose. A proxy is void if it is not dated
6 or if it purports to be revocable without notice. A proxy terminates eleven months after its date
7 unless it specifies a shorter or longer time. If a lot is owned by more than one person, each owner
8 of the lot may execute a proxy to vote or to register protest to the casting of votes by the other
9 owners of the lot.

10
11 (c) To the extent that the governing documents expressly provide, a vote or proxy may be
12 submitted by electronic transmission, provided that any such electronic transmission shall either set
13 forth or be submitted with information from which it can be determined that the electronic
14 transmission was authorized by the lot owner or the lot owner's proxy.

15
16 (d) Cumulative voting is not allowed.

17
18 **Sec. 83.109. ASSOCIATION RECORDS.** (a) The association shall keep:

19
20 (1) financial records sufficiently detailed to enable the association to prepare a resale
21 certificate;

22
23 (2) the name and address of each lot owner;

24
25 (3) minutes of meetings of the board and the association;

26
27 (4) copies of invoices for which the association seeks reimbursement from an owner;
28 and

29
30 (5) any other record the board deems appropriate.

31
32 (b) Each officer and director of the association, without qualification or condition, may
33 examine and photocopy the association's records which the association shall make reasonably
34 available at its registered office or its principal office in this state, by appointment at a time that is
35 acceptable to the association. If an officer or director is also an owner, the right of inspection
36 provided by this section is in addition to the owner's right to inspect records under Subchapter E of
37 this chapter.

38
39 (c) The association may establish a records management policy for the creation, use,
40 maintenance, retrieval, retention, preservation, and disposal of records for the purposes of reducing
41 the costs and improving the efficiency of recordkeeping. Records management includes the
42 protection of essential and permanent records, the economical and space-effective storage of inactive
43 records, and the management of records storage systems.

1 **Sec. 83.110. ASSOCIATION AS TRUSTEE.** A third person dealing with an association
2 in the association's capacity as a trustee may assume without inquiry the existence of trust powers
3 and their proper exercise by the association. A third person who lacks actual knowledge that an
4 association is exceeding or improperly exercising its powers is fully protected in dealing with the
5 association as if the association possessed and properly exercised the powers it purports to exercise.
6 A third person is not bound to ensure the proper application of trust assets paid or delivered to an
7 association in its capacity as trustee.
8

9 **Sec. 83.111. ASSOCIATION MANAGEMENT CERTIFICATE.** (a) No later than the
10 30th day after termination of the period of declarant control, an association shall publicly record a
11 notice to inform the public how to contact the association, stating:
12

13 (1) the name of the planned community and, if different, the name of each platted
14 addition, phase, or subdivision in the planned community;

15 (2) the location of the planned community by city and county;

16 (3) the name of the association;

17 (4) the recording data for the plat and the declaration;

18 (5) the mailing address and phone number of the association, or the association's
19 representative; and
20

21 (6) other information the association considers appropriate.
22

23 (b) The management certificate must be signed and acknowledged by an officer or
24 authorized agent of the association.
25

26 (c) An amendment or new management certificate must be publicly recorded when the
27 association has notice of a change in any information in a previously recorded management
28 certificate.
29

30 (d) The association and its officers, directors, employees, and agents are not subject to
31 liability to any person for delay or failure to record or to amend a management certificate, unless the
32 delay or failure is wilful or caused by gross negligence.
33

34 **Sec. 83.112. VIOLATIONS AND ENFORCEMENT.** (a) The board may use its discretion
35 in determining whether to pursue a violation of a governing document, provided the board does not
36 act in an arbitrary, capricious, or discriminatory manner. In evaluating a particular violation, the
37 board may determine that under the particular circumstances:
38

39 (1) the association's position is not sufficiently strong to justify taking any or further
40 action;
41
42
43
44

1 (2) the provision being enforced may be inconsistent with applicable law;

2
3 (3) the violation is not of such a material or visible nature as to be objectionable to
4 a reasonable person or to justify expending the association's resources; or

5
6 (4) that enforcement is not in the association's best interests, based on hardship,
7 expense, or other reasonable criteria.

8
9 (b) An exercise of discretionary authority by the board, the association, or a committee of
10 the association is presumed reasonable unless the court determines by a preponderance of the
11 evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory.

12
13 (c) The association may initiate, defend, or intervene in litigation or an administrative
14 proceeding affecting the enforcement of a provision of the governing documents or the protection,
15 preservation, or operation of the planned community.

16
17 **Sec. 83.113. ARCHITECTURAL STANDARDS.** (a) In this section:

18
19 (1) "Architectural standard" means a provision in a governing document that regulates
20 improvements in the planned community, such as appearance, design, size, style, condition, location,
21 and quality.

22
23 (2) "Architectural standards committee" means a person, persons, or body, however
24 denominated by a governing document, with power to approve or deny applications for proposed
25 construction or modification of improvements in the planned community.

26
27 (b) Unless specifically provided otherwise by a governing document, an architectural
28 standards committee may issue procedures and guidelines for enforcing architectural standards in
29 the planned community, and may modify the procedures and guidelines as the needs of the planned
30 community change.

31
32 (c) No action may be commenced or maintained to enforce an architectural standard or to
33 compel the removal of an improvement that violates an architectural standard unless the action is
34 commenced within four years after the date on which construction of the improvement is
35 substantially complete, or any shorter period provided in a governing document.

36
37 (d) If a governing document contains architectural standards or creates an architectural
38 standards committee, but does not provide for perpetuation of an architectural standards committee
39 by the association after the development period, the right to elect or appoint the architectural
40 standards committee automatically and permanently vests in the association on expiration of the
41 development period. The board may appoint and remove members of the architectural standards
42 committee, and may serve as the architectural standards committee, unless a governing document
43 specifically provides otherwise.

1 (e) This section does not create architectural standards or authority for an architectural
2 standards committee if a dedicatory instrument does not do so.
3

4 **Sec. 83.114. ASSESSMENTS FOR COMMON EXPENSES.** (a) Until the association
5 makes a common expense assessment, the declarant shall pay all common expenses. After an
6 assessment has been made by the association, assessments shall be levied at least annually and shall
7 be based on a budget adopted at least annually by the association.
8

9 (b) From the date of the initial assessment until declarant control terminates, the declarant
10 shall:

11 (1) pay all actual operational expenses of the association, less the operational expense
12 portion of the assessments paid by lot owners other than declarant; or
13

14 (2) pay the common expense liability allocated by the declaration to each lot owned
15 by the declarant.
16

17 (c) If the governing documents state an annual amount or rate of increase above which the
18 actual or maximum regular assessment cannot be levied without a vote of the lot owners, the board
19 may accumulate the stated amount or rate of increase for each year that the increase is not levied and
20 may levy the accumulated increases for a number of years, as if the increases had been levied
21 annually as permitted, provided the decision to accumulate increases is approved by owners
22 representing a majority of the votes present in person or by proxy at a meeting of the association.
23

24 (d) Except for assessments under subsections (f), (g), and (h), all common expenses must
25 be assessed against all the lots in accordance with the allocations set forth in the declaration.
26

27 (e) The declaration may provide that:

28 (1) different types, conditions, or locations of lots are subject to different rates of
29 assessment;
30

31 (2) any common expense associated with the maintenance, repair, or replacement of
32 a limited common area must be assessed against the lot or lots to which that limited common area
33 is assigned; and
34

35 (3) any common expense or portion thereof benefitting fewer than all of the lots must
36 be assessed exclusively against the lots benefitted.
37

38 (f) Assessments to pay a judgment against the association may be levied against only the
39 lots in the planned community at the time the judgment was entered, in proportion to their common
40 expense liabilities.
41

42 (g) If any portion of the common area is damaged as a result of negligence or willful
43
44

1 misconduct of an owner or occupant of a lot, or the guest or invitee of an owner or occupant, the
2 association may assess the cost of repairing the damage against the lot.

3
4 (h) In this subchapter, "individual assessment" means a charge levied by the association
5 against an individual lot or its owner, but not levied against all lots and owners. Individual
6 assessments include:

7
8 (1) interest, late charges, collection costs, and attorney's fees relating to delinquent
9 assessments;

10
11 (2) reimbursement for costs, such as attorney's fees, incurred in bringing an owner
12 or his lot into compliance with the governing documents;

13
14 (3) fines for violations of the governing documents;

15
16 (4) fees related to the sale or transfer of a lot, such as resale certificate fees;

17
18 (5) reimbursement for damage to or waste of common areas or association property
19 caused by willful or negligent acts; or

20
21 (6) pass through expenses for services to lots provided through the association and
22 which are equitably paid by each lot according to benefit received.

23
24 (i) If common expense liabilities are reallocated, common expense assessments and any
25 installment thereof not yet due must be recalculated in accordance with the reallocated common
26 expense liabilities.

27
28 (j) Each lot owner is personally liable for assessments made against the owner or the
29 owner's lot during the period of ownership of the lot. Co-owners of a lot are jointly and severally
30 liable. No lot owner may be exempt from liability for payment of an assessment by waiver of the
31 use or enjoyment of any common area or by abandonment of the lot against which the assessment
32 is made.

33
34 (k) A past due assessment or installment of an assessment may bear interest at a lawful rate
35 established by the association.

36
37 (l) An association may accumulate reserve funds for an unspecified period to provide for
38 any anticipated expense of the planned community.

39
40 **Sec. 83.115. ASSOCIATION'S LIEN FOR ASSESSMENTS.** (a) An assessment levied
41 by the association against a lot or lot owner is a personal obligation of the lot owner and is secured
42 by a continuing statutory lien on the lot and on rents and insurance proceeds received by the lot
43 owner and relating to the owner's lot.

1 (b) Unless a governing document specifically provides otherwise, the following types of
2 charges are enforceable as assessments under this section:

3
4 (1) regular assessments, however named, such as dues or maintenance fees, levied
5 against all lots in the planned community according to the allocations stated in the declaration;

6
7 (2) special assessments levied against all lots in the planned community according to
8 the allocations stated in the declaration;

9
10 (3) neighborhood assessments, if authorized by the declaration, levied against a
11 section of lots in the planned community for common expenses or services that are particular to the
12 section;

13
14 (4) individual assessments for common expenses that benefit fewer than all of the lots
15 and which are equitably paid by each lot according to benefit received; and

16
17 (5) any other fee or charge permitted or required of lot owners by this chapter or the
18 governing documents.

19
20 (c) The association's lien for assessments has priority over any other lien except:

21
22 (1) a lien for real property taxes and other governmental assessments or charges
23 against the lot;

24
25 (2) a lien or encumbrance recorded before the declaration is recorded; and

26
27 (3) a purchase money vendor's lien or a purchase money deed of trust lien recorded
28 before the date on which the assessment sought to be enforced becomes delinquent.

29
30 (d) The association's lien for assessments is created by recordation of the declaration, which
31 constitutes record notice and perfection of the lien. Unless the declaration specifically requires an
32 additional recording to perfect the lien or as a prerequisite to foreclosure, no other recordation of a
33 lien related instrument is required.

34
35 (e) If, on January 1, 2006, a lot is the homestead of the homeowner and is subject to a
36 declaration that does not contain a valid assessment lien against the lot, the lien provided by this
37 section does not attach against the lot until the lot ceases to be the homestead of the person owning
38 it on January 1, 2006.

39
40 (f) Foreclosure of a tax lien attaching against a lot under Chapter 32, Tax Code, does not
41 discharge the association's lien for assessments under this section or under a declaration for amounts
42 becoming due to the association after the date of foreclosure of the tax lien.

43
44 (g) If a lot owner defaults in the owner's monetary obligations to the association, the

1 association may notify other lienholders of the default and the association's intent to pursue its
2 collection remedies.

3
4 (h) If a lot owner is delinquent in the payment of assessments to an association, at the
5 request of the association a holder of a recorded lien against the lot may provide the association with
6 information about the lot owner's debt secured by the holder's lien against the lot and other relevant
7 information. At the request of a lienholder, the association may furnish the lienholder with
8 information about the planned community and the lot owner's obligations to the association.

9
10 (i) This section does not prohibit the association from taking a deed in lieu of foreclosure
11 or from filing suit to recover a money judgment for sums that may be secured by the lien.

12
13 **Sec. 83.116. FORECLOSURE OF ASSESSMENT LIEN.** (a) The association has the right
14 to foreclose its lien judicially.

15
16 (b) If the declaration creates a private power of sale for the association, the association has
17 the right to foreclose its lien by nonjudicial foreclosure. By written resolution, a board may appoint,
18 from time to time, an officer, director, manager, agent, trustee, or attorney of the association to
19 exercise the power of sale on behalf of the association. An association shall exercise its power of
20 sale pursuant to Section 51.002 and any additional requirements of the governing documents and
21 this chapter. This section does not create a private power of sale.

22
23 (c) Costs of foreclosure may be added to the amount owed by the owner to the association.

24
25 (d) The association may bid for and purchase the lot at foreclosure sale as a common
26 expense.

27
28 (e) The person conducting the sale for the association, or the association, shall prepare,
29 execute, and deliver a deed to the purchaser of the lot. The deed vests title in the purchaser,
30 including rights of use and possession of the lot, subject to the former owner's right of redemption.

31
32 (f) A court may not set aside a sale solely because the purchase price at the foreclosure sale
33 was insufficient to fully satisfy the former owner's debt to the association.

34
35 [Sections 83.117 to 83.150 reserved for expansion]

36
37 **SUBCHAPTER D. PROTECTION OF OWNERS**

38 [Sections 83.151 - 83.200]

39
40 **Sec. 83.151. RIGHTS GUARANTEED.** Each owner of a lot in a planned community in this
41 state has the rights, benefits, and privileges guaranteed by the constitution and laws of the United
42 States and this state. The rights specifically listed in this subchapter are in addition to all other rights
43 that lot owners have and are not exclusive or intended to limit the rights guaranteed by the
44 constitution and laws of the United States and this state.

1 **Sec. 83.152. ASSOCIATION DUTIES.** (a) The association's duties to its members include
2 the following responsibilities:

3
4 (1) to use ordinary care and prudence in managing the planned community and the
5 financial affairs under its control;

6
7 (2) to treat members fairly;

8
9 (3) to act reasonably when exercising discretionary powers; and

10
11 (4) to provide members reasonable access to information about the association, the
12 common properties, and the financial affairs of the association.

13
14 (b) A member who challenges an act or decision of the association has the burden of
15 proving a breach of duty by the association and that the breach has caused or threatens to cause
16 injury to the member individually or to the interests of the planned community.

17
18 **Sec. 83.153. REASONABLE RULES.** (a) To be enforceable against an owner or the
19 occupant of an owner's lot, a rule adopted by the board:

20
21 (1) may not regulate the use of lots by residents or the behavior of residents on their
22 lots except to the extent the use or behavior adversely affects the appearance or use and enjoyment
23 of a common area or another lot;

24
25 (2) must not require the owner to construct or substantially modify an improvement
26 on the owner's lot that is not required of other owners by the governing documents;

27
28 (3) must be reasonable and reasonably related to the purpose for which it was adopted;

29
30 (4) must be enforced in a manner that is not arbitrary or capricious;

31
32 (5) must be worded with sufficient clarity to inform an owner or occupant of the
33 action or omission required for compliance; and

34
35 (6) may not be contrary to other governing documents.

36
37 (b) The owner against whom the association seeks enforcement must have actual or
38 constructive notice of the rule, which must be:

39
40 (1) publicly recorded;

41
42 (2) when appropriate, posted in the planned community at a place that pertains to the
43 rule, such as pool safety rules posted at the common area pool;

1 (3) published periodically to owners in community-wide distributions;

2
3 (4) available to owners on a website maintained by or for the association; or

4
5 (5) a response to a temporary situation that threatens persons or property, in which
6 case the rule may be communicated in any manner that is likely to be effective.

7
8 **Sec. 83.154. PROTECTION FROM FINES.** (a) A fine levied by the association must be
9 reasonable in light of the nature, frequency, and effect of the violation. If the association allows
10 fines for a continuing violation to accumulate against a lot or an owner, the association must
11 establish a maximum amount for the violation, at which point the total fine will be capped.

12
13 (b) Before an owner is liable for a fine levied by the association for a violation of a
14 governing document, the association must give the owner a written notice stating that the owner may
15 avoid the proposed fine by curing the violation within a reasonable time period, for which a date
16 certain is specified, unless the owner was given notice and a reasonable opportunity to cure a similar
17 violation within the preceding 12 months.

18
19 (c) If a lot occupant other than the owner violates the governing documents, in addition to
20 exercising any of its powers against the owner, the association may levy fines directly against the
21 non-owner occupant in the same manner as provided for owners.

22
23 (d) The association must give notice of a levied fine to the owner not later than the 30th day
24 after the date of levy.

25
26 **Sec. 83.155. RIGHT TO NOTICE BEFORE ENFORCEMENT.** (a) An owner is entitled
27 to a written notice from the association before the association may take action against the owner for
28 a violation of the governing documents, subject to the exceptions in subsection (e). The association
29 must provide a notice of proposed action and a notice of determined action.

30
31 (b) The written notice of proposed action must:

32
33 (1) state the violation, the governing document provision being violated, and the
34 nature of the association's proposed action;

35
36 (2) inform the owner that the owner is entitled to a reasonable period to cure the
37 violation and avoid the proposed action unless the owner was given notice and a reasonable
38 opportunity to cure a similar violation within the preceding 12 months; and

39
40 (3) state that not later than the 30th day after the date of the notice, the owner may
41 request a hearing in accordance with Section 83.156 [Right to Hearing].

42
43 (c) The written notice of determined action must inform the owner of the board's decision
44 of enforcement action, and must be issued not later than the 30th day after the date of the board's

1 decision.

2
3 (d) The notices required by this section may be given by more than one method, provided
4 a notice is given by certified mail return receipt requested.

5
6 (e) The owner's right to notice and hearing provided by this section does not apply to, affect,
7 or toll:

8
9 (1) pending litigation between the association and the owner;

10
11 (2) collection of assessments;

12
13 (3) suspension of voting rights for nonpayment of assessments;

14
15 (4) suspension of common area use privileges for nonpayment of assessments;

16
17 (5) situations which in the reasonable opinion of the board are emergencies or which
18 are capable of being dangerous for persons or property; and

19
20 (6) removal of items or conditions that violate the governing documents and which
21 may be easily removed or abated by the association.

22
23 **Sec. 83.156. RIGHT TO HEARING.** (a) An owner is entitled to a hearing to discuss and
24 verify facts and resolve the matter in issue by submitting a written request to the association within
25 30 days after the date of the association's notice of violation, fine, action, or ruling addressed to an
26 owner.

27
28 (b) The hearing may be convened before the board or, at the discretion of the board, before
29 a committee appointed by the board. Appeal hearings will be conducted by the board.

30
31 (c) Within 20 days after the date the board receives the owner's written request for a
32 hearing, the board will notify the owner of the date, time, and place of the hearing. If the hearing is
33 to be held before a committee appointed by the board, the board's notice must state that the owner
34 has the right to appeal the committee's decision to the board.

35
36 (d) The association shall hold the hearing not later than the 30th day after the date the board
37 receives the owner's written request for a hearing, and not sooner than 10 days after the date of the
38 board's notice of hearing to the owner. The board or the owner may request a postponement and, if
39 requested, a postponement shall be granted for a period of not more than 10 days. Additional
40 postponements may be granted by agreement of the parties.

41
42 (e) The owner or the association may make an audio or video recording of the hearing, may
43 be represented by an attorney at the hearing, and may require that the hearing be closed to the
44 general membership.

1 (f) The right to a hearing provided by this section does not apply to, affect, or toll pending
2 litigation between the association and the owner.
3

4 **Sec. 83.157. RIGHT OF APPEAL.** If an owner or owner's lot is the subject of a decision
5 by a committee of the board or a committee of the association, the owner has the right to appeal the
6 decision to the board by submitting a written request for a hearing. The owner's request for a hearing
7 must be submitted within 30 days after the date on which the owner is informed of the decision from
8 which the owner appeals.
9

10 **Sec. 83.158. PAYMENT PLAN FOR DEBT.** If the owner of a lot against which
11 assessments are delinquent requests a payment plan, the association must inform the owner of the
12 association's standards, if any, for payment plans, and must accept a plan that meets the standards.
13

14 **Sec. 83.159. LONGER LIMITATIONS PERIOD.** (a) If the cost to the association of
15 collecting a debt substantially exceeds the base amount of the debt, the association may postpone
16 collection of the debt if postponement does not jeopardize the association's claim under a statute of
17 limitations.
18

19 (b) This subsection applies if the limitations period of the owner's debt to the association is
20 less than seven years. The owner of a lot against which an assessment has been delinquent for at
21 least three years but not more than four years may petition the board for an extension of real
22 property lien, pursuant to Section 16.036 Civil Practice and Remedies Code. The association may
23 execute and record one or more extension instruments against the lot if the board deems the
24 extension of the limitations period to be in the best interests of the owner and the association.
25

26 **Sec. 83.160. PROTECTION AGAINST NONJUDICIAL FORECLOSURE.** (a) This
27 subsection applies if the association has a private power of nonjudicial foreclosure under the
28 declaration.
29

30 (b) The association may not use the nonjudicial method to foreclose a lien for a debt
31 consisting solely of fines, late fees, interest, attorney's fees, or a combination of these.
32

33 (c) The association must give the owner at least three written notices of the owner's
34 delinquency and of the association's intent to foreclose before the association posts the lot for
35 nonjudicial foreclosure. At least 15 days must lapse between issuance of each of the three notices.
36 The first notice must be given not less than 90 days before posting. The second notice must be given
37 not less than 45 days before posting. The third notice must be given not less than 20 days before
38 posting. The notices may be issued by an officer, director, manager, or attorney of the association,
39 or by any combination of these.
40

41 (d) Each notice must:

42 (1) identify the lot;
43
44

1 (2) state the amount required to cure the debt;

2
3 (3) state that failure to cure the debt may result in foreclosure of the assessment lien,
4 loss of title to and possession of the lot, and liability for additional expenses, including attorney's
5 fees;

6
7 (4) inform the owner of the owner's right to make a payment plan with the association;

8
9 (5) identify the proper place for payment to cure the debt; and

10
11 (6) provide the name and phone number of the person or company with whom to
12 communicate about the debt.

13
14 (e) Each notice must be delivered by certified mail return receipt requested and by regular
15 first-class mail, and is presumed delivered when deposited in the United States mail, postage
16 prepaid, and addressed to the owner at the owner's last known address as shown on the association's
17 records. The affidavit of a person knowledgeable of the facts to the effect that delivery was
18 completed is prima facie evidence of delivery.

19
20 (f) At any time before a nonjudicial foreclosure sale, an owner may avoid foreclosure by
21 paying all amounts due the association, subject to a requirement, if any, by the association for
22 payment in cash or cash equivalent.

23
24 (g) An owner who disputes the validity or amount of the association's claim may tender full
25 payment under protest by submitting his challenge in writing to the association within 30 days after
26 tendering payment to avoid foreclosure and requesting a hearing before the board.

27
28 **Sec. 83.161. REPORT THAT FORECLOSURE OCCURRED.** (a) The notice
29 requirements of this section apply to the sale of an owner's lot by a sheriff or constable pursuant to
30 a judgment obtained by an association, as well as to a nonjudicial foreclosure under a private power
31 of sale.

32
33 (b) Within 30 days after the date of the foreclosure sale, the association shall give the former
34 owner a written report of the date of sale, sale price, name and address of the purchaser, and
35 informing the former owner of the owner's right of redemption under this chapter. If the foreclosure
36 sale deed contains the information required in the report, a copy of the executed deed may serve as
37 the report. Failure to provide this report does not void a deed to a purchaser.

38
39 (c) The association shall send the report by certified mail, return receipt requested, to the
40 former owner at the address shown on the association's records at the time of the foreclosure, and
41 may also send the report to any other address the association has reason to believe is effective for
42 the former owner.

43
44 (d) Not later than the 30th day after the date the association sends the report required by

1 Subsection (c), the association must publicly record an affidavit stating the date on which the report
2 was sent and containing a legal description of the lot. Any person is entitled to rely on the
3 information contained in the publicly recorded affidavit.
4

5 **Sec. 83.162. RIGHT TO REDEEM AFTER FORECLOSURE.** (a) The former owner of
6 a lot that is purchased at a judicial or nonjudicial foreclosure sale of the association's lien for
7 assessments may redeem the lot not later than the 180th day after the date the association delivers
8 to the former owner the report of the outcome of the foreclosure sale. During the redemption period,
9 the purchaser of the lot may not transfer ownership of the lot to any person other than the redeeming
10 former owner.

11
12 (b) If the association purchases the lot at its foreclosure sale, to redeem the lot from the
13 association the former owner must pay to the association:

14 (1) all amounts due the association at the time of the foreclosure sale;

15
16 (2) interest from the date of foreclosure sale to the date of redemption at the rate of
17 10 percent per annum;

18
19 (3) reasonable attorney's fees and costs incurred by the association in foreclosing the
20 lien and conveying the lot;

21
22 (4) any assessment levied against the lot by the association after the foreclosure sale;

23
24 (5) any reasonable cost incurred by the association as owner of the lot, such as
25 mortgage payments, property taxes, insurance payments, and costs for repairs, eviction, and leasing;
26 and
27

28
29 (6) redemption costs incurred by the association, such as reasonable attorney's fees.
30

31 (c) If a person other than the association purchases the lot at the foreclosure sale, to redeem
32 the lot from the purchaser the former owner must pay:

33 (1) to the purchaser:

34
35 (A) the amount paid by the purchaser to the association at the foreclosure sale, all
36 assessments levied against the lot by the association after the date of foreclosure sale and paid by
37 the purchaser, interest on the purchase price from the date of foreclosure sale to the date of
38 redemption at the rate of 10 percent per annum, and all reasonable costs incurred by the purchaser
39 as owner of the lot, such as mortgage payments, property taxes, insurance payments, and costs for
40 repairs, eviction, and leasing; and
41

42
43 (B) a redemption premium of 5 percent of the aggregate total of the foregoing; and
44

1 (2) to the association:

2
3 (A) the difference between the purchase price paid to the association by the purchaser
4 and all amounts due the association at the time of foreclosure sale;

5
6 (B) interest from the date of foreclosure sale to date of redemption at the rate of 10
7 percent per annum;

8
9 (C) reasonable attorney's fees and costs incurred by the association in foreclosing the
10 lien and conveying the lot;

11
12 (D) any assessment levied against the lot by the association after the foreclosure sale
13 and not paid by the purchaser; and

14
15 (E) redemption costs incurred by the association, such as reasonable attorney's fees.

16
17 (d) If the lot is owned by more than one person at time of foreclosure, redemption by any
18 co-owner is redemption by and for all co-owners. On redemption, the purchaser shall prepare a deed
19 to the former owner or owners as their names and interests appeared in the public record at time of
20 foreclosure. The deed will be executed by the association and by the purchaser. If the association
21 or the purchaser fails or refuses to provide and execute a deed, the redeeming former owner may
22 record an affidavit stating the former owner has exercised the right of redemption permitted by this
23 chapter.

24
25 (e) The exercise of the right of redemption is not effective against a subsequent purchaser
26 or lender for value without notice of the redemption after the redemption period expires unless the
27 redeeming former owner records the deed from the purchaser or an affidavit stating that the former
28 owner has exercised the right of redemption.

29
30 (f) A lot that has been redeemed remains subject to all liens and encumbrances on the lot
31 before foreclosure.

32
33 (g) Any lease entered into by the purchaser is subject to the former owner's right of
34 redemption provided by this section and the former owner's right to reoccupy the lot immediately
35 after the redemption.

36
37 (h) Any and all rents and other income collected from the lot by the purchaser from the date
38 of foreclosure sale to the date of redemption belong to the purchaser. If the association is the
39 purchaser, the rents and income shall be credited against the redemption amount.

40
41 (i) The purchaser or a person to whom the purchaser transfers the lot may presume
42 conclusively that the former owner did not redeem the lot unless the former owner publicly records:

43
44 (1) a deed from the purchaser to the former owner; or

1 (2) an affidavit containing a legal description of the lot and stating that the former
2 owner has redeemed the lot from the purchaser.
3

4 (j) If the purchaser is not the association, before executing a deed transferring the lot to the
5 redeeming former owner, the purchaser shall obtain an affidavit from the association or its
6 authorized agent stating that all amounts owed the association under Subsection (c) have been paid.
7 The association shall provide the purchaser with the affidavit not later than the 10th day after the
8 date the association receives all amounts owed to the association under Subsection (c). Failure of
9 a purchaser to comply with this subsection does not affect the validity of a redemption by a
10 redeeming former owner.
11

12 (k) If the former owner makes partial payment of amounts due the association at any time
13 before the redemption period expires but fails to pay all amounts necessary to redeem the lot before
14 the redemption period expires, the association shall refund any partial payments to the former owner
15 by mailing payment to the former owner's last known address as shown in the association's records
16 not later than the 30th day after the expiration date of the redemption period.
17

18 (l) If the former owner sends by certified mail, return receipt requested, a written request
19 to redeem the lot on or before the last day of the redemption period, the former owner's right of
20 redemption is extended until the 10th day after the date the purchaser provides written notice to the
21 former owner of the amounts that must be paid to redeem the lot.
22

23 (m) After the redemption period and any extended redemption period provided by
24 Subsection (l) expires, the purchaser shall record an affidavit in the real property records of the
25 county in which the property is located stating that the lot owner did not redeem the property during
26 the redemption period or any extended redemption period.
27

28 **Sec. 83.163. DISPUTED CHARGES.** An owner may dispute any charge levied against the
29 owner or the owner's lot by the association by notifying the association in writing within 30 days
30 after the owner is informed of the charge. An owner may pay disputed charges in full under protest,
31 and then request a hearing before the board in accordance with Section 83.156 [Right to Hearing].
32 A charge that is not disputed is presumed to be valid.
33

34 **Sec. 83.164. LIMITS ON ATTORNEY'S FEES.** (a) An owner is not liable to an attorney
35 for a fee or expense arising from this chapter or a governing document that is charged directly to the
36 owner or against the owner's lot by the attorney. A provision in a contract between the association
37 and an attorney that authorizes the attorney to seek payment directly from the owner is not
38 enforceable against the owner.
39

40 (b) An owner is not liable to the association for reimbursement of attorney's fees and other
41 costs incurred by the association to enforce the governing documents against the owner or the
42 owner's lot unless and only if:
43

44 (1) the owner receives prior written notice from the association that the owner will

1 be liable to the association for reimbursement of attorney's fees and enforcement costs if the
2 violation or assessment delinquency is not cured by the date certain stated in the notice;

3
4 (2) the attorney's fees and legal expenses are reasonable in amount, and are
5 appropriate, customary, or necessary for the circumstances; and

6
7 (3) if Section 83.155 [Right to Notice Before Enforcement] is applicable, the
8 attorney's fees and enforcement costs are incurred after the conclusion of the hearing under Section
9 83.156 [Right to Hearing] or, if the owner does not request a hearing under that section, after the
10 date by which the owner must request a hearing.

11
12 (c) An owner is entitled to receive from the association copies of invoices for attorney's fee
13 and enforcement costs for which the association seeks reimbursement from the owner within 30 days
14 after the association receives the owner's written request for such records.

15
16 (d) If the governing documents authorize nonjudicial foreclosure of the association's
17 assessment lien, the amount of attorney's fees that an association may include in a nonjudicial
18 foreclosure sale for an indebtedness covered by an association's assessment lien is limited to the
19 greater of:

20
21 (1) one-third of the amount of the actual costs and assessments, excluding attorney's
22 fees, plus interest and court costs; or

23
24 (2) \$2,500.

25
26 (e) This section does not apply to an award of attorney's fees or enforcement costs awarded
27 by a court, or other means provided by law to the association for the claim, recovery, or collection
28 of attorney's fees and enforcement costs in excess of the amounts prescribed by this section.

29
30 **Sec. 83.165. LIMITS ON THIRD-PARTY FEES.** (a) As used in this section, a third party
31 is an agent, manager, contractor, or assignee of the association. This section does not apply to
32 attorney's fees and may not be construed to regulate with whom the association or the owner may
33 contract for goods and services.

34
35 (b) An owner is not liable to a third party for a fee or expense arising from this chapter or
36 a governing document that is charged directly to the owner or against the owner's lot by the third
37 party. A provision in a contract between the association and a third party that authorizes the third
38 party to seek payment directly from the owner is not enforceable without the owner's execution of
39 the contract.

40
41 (c) An owner is not liable to the association for reimbursement of a fee or expense charged
42 by a third party to the association unless:

43
44 (1) the fee or expense is reasonable in amount;

- 1 (2) the fee or expense is appropriate, customary, or necessary for the circumstances;
- 2
- 3 (3) the association has paid or is scheduled to pay the fee or expense; and
- 4
- 5 (4) the owner has actual or constructive notice of the fee or expense.
- 6

7 (d) An owner's reimbursement to the association for third-party fees or expenses must be
8 paid to the association.

9
10 (e) Any money collected by a third party for the benefit or account of the association must
11 be deposited into an account in the name of the association that is maintained by the association or
12 its managing agent at a financial institution.

13
14 **Sec. 83.166. LIMITS ON SUSPENDED VOTE.** (a) The vote appurtenant to a lot may not
15 be suspended if, at the time of suspension, the number of lots with suspended voting rights exceeds
16 20 percent of the lots in the planned community. If suspensions exceed 20 percent, all lots are
17 eligible to vote.

18
19 (b) The board may decline to suspend voting rights even if a governing document appears
20 to require suspension under certain circumstances.

21
22 (c) An owner whose voting rights are suspended by the board has the following membership
23 and voting rights:

24
25 (1) to receive notices of association meetings, to attend association meetings, to
26 participate in discussion at association meetings, and to be counted towards a quorum at association
27 meetings;

28
29 (2) to serve as the appointed proxy of an owner entitled to vote;

30
31 (3) to be counted as a petitioner for a special meeting of the association;

32
33 (4) to attend open board meetings;

34
35 (5) to vote for the removal of a director and for the replacement of the removed
36 director; and

37
38 (6) to vote for the first election of directors following termination of the declarant
39 control period.

40
41 **Sec. 83.167. ASSOCIATION ACCOUNTS.** Any money paid by an owner to or for the
42 benefit of the association, including reimbursement of third party and attorneys fees, must be
43 deposited into an account in the name of the association that is maintained by the association or its
44 managing agent at a financial institution. The signatories on the account must be officers or

1 directors of the association, or the association manager, managing agent, or employees of the
2 managing agent.
3

4 **Sec. 83.168. LIMIT ON LIABILITY.** An owner is not liable, solely by reason of being a
5 lot owner, for injury or damage arising out of the condition or use of the common area. A cause of
6 action arising from an act or omission of the association acting through its board must be brought
7 against the association and not against the individual lot owners. The liability of an owner for a
8 judgment against the association must be in proportion to the common expense liability for the
9 owner's lot.
10

11 **Sec. 83.169. MEETING RIGHTS.** (a) An owner may attend meetings of the association
12 and meetings of the board, subject to the right of the board to adjourn the open meeting of the board
13 and reconvene in executive session as provided by Subsection (d).
14

15 (b) An owner may speak at meetings of the association, subject to reasonable limitations
16 on time which are established by the board.
17

18 (c) The association must convene at least one meeting of owners each year. The association
19 may also convene special meetings of owners from time to time. Meetings of the association are
20 called by the president or by a majority of the board. If so requested by owners to which at least 20
21 percent of the votes in the association are allocated, or any lower percentage specified in the
22 governing documents, the president, the secretary, or the board must call a meeting of the
23 association. If the president, the secretary, and the board fail or refuse to issue a notice for a meeting
24 of the association within 30 days after receiving a written request from the required percentage of
25 owners, any director or member of the association may issue notice for a meeting according to the
26 meeting notice requirements in the governing documents.
27

28 (d) To convene in executive session, the board must announce at the open board meeting
29 the general nature of any business to be considered in executive session. The board will maintain
30 minutes of the executive session by generally noting the matter discussed and reporting any decision
31 made in executive session. The limited purposes for which the board may convene in executive
32 session are:
33

34 (1) to consult with an attorney for the association;

35 (2) to discuss matters or consider actions involving personnel;

36 (3) to discuss proposed, threatened, or pending litigation, arbitration, or administrative
37 proceedings, if the board determines that closing the meeting is necessary to discuss strategy or
38 otherwise protect the position of the board or association or the privacy of a lot owner or occupant
39 of a lot;
40

41 (4) to discuss matters involving criminal activity arising within the planned
42 community if the board determines that closing the meeting is necessary to protect the privacy of
43
44

1 the victim or that opening the meeting would jeopardize investigation of the activity; or

2
3 (5) to discuss matters that are to remain confidential by written request of the affected
4 parties and agreement of the board.

5
6 (e) An owner who is the subject of a hearing in executive session may ask the board to keep
7 the content of the hearing confidential and to provide the owner with the board's decision in writing.
8 The request may be made by the owner's designated representative. Whether to honor the
9 confidentiality request is at the discretion of the board.

10
11 (f) Notices of meetings of the association and of the board must be given as provided by
12 the governing documents.

13
14 (g) On the written request of an owner, the association shall inform the owner of the time
15 and place of the next regular or special meeting of the board. If the association representative to
16 whom the request is made does not know the time and place of the meeting, the association promptly
17 shall obtain the information and disclose it to the owner or inform the owner where the information
18 may be obtained.

19
20 **Sec. 83.170. ACCESS TO ASSOCIATION RECORDS.** (a) An owner, on written request
21 stating the purpose of the inspection, is entitled to examine and copy, in person or by agent,
22 accountant, or attorney, by appointment, at the association's registered office or its principal office
23 in this state, at a reasonable time, and for a proper purpose, the books and records of the association
24 relevant to the stated purpose.

25
26 (b) The board may adopt a policy by which the association may limit the availability of, or
27 decline to make available, the following records for inspection and photocopying by an owner or
28 the owner's agent:

29
30 (1) any association file or record that is older than 4 years;

31
32 (2) personnel records of an association employee;

33
34 (3) records relating to the owner or resident of another lot;

35
36 (4) minutes of an executive session of the board;

37
38 (5) records pertaining to threatened or pending litigation; and

39
40 (6) records from the association's attorney marked "confidential," "privileged," or
41 bearing some similar notation.

42
43 (c) An attorney's files and records relating to the association are not records of the
44 association and are not subject to inspection by owners or production in a legal proceeding for

1 examination by owners.
2

3 (d) The association may require an owner to pay a reasonable fee for copies of documents
4 or records requested by the owner.
5

6 **Sec. 83.171. REMOVAL OF DIRECTORS.** (a) Notwithstanding any provision of the
7 governing documents to the contrary, the owners may remove any member of the board, other than
8 a member appointed by the declarant, with or without cause by any of the following methods:
9

10 (1) At any special or annual meeting of the association called for the purpose of
11 removing one or more directors, at which a quorum is present, any director may be removed by the
12 affirmative vote of the greater of:

13 (A) a majority of the votes present in person or by proxy, or
14

15 (B) owners representing at least 40 percent of the votes in the association.
16

17 (2) By petition or ballot, any director may be removed by the written consent of
18 owners representing at least a majority of votes in the association.
19

20 (b) A director whose removal has been proposed must be given an opportunity to be heard
21 at the meeting.
22

23 (c) If removal occurs at an association meeting, the owners may then and there elect a
24 director to fill the vacancy created.
25

26 (d) If removal occurs by petition or ballot, the vacancy should be filled in accordance with
27 the terms of the governing documents.
28

29 (e) No owner is ineligible to vote for the removal of a director or for the replacement of the
30 removed director.
31

32 (f) A director may be removed by the owners and may not be removed by the board, unless
33 the governing documents specifically permit removal of a director by the other directors for certain
34 breaches of conduct or breaches of the governing documents.
35

36 **Sec. 83.172. RIGHT OF ACCESS.** Unless the declaration specifically provides otherwise,
37 each owner has a perpetual easement over the streets in the planned community, as may be
38 reasonably required, for ingress to and egress from the owner's lot.
39

40 **Sec. 83.173. RIGHT OF ACTION.** Each owner, as well as the association and any person
41 adversely affected by a violation of this chapter or the governing documents has the right of action
42 against a person who fails or refuses to comply with the person's duties under this chapter, the
43 person's duties under the governing documents, or decisions made by the association. Each owner
44

1 also has the right of action against the association for its failure to comply with this chapter, the
2 governing documents, or its decisions. The court shall award to a prevailing party reasonable
3 attorney's fees in addition to the party's costs and claims.
4

5 **Sec. 83.174. WRITTEN COMMUNICATIONS.** (a) The owner or co-owners of a lot will
6 at all times maintain an effective mailing address on the records of the association. Within 30 days
7 after changing a mailing address, the owner will notify the association of the change, in writing and
8 in a manner that clearly informs the association that the owner is communicating a change of
9 address. If the association does not have an effective address for an owner, the mailing address of
10 the lot is effective as the mailing address of the owner.
11

12 (b) The association may not prohibit an owner from communicating directly with other
13 owners. At least once a year the association will publish a list of owners and each owner's mailing
14 address as shown on the records of the association. The association will make the owners mailing
15 list available to any owner on written request.
16

17 **Sec. 83.175. DISPUTE RESOLUTION.** (a) The association shall publish procedures for
18 attempting to resolve disputes by use of fair, reasonable, affordable, and expeditious processes. The
19 procedures established by the association must provide opportunities for notification, negotiation,
20 and one or more nonjudicial procedures that involves a neutral party in the dispute resolution, such
21 as mediation, neutral evaluation, conciliation, arbitration, and any other method permitted under
22 Chapter 154, Civil Practice and Remedies Code. The form of dispute resolution chosen by the
23 parties shall be nonbinding, unless all parties to the dispute consent to a binding form of dispute
24 resolution.
25

26 (b) All costs associated with the dispute resolution process, including the use of a neutral
27 party, shall be shared equally by the parties to the dispute. In the sharing of costs relating to dispute
28 resolution:
29

30 (1) If the lot owner is a party, multiple co-owners of the lot shall be considered one
31 party, unless the dispute is between or among the co-owners of the lot; and
32

33 (2) If the association is a party, all directors, officers, managers, employees, and
34 managing agents of the association shall be considered one party, unless the dispute is between or
35 among the members of that party.
36

37 (c) To support the use of alternate forms of dispute resolution for all or certain types of
38 litigation, a governing document may provide constraints on the initiation of litigation by the
39 association, such as provisions requiring the approval of a percentage of owners or the use of
40 alternate dispute resolution as a prerequisite to the inception of litigation by the association.
41

42 [83.175 to 83.200 reserved for expansion]
43

1 (11) that is a mineral interest, leasehold interest, or security interest; or

2
3 (12) that may be canceled by the purchaser at any time, for any reason, and without
4 penalty.

5
6 (c) Although a new home sale is not eligible for a resale package, the association may
7 provide a resale package to a purchaser if the seller fails or refuses to provide a planned community
8 information statement. The association may charge a reasonable fee for preparing and delivering
9 a resale package to a new home purchaser if the seller or purchaser, in writing, requests a resale
10 package from the association and agrees to pay for the cost of the resale package.

11
12 **Sec. 83.203. DELIVERY METHODS.** This subchapter requires that certain documents and
13 disclosures be delivered to purchasers. Any document or disclosure required by this subchapter may
14 be provided in electronic form, such as providing a computer diskette or an internet website address
15 from which the document or disclosure can be printed or downloaded, and may be delivered by any
16 customary method, including by electronic mail. If requested by a purchaser, the seller must provide
17 the required document or disclosure in a paper form. Purchaser may not be charged for the seller's
18 cost of production or delivery, regardless of the method used.

19
20 **Sec. 83.204. SELLER'S NOTICE OF MEMBERSHIP.** (a) A seller of a lot in a planned
21 community must give the purchaser a written notice that reads substantially similar to the following:

22
23 **NOTICE OF MEMBERSHIP IN PLANNED COMMUNITY**
24 **CONCERNING THE PROPERTY AT (street address) IN (name of planned community)**

25
26 As a purchaser of a lot or home in the planned community in which this property is located,
27 you are obligated to be a member of a property owners association. Documents governing the
28 establishment, maintenance, operation, use, and occupancy of lots in this planned community have
29 been or will be recorded in the real property records of the county in which this planned community
30 is located. Copies of the governing documents may be obtained from the county clerk.

31
32 You are obligated to pay assessments to the owners association, which has a lien against your
33 property. The amount of the assessments are subject to change. Your failure to pay the assessments
34 could result in the foreclosure of your property.

35
36 Most planned communities are subject to architectural standards. This means that construction
37 and/or modification of all improvements must be approved by the owners association or an
38 architectural control committee prior to beginning any construction or work on your property.

39
40 Date: _____ Signature of Purchaser _____

41
42 (b) If the lot is in a planned community within a master planned community, the seller must
43 give the purchaser a notice for each planned community in which the lot is located.

1 (c) The seller shall deliver the notice to the purchaser before the date the executory contract
2 binds the purchaser to purchase the property. The notice may be given separately, as part of the
3 contract during negotiations, or as part of any other disclosure the seller delivers to the purchaser,
4 such as the planned community information statement or the resale package.
5

6 **Sec. 83.205. NEW HOME SALES.** (a) For every new home sale, unless exempt under
7 Section 83.202(b), a seller shall furnish to a purchaser a planned community information statement
8 prepared by the declarant.
9

10 (b) A declarant may transfer responsibility for preparation of all or a part of the planned
11 community information statement to a successor declarant, to a builder, or to a person in the
12 business of selling real property who intends to offer lots in the planned community for the person's
13 own account, provided:
14

15 (1) on such transfer, the transferor shall provide the transferee with any information
16 necessary to enable the transferee to prepare a planned community information statement; and
17

18 (2) if a declarant did not prepare any part of a planned community information
19 statement that the declarant delivers, the declarant is not liable for any false or misleading statement
20 or any omission of material fact unless the declarant actually knew or should have known of the
21 statement or omission.
22

23 (c) The declarant or the transferee is liable for any false or misleading statement or for any
24 omission of material fact in the portion of the planned community information statement that the
25 person prepared.
26

27 (d) A builder who delivers to a purchaser a planned community information statement
28 prepared by the declarant or the declarant's transferee:
29

30 (1) is not liable for any false or misleading statement or any omission of material fact
31 in the planned community information statement unless the builder actually knew or should have
32 known of the statement or omission; and
33

34 (2) may deliver to a purchaser additional information about the planned community,
35 provided the information is executed by the builder or is otherwise identifiable as not having been
36 prepared by the declarant.
37

38 **Sec. 83.206. PLANNED COMMUNITY INFORMATION STATEMENT.** (a) A planned
39 community information statement is an assembly of materials that must contain:
40

41 (1) a copy of the plat or instructions on how the purchaser may obtain or view a copy
42 of the plat;
43

44 (2) a copy of the governing documents, other than the plat, which may be in draft

1 form;

2
3 (3) if the planned community is subject to a master association, a copy of the
4 governing documents of the master association or instructions on how the purchaser may obtain
5 them;

6
7 (4) copies of leases and contracts, other than loan documents, that are required by the
8 declarant to be signed by purchasers at closing;

9
10 (5) a proposed or actual budget for the association for a full fiscal year and the
11 projected regular common expense assessment for each lot or each type of lot;

12
13 (6) a certificate signed by the person who prepared the budget, with the following:

14
15 (A) a statement of the amount included, or a statement that no amount is included, in
16 the budget as a reserve;

17
18 (B) a statement of the budget's assumptions concerning the size of the planned
19 community, and occupancy and inflation factors;

20
21 (C) a statement about the person's relationship to the declarant.

22
23 (7) A planned community disclosure statement; and

24
25 (8) any other information the declarant desires to include.

26
27 (b) A planned community disclosure statement must contain or accurately disclose:

28
29 (1) the name and principal address of the declarant;

30
31 (2) the name, address, and telephone number of the declarant's representative or agent
32 who responds to inquiries from purchasers;

33
34 (3) the name of the planned community and, if different, the name of each platted
35 addition or subdivision in the planned community as of the date of the statement;

36
37 (4) a statement that the planned community is subject to this chapter;

38
39 (5) a statement that by purchasing a lot each purchaser acquires mandatory
40 membership in the association and an assessment obligation that is secured by a foreclosable
41 assessment lien against the lot;

42
43 (6) the amount and frequency of the regular assessment for each lot or type of lot,
44 unless that information is published elsewhere in the planned community information statement;

1 (7) if the planned community is subject to a master association, information about the
2 purchasers' assessment obligation to the master association or instructions on how the purchaser may
3 obtain the information;

4
5 (8) a disclosure of whether any portion of the planned community is located outside
6 the corporate boundaries of a municipality, in which case the notice regarding possible annexation
7 required by Section 5.011 Property Code may be included in the planned community information
8 statement;

9
10 (9) the name and type of each taxing or assessing jurisdiction in which the planned
11 community is located on the date of the statement;

12
13 (10) information about any proposed taxing or assessing entity that will have
14 jurisdiction over the planned community, of which declarant has actual knowledge on the date of
15 the statement, or a statement that none are known to declarant;

16
17 (11) a statement that the common area will be conveyed to the association free of
18 encumbrance except for accruing property taxes, or a general description of each lien, lease, or
19 encumbrance that may be expected to affect title to the common area after conveyance to the
20 association;

21
22 (12) current or expected fees or charges to be paid by owners for use of the common
23 area or other facilities related to the planned community;

24
25 (13) if the association maintains a portion of the lot or the improvements on the lot, a
26 general description of the types of maintenance provided by the association;

27
28 (14) if the association insures a significant portion of the improvements on a lot, a
29 general description of the insurance coverage provided for the benefit of lot owners;

30
31 (15) the name and contact information of the person or company that manages the
32 association, and a description of the relationship between that person or company and the declarant,
33 or a statement that the management has not been determined;

34
35 (16) a disclosure of any right or reservation declarant expects to retain in the planned
36 community after the development period; and

37
38 (17) any other information the declarant desires to include.

39
40 (c) A declarant shall amend the planned community information statement to reflect a
41 material and substantial change in its contents. An amendment or supplement of a dedicatory
42 instrument that adds real property to the planned community is not a material or substantial change.
43 A purchaser who has received a planned community information statement may request, in writing,
44 a copy of any amendment, which the declarant shall furnish at declarant's sole expense.

- 1 (4) a copy of the current operating budget of the association;
2
3 (5) a copy of the most recent balance sheet of the association;
4
5 (6) a copy of a current certificate of property and liability insurance maintained by
6 the association for the common area;
7
8 (7) a copy of a current certificate of property and liability insurance, if any,
9 maintained by the association covering the lots for the benefit of the owners; and
10
11 (8) a resale certificate that must have been prepared not earlier than three months
12 before the date it is delivered to the purchaser.
13
14 (b) The resale certificate must be signed and dated by an officer or authorized agent of the
15 association and must contain statements of:
16
17 (1) any right of first refusal or other restraint contained in the governing documents
18 that restricts the right to transfer a lot;
19
20 (2) any restraint contained in the governing documents that restricts or prohibits the
21 owner's right to use or occupy the lot or to lease the lot to another person;
22
23 (3) the frequency and amount of the periodic common expense assessment for the lot;
24
25 (4) the amount of any special assessment against the lot that becomes due and payable
26 on a future date;
27
28 (5) the total amount owing and unpaid by the owner for the lot;
29
30 (6) the amount and nature of any capital expenditure approved by the association for
31 the current and succeeding fiscal years;
32
33 (7) the amount of any reserve for capital expenditures;
34
35 (8) if the planned community is in a master planned community, information about
36 the purchasers' assessment obligation to the master association or instructions on how the purchaser
37 may obtain the information;
38
39 (9) any pending sale or encumbrance of common area;
40
41 (10) any unsatisfied judgments against the association;
42
43 (11) the style, case number, and nature of any pending suit against the association;
44

1 (12) a narrative description of any insurance coverage provided by the association for
2 the benefit of lot owners;

3
4 (13) whether the board has actual knowledge that any condition on the lot or the limited
5 common area assigned to the lot violates the governing documents, and a description of the
6 violation;

7
8 (14) whether the board has received actual notice from a governmental authority
9 concerning violations of health or building codes with respect to the common area, the lot, or the
10 limited common area assigned to the lot, which has not been cured, and a description or copy of such
11 notice;

12
13 (15) the remaining term of any leasehold estate affecting the planned community and
14 the provisions governing an extension or renewal of the lease;

15
16 (16) a disclosure of whether the association is subject to the period of declarant control;

17
18 (17) a disclosure of whether the development period is active, expired, or terminated.

19
20 (18) a disclosure of whether the lot is located outside the corporate boundaries of a
21 municipality, in which case the notice regarding possible annexation required by Section 5.011
22 Property Code may be included in the resale certificate;

23
24 (19) the nature and amount of each transfer-related fee payable to the association or
25 its managing agent; and

26
27 (20) the name, mailing address, and telephone number of the association's manager,
28 managing director, or managing agent.

29
30 (c) Unless specifically provided otherwise by a governing document, the association is not
31 required to inspect the lot before issuing a resale certificate.

32
33 (d) The association may charge a reasonable fee for preparation and delivery of the resale
34 certificate and the resale package, and for any update requested by the selling lot owner or the
35 selling owner's agent. The association may require prepayment in full before delivering the resale
36 certificate or package, and may charge a fee for expedited issuance.

37
38 (e) A request for a resale package, resale certificate, or update of resale certificate
39 information must be made by the selling lot owner or the selling owner's agent. The request must
40 be in writing and must provide the name and address for delivery of the requested items.

41
42 (f) A request from a party to the transaction or from a party's real estate agent, mortgage
43 company, insurer, or title insurance company for specific information about the lot or the planned
44 community, such as an assessment estoppel letter or an insurance certificate, is not a request for a

1 resale certificate or for a resale package.
2

3 (g) Not later than the 10th day after the date of receiving a written request, an association
4 shall furnish the requested resale certificate or resale package to the person specified in the request.
5 A selling lot owner or the owner's agent is not liable to the purchaser for omissions or erroneous
6 information provided by the association in the resale certificate.
7

8 (h) If an association does not furnish the requested resale certificate or resale package within
9 the 10 day period, the owner, owner's agent, or title insurance company or its agent acting on behalf
10 of the owner may submit a second request for the information.
11

12 (i) If the association does not furnish the requested resale certificate or resale package
13 before the seventh day after the second request, the lot owner may provide the purchaser with a
14 sworn affidavit signed by the lot owner in lieu of the certificate or package. An affidavit must state
15 that the lot owner requested information from the association, as required by this section, and that
16 the association did not timely provide a resale certificate or resale package. If a lot owner has
17 furnished an affidavit to a purchaser, the lot owner and the purchaser may agree in writing to waive
18 the requirement to furnish a resale certificate or resale package. The association is not liable to a
19 selling lot owner for delay or failure to furnish a resale certificate or resale package, and an officer
20 or agent of the association is not liable for a delay or failure to furnish a certificate or package unless
21 the officer or agent willfully refuses to furnish the resale certificate or resale package or is grossly
22 negligent in not furnishing the resale certificate or resale package. Failure to provide a resale
23 certificate or resale package does not void a deed to a purchaser.
24

25 (j) A resale certificate does not affect an association's right to recover debts or claims that
26 arise or become due after the date the certificate is prepared, or an association's lien on a lot securing
27 payment of future assessments.
28

29 (k) A selling lot owner, a selling owner's agent, and a purchaser's agent are not liable to a
30 purchaser for the failure or delay of the association to provide the resale certificate or resale package
31 in a timely manner.
32

33 (l) A purchaser, lender, or title insurer who relies on an executed resale certificate or on an
34 assessment estoppel letter issued by the association is not liable for any debt or claim that is not
35 disclosed in the certificate or estoppel letter.
36

37 [Sections 83.209 to 83.250 reserved for expansion]
38

39 **SUBCHAPTER F. APPLICABILITY**

40 [Sections 83.251 to 83.300]
41

42 **Sec. 83.251. APPLICABILITY TO NEW PLANNED COMMUNITIES.** Except as
43 provided in Section 83.254[Exclusions for Certain Planned Communities], this chapter applies to
44 all planned communities in this state for which the declaration is recorded on or after January 1,

1 2006. Amendments to this chapter apply to all planned communities created after the effective date
2 of this chapter or subjected to this chapter, regardless of when the amendment is adopted.
3

4 **Sec. 83.252. APPLICABILITY TO ESTABLISHED PLANNED COMMUNITIES.** (a)
5 A planned community for which the declaration was recorded before January 1, 2006, is subject to
6 this chapter with respect to events and circumstances occurring on or after January 1, 2006, except
7 for the sections identified in subsection (b), and unless the planned community is not otherwise
8 eligible for the exclusions of Section 83.254[Exclusions for Certain Planned Communities]:
9

10 (b) The following sections do not apply to a planned community for which the declaration
11 was recorded before January 1, 2006:
12

- 13 Sec. 83.051. CREATION OF PLANNED COMMUNITY
- 14 Sec. 83.052. PLATS
- 15 Sec. 83.053. CONTENTS OF DECLARATION
- 16 Sec. 83.054. ALLOCATION OF VOTES AND COMMON EXPENSE LIABILITIES
- 17 Sec. 83.055. LIMITED COMMON AREAS
- 18 Sec. 83.056. EXERCISE OF DEVELOPMENT RIGHTS
- 19 Sec. 83.057. TRANSFER OF SPECIAL DECLARANT RIGHTS
- 20 Sec. 83.058. CONVEYANCE OF COMMON AREA
- 21 Sec. 83.059. DECLARANT'S EASEMENT AND USE RIGHTS
- 22 Sec. 83.101. ORGANIZATION OF OWNERS ASSOCIATION
- 23 Sec. 83.104. TERMINATION OF CONTRACTS AND LEASES OF DECLARANT
- 24 Sec. 83.105. BYLAWS
- 25 Sec. 83.205. NEW HOME SALES
- 26 Sec. 83.206. PLANNED COMMUNITY INFORMATION STATEMENT
- 27 Subsection (b) of Sec. 83.207. PURCHASER'S RIGHT TO CANCEL

28
29 (c) The applicable sections of this chapter do not invalidate existing provisions of the
30 governing documents of a planned community for which the declaration was recorded before
31 January 1, 2006.
32

33 (d) References to "a planned community subject to this chapter" include planned
34 communities created before January 1, 2006, although they are not subject to the limited number of
35 sections identified in subsection (b).
36

37 (e) The applicable sections of this chapter shall be applied and construed to establish a clear,
38 comprehensive, and uniform framework for the operation and management of planned communities
39 in this state and to supplement the provisions of any governing document in existence on January
40 1, 2006. In the event of specific conflicts between the applicable provisions of this chapter and
41 express requirements or restrictions in a governing document in existence on January 1, 2006, the
42 requirements or restrictions in the governing document shall control, but only to the extent necessary
43 to avoid invalidation of the specific requirement or restriction in the governing document.
44

1 **Sec. 83.253. EXISTING PLANNED DEVELOPMENT BECOMES PLANNED**
2 **COMMUNITY.** (a) This section applies to a planned development or subdivision containing one
3 or more areas or improvements that are intended to benefit or to be maintained by the collective
4 owners in the planned development or subdivision, but which is not subject to a recorded declaration
5 creating a mandatory owners association and assessment obligation for owners of all lots in the
6 planned development or subdivision. Such areas or improvements include subdivision entry
7 features, screening walls, landscaping on street islands or public rights of way, pedestrian or
8 vehicular gated entrances to the subdivision, drainage easements and water retention areas, and open
9 spaces.

10
11 (b) A planned development or subdivision may become a planned community subject to this
12 chapter by recording a declaration signed by at least 3 owners of lots in the planned development
13 or subdivision, none of whom co-own the same lot, each certifying that:

14
15 (1) An owner of each lot in the planned development or subdivision was given notice
16 of a special meeting to discuss approval of the declaration and the decision to become a planned
17 community subject to this chapter;

18
19 (2) A copy of the proposed declaration was given to an owner of each lot with the
20 notice of special meeting;

21
22 (3) All owners were given an opportunity to vote on the decision, and a description
23 of the method or combination of methods by which owners communicated their approval;

24
25 (4) The decision was approved by owners of at least 75 percent of the lots in the
26 planned development or subdivision, voting in person or by proxy, as evidenced by a list of the lots
27 and the names of their owners who approved the decision; and

28
29 (5) Owners of all lots have been notified in writing about the outcome of the vote.

30
31 (c) The declaration becomes effective as to all lots in the planned development or
32 subdivision in the following stages:

33
34 (1) The lot of an owner who approved the declaration becomes subject to the
35 declaration on the 120th day after the date on which the declaration is recorded; and

36
37 (2) The lot of an owner who did not vote or who voted against the declaration
38 becomes subject to the declaration on the date the non-approving owner ceases to own the lot.

39
40 (d) The owners who sign the declaration must give a copy of the executed declaration, with
41 evidence of recording, to an owner of every lot within 90 days after the declaration is recorded. The
42 failure to provide or receive a copy of the declaration does not void the declaration or its
43 effectiveness as to any lot.
44

1 **Sec. 83.254. EXCLUSIONS FOR CERTAIN PLANNED COMMUNITIES.** Unless the
2 declaration specifically provides that this chapter is applicable, a planned community is not subject
3 to this chapter if:

4
5 (1) all the lots in the planned community are restricted to nonresidential use;

6
7 (2) the planned community is mixed use, containing residential and nonresidential
8 lots, unless the lots that may be used for residential purposes would comprise a planned community
9 in the absence of the nonresidential lots;

10
11 (3) the planned community contains 12 or fewer lots and is not subject to the
12 development rights of adding real property to the planned community or creating additional lots
13 within the planned community; or

14
15 (4) the planned community is a master planned community in which all of the
16 residential lots are in planned communities.

17
18 **Sec. 83.255. STATUTES NOT APPLICABLE.** The provisions of the following parts of
19 the Property Code do not apply to a planned community that is subject to this chapter:

20
21 (1) Section 5.012 - Notice of Obligations Related to Membership in Property Owners'
22 Association;

23
24 (2) Section 5.025 - Wood Shingle Roof;

25
26 (3) Chapter 201 - Restrictive Covenants Applicable to Certain Subdivisions;

27
28 (4) Chapter 202 - Construction and Enforcement of Restrictive Covenants;

29
30 (5) Chapter 204 - Powers of Property Owners' Association Relating to Restrictive
31 Covenants in Certain Subdivisions;

32
33 (6) Chapter 205 - Restrictive Covenants Applicable to Revised Subdivisions in
34 Certain Counties;

35
36 (7) Chapter 206 - Extension of Restrictions Imposing Regular Assessments in Certain
37 Subdivisions;

38
39 (8) Chapter 207 - Disclosure of Information by Property Owners' Associations; and

40
41 (9) Chapter 209 - Texas Residential Property Owners Protection Act.

42
43 [Sections 83.256 to 83.300 reserved for expansion]

1 **SECTION 4. ALTERNATE DISPUTE RESOLUTION.** Section 154.002 Civil Practice
2 and Remedies Code is amended to read as follows:

3
4 Sec. 154.002. Policy. It is the policy of this state to encourage the peaceable resolution of
5 disputes through voluntary settlement procedures, with special consideration given to:

6
7 (1) disputes involving the parent-child relationship, including the mediation of issues
8 involving conservatorship, possession, and support of children[;];

9
10 (2) disputes between a property owners association and its members; and

11
12 (3) the early settlement of pending litigation[~~through voluntary settlement~~
13 ~~procedures~~].

14
15 **SECTION 5. LIMITATIONS.** Subchapter A of Chapter 16 Civil Practice and Remedies
16 Code is amended to read as follows:

17
18 Sec. 16.0048. Ten-Year Limitations Period. The property owners association of a planned
19 community that is subject to Chapter 83, Property Code must bring suit on a debt of an owner not
20 later than ten years after the day the cause of action accrues.

21
22 **SECTION 6. EFFECTIVE DATE.** This Act takes effect January 1, 2006.