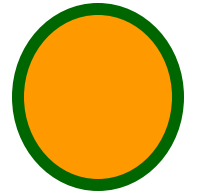
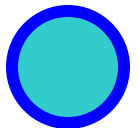
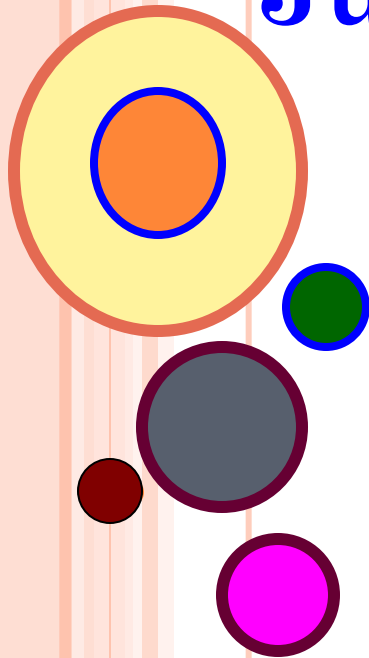


TRUSTEE WORKSHOP



**CLEAR LAKE CITY COMMUNITY ASSOCIATION
OPPORTUNITIES FOR SUCCESSFUL BOARDS IN
COMMUNITY LEADERSHIP**

June 22, 2013



This 2013 Trustee Workshop Presentation has been prepared in reference to Bylaw 3.3. I took an Oath of Office in 2012 to follow Policy 401-14 Code of Conduct "Comply with the Law - Comply with all applicable laws and legal requirements." The OATH, is not defined anywhere within the CLCCA Resolutions, but was administered by the President, during a legally constituted meeting of the Board of Trustees, has all the effect as a legally binding statement "[bound in conscience to perform an act faithfully and truthfully](#)" * . **I am not an Attorney nor have any legal background.** However, I have performed many hours of research for this presentation using Texas Laws & AG Legal Opinions as a guide.

This presentation includes specific references to Texas Articles of Law, House / Senate Bills signed by Texas Governors, and Attorney General's Legal Opinions which appear to be applicable to the CLCCA. This presentation also includes but not limited to: Texas Open Meetings Act (TOMA), Texas Business Organization Code (BOC), Open Meetings (OM) 2012 Handbook which explains and refers exclusively to the TOMA, Texas Property Codes (TPC) and internal CLCCA Governing Documents and Board approved Resolutions, Articles of Incorporation, Certificate of Amendment, Bylaws & Policies.

Hyperlinks are included in certain places throughout this presentation. The last page of this presentation has Hyperlinks to Texas Governmental Documents & Index for Texas Attorney General Legal Opinions, Robert Rules of Order On-Line that is referenced in Bylaw 6.8 and the 1968 Black's Law Dictionary, Forth Edition.

Fred Swerdlin, Meadowgreen Trustee

* **Black's Law Dictionary**

HISTORY – OATH’S OF OFFICE (RESOLUTION)

06/09/2009: All nine of nine Trustees stood and recited - As a member of this Board of Trustees, I am committed to upholding all Texas laws and all CLCCA documents governing the operations of the Board of Trustees, and the CLCCA; providing for maintenance, preservation and architectural control of properties within the boundaries of the Clear Lake City Community Association’s jurisdiction, and promoting the health, recreation and wellbeing of the residents and of the community.

06/19/2012: Ten of eleven Trustees present stood and the President recited to all - Do you and each of you swear that during your term as a trustee you will abide by the bylaws, regulations, and the Code of Conduct?” All Present “I DO”

07/17/2012 - Present: President read to Trustees who had not taken the OATH, but stood in front of the President – As an appointed or elected member of this Board of Trustees, I am committed to upholding all Texas laws and all CLCCA documents governing the operations and administration of the Board of Trustees, and the CLCCA, as well as assuming the fiduciary responsibilities required to govern the CLCCA; providing for maintenance, preservation and architectural control of properties within the boundaries of the CLCCA jurisdiction, and promoting the health, recreation and wellbeing of the residents and of the community.

Bylaw 6.7: “A majority of the duly elected or appointed and qualified Trustees shall constitute a quorum for the transaction of business at any meeting and an affirmative vote of the majority of the Trustees thus present, provided at least a majority of the duly elected or appointed and qualified Trustees shall vote affirmatively, shall be necessary for the transaction of ordinary business of the corporation, except as otherwise provided by the articles of Incorporation and these Bylaws.”

WHAT CONSTITUTES A QUALIFIED TRUSTEE?

BYLAW ARTICLE X: INDEMNIFICATION First Receipt 09/14/1999

The Association shall indemnify every Trustee or officer, his heirs, executors and administrators, against all loss, cost and expense, including attorney's fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Trustee or officer of the Association, **except in matters of gross negligence or willful misconduct.** In the event of a settlement, indemnification shall be provided only in connection with such matters in which the **Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duty** as such Trustee or officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Trustee or officer may be entitled. All liability, loss, damage, cost and expense incurred or suffered by the Association in connection with the foregoing indemnification provision shall be treated and handled by the Association as Common Expenses; provided, however, nothing contained in the Article X shall be deemed to obligate the Association to indemnify any Owner of a Lot or Commercial Unit who is or has been a Trustee or officer of the Association with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of the Declaration of Covenants, Conditions and Restrictions for any subdivision in Clear Lake City as an Owner of a Lot or Commercial Unit covered thereby.

Definition of Terms & Phrases in Texas Law Code Construction for Texas Statutory Laws

www.statutes.legis.state.tx.us/Docs/GV/htm/GV.311.htm

GOVERNMENT CODE TITLE 3.

LEGISLATIVE BRANCH SUBTITLE B. LEGISLATION

CHAPTER 311. CODE CONSTRUCTION ACT

SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is Expressly provided by statute:

- (1) "May" creates discretionary authority or grants permission or a power.**
- (2) "Shall" imposes a duty.**
- (3) "Must" creates or recognizes a condition precedent.**
- (4) "Is entitled to" creates or recognizes a right.**
- (5) "May not" imposes a prohibition and is synonymous with "shall not."**
- (6) "Is not entitled to" negates a right.**
- (7) "Is not required to" negates a duty or condition precedent.**

Black's Law Dictionary (Direct Quotes)

Page 109 ANALOGOUS - Means bearing some resemblance.

Page 753 FIDUCIARY - A person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. (*scrupulous = meticulous / thorough / rigorous / conscientious*)

Page 822 GOOD FAITH - Honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry.

Page 947 INTEGRITY - As occasionally used in statutes prescribing the qualifications of public officers, trustees etc., this term means soundness of Moral principle and character, as shown by one person dealing with others in the making and performance of contracts, and fidelity and honesty in the discharge of trusts.

Page 1038 LEGAL - Conforming to the law; according to law; required or permitted by law; not forbidden or discountenanced by law; good and effectual in law.

Page 1220 OATH - Any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully. (*attestation = verification / confirmation / testimony*)

Page 1243 OPINION - A document prepared by an attorney for his client, embodying his understanding of the law as applicable to a state of facts submitted to him for that purpose.

Page 1474 RESOLUTION - A formal expression of the opinion or will of an official body or a public assembly, adopted by vote.

[MY OPINION REFERENCE BYLAWS 2.1 & 7.5](#)

All Policies / Bylaws / Committee Charters / other CLCCA governing documents approved by the Board of Trustees, provided they do not violate / conflict with higher level CLCCA documents or Texas Laws would seem to be Resolutions of the Board of Trustees to be followed by all Trustees without exception at all times and enforced by the GM & President.

7

[THERE SHOULD BE NO SELECTIVE ENFORCEMENT OF ANY BOARD RESOLUTIONS]

Attorney General Greg Abbott

My Fellow Texans:

- The Texas Open Meetings Act honors the principle that government at all levels in this state should operate in a way that is open and accessible to the people. As Attorney General, I am committed to that vision as well, and I am working to ensure that Texas government is as transparent as possible.
- Texas courts have upheld the statutory duty of public officials to conduct open meetings, except in certain limited circumstances, and have affirmed that ignorance of the law does not shield anyone from compliance with the law.
- Public officials often ask my office for guidance in complying with the Open Meetings Act, and one of the ways we respond is to provide this *Open Meetings Handbook*. The *Handbook*, also available on the Internet at www.oag.state.tx.us/open/publications_og.shtml, is designed to help public officials avoid unintentional violations of the law and to help all Texans understand how the Open Meetings Act affects them.
- Part of the great trust that the public has bestowed upon government officials is the confidence they will conduct business responsibly and in the open. My commitment to enforcing the open government laws of Texas is unwavering, and it is my sincere hope that this *Handbook* will serve as a guide for all governmental bodies as they conduct the people's business.
- Other open government resources are available on the OAG website at www.texasattorneygeneral.gov. These resources include frequently asked questions. Texans can also call our open government telephone hotline (877-OPEN-TEX) with their questions.

Open Meetings (OM) Handbook (HB)

As stated by the Honorable Greg Abbott, Texas Attorney General in the previous slide, second page of the Open Meetings Handbook pertains only to the Texas Open Meetings Act Ethics Code 551 and no other statute of Texas Law.

It is a guide to inform the public official to what each article of law within the TOMA means to strive for open government and provides footnotes about cases that have appeared before the Texas Appeals & Supreme Courts, Texas Attorney General Legal Opinions, and Texas Case Law in the administration of the TOMA

(Page 1) **I: Introduction A: Open Meetings Act**

“The Open Meetings Act (the “Act”) was adopted to help make governmental decision-making accessible to the public. It requires meetings of governmental bodies to be open to the public, except for expressly authorized closed sessions, and to be preceded by public notice of the time, place and subject matter of the meeting. The provisions of **[the Act] are mandatory and are to be liberally construed in favor of open government.**”

Robert Rules of Order (Voting & Committees)

<http://www.kkytbs.org/forms/parliamentaryprocedure.pdf>

Parliamentary Procedures At A Glance

<http://rulesonline.com/>

Bylaw 6.8 – “Robert Rules of Order will act as a guideline for all meetings”

<http://rulesonline.com/rror-08.htm#47>

Votes that are Null and Void even if Unanimous.

No motion is in order that conflicts with the laws of the nation, or state, or with the assembly's constitution or by-laws, and if such a motion is adopted, even by a unanimous vote, **it is null and void.**

Proxy Voting.

A proxy is a power of attorney given by one person to another to vote in his stead and it is also used to designate the person who holds the power of attorney. **It is unknown** to a strictly deliberative assembly, and **is in conflict with the idea of the equality of members,** which is a fundamental principle of deliberative assemblies.

<http://rulesonline.com/rror-09.htm#52>

Committees, Special and Standing. (Bylaws 6.6 & 7.9)

It is usual in deliberative assemblies, to have all preliminary work in the preparation of matter for their action done by means of committees. The committee may be either a "standing committee," appointed for a definite time, as a session or a year; or a "special [or select] committee," appointed for a **special** purpose.

Bylaw 9.12 – “Proxy voting is not allowed for matters of the Board” (06/11/2002)

BOT / GM / PRESIDENT

- **2009 CLCCA CERTIFICATE OF AMENDMENT ARTICLE V**

The direction and management of the affairs of this corporation and the control and disposition of its properties and funds shall be vested in a Board of Trustees composed of such number of persons as may be fixed by the by-laws of the corporation. The Trustees shall continue to serve until their successors are selected in the manner provided in the by-laws of the corporation.

- **03/01/1988 BYLAW 2.1**

This corporation shall take a "Board-Manager" form. All powers of the corporation shall be vested in the Board of Trustees except as otherwise provided in these Bylaws. The Board shall employ a general manager, who shall execute the bylaws and administer the business of the corporation in accordance with the policies and budget adopted by the Board of Trustees.

- **03/01/1988 / 04/13/2010 Bylaw 7.5**

The President shall be the Chief Executive Officer of the corporation and shall see that all orders and resolutions of the Board of Trustees are carried into effect. He shall preside at all meetings of the Board of Trustees. The President shall attest and certify closed session minutes and documents as may be required.

"Shall" imposes a duty. – Code Construction 311.016

Certificate of Formation (1963 Articles of Incorporation) 2009 Certificate of Amendment Page 8 of 9 Article X

“Anything to the contrary herein notwithstanding the Trustee **shall not**:

- 1) lend any part of the corporation assets to;
- 2) pay any compensation, other than that set forth in Article VI to;
- 3) make any services, benefits, or facilities of the corporation available on a preferential basis to;
- 4) purchase any securities or other property for other than adequate consideration in money or money’s worth to;
- 5) sell any securities or other property for other than adequate consideration in money or money’s worth to;
- 6) engage in any other transaction which diverts any part of the corporate assets to; any person, association or corporation who has contributed property or money to the corporation, nor shall the Trustees ever engage, participate, or intervene in any activity or transaction which would cause the corporation to lose its status as an exempt organization under the provisions of the Internal Revenue Code and the use, directly or indirectly, of any part of the corporation’s funds or property in **Any such activity or transaction is hereby expressly prohibited.**”

Texas Business Organizations Code (BOC)

www.sos.state.tx.us/corp/forms/boc/boc-np-2010.pdf

BOC Applicable Chapters for Non-Profit Corporations

- <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.1.htm>
- <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.2.htm>
- <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.3.htm>
- <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.4.htm>
- <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.5.htm>
- <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.10.htm>
- <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.11.htm>
- <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.20.htm>
- <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.22.htm>

Texas Business Organizations Code (BOC)

www.legis.state.tx.us/tlodocs/78R/billtext/pdf/HB01156F.pdf#navpanes=0

- In 2003, the Texas Legislature enacted the Texas Business Organizations Code (BOC), which codified the provisions of the statutes governing nonprofit corporations. The BOC represented a major restructuring of the business organization statutes, and also made substantive changes to the law in existence at the time of its enactment.
- Because the structure, organization, and language of the BOC differed from existing statutes, the Legislature delayed the effectiveness of the BOC until January 1, 2006. In addition, the Legislature provided for a four-year period of transition before the repeal of the statutes codified by the BOC and the mandatory application of the BOC to pre-existing entities. Consequently, on January 1, 2010, a Texas entity that was formed before January 1, 2006 and that has not elected to adopt the BOC will automatically be subject to the BOC.

Acting in Good Faith (Cut & Paste)

- **TEXAS NONPROFIT CORPORATION ACT (TNPCA)
VERNON'S TEXAS CIVIL STATUTE ARTICLE 1396
(Repealed thru HB 1156 01/01/2010)**

<http://codes.lp.findlaw.com/txstatutes/CV/32/9>

- **Art. 1396-2.26. LIABILITY OF DIRECTORS IN CERTAIN CASES.**

Item D. A director shall not be liable under this Article if, in the exercise of ordinary care, he acted in good faith and in reliance upon the written opinion of an attorney for the corporation.

www.statutes.legis.state.tx.us/Docs/BO/htm/BO.22.htm#22.228

- **BUSINESS ORGANIZATION CODE CHAPTER 22**
- **Sec. 22.228. RELIANCE ON WRITTEN OPINION OF ATTORNEY.** A director is not liable under Section 22.226 or 22.227 if, in the exercise of ordinary care, the director acted in good faith and in reliance on the written opinion of an attorney for the corporation

OPEN MEETINGS BY REMOTE TELEPHONE COMMUNICATIONS

www.statutes.legis.state.tx.us/Docs/GV/htm/GV.551.htm#551.125 551.125

www.legis.state.tx.us/tlodocs/74R/billtext/doc/HB02508F.doc (b1 & b2)

TOMA 551.125 – Other Governmental Body (3 Conditions & only 3 Conditions)

TOMA 551.045 – Exception to General Rule Notice to Emergency Meeting/Agenda

BOC 22.002 – Meetings by Remote Communications Technology (Unanimous Vote**)**

BOC 22.215 – Voting in Person or by Proxy with Proxy Power of Attorney

LO1994028 – AG Dan Morales 1994 Legal Opinion base upon 1942 Texas Supreme Court Ruling – MUST BE PRESENT TO VOTE (Texas Common Law)

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.551.htm#551.129>

TOMA 551.129 – Consultations between Governmental Body and its attorney

Use of phone call is permitted both Open & Closed

Email Polls - Making individual phone calls to poll members on an issue is a criminal violation. Walking Quorum. (TOMA 551.143)

www.oag.state.tx.us/media/videos/2005openmeetings.wmv

AG Training Video Ethics TOMA 551.005 Phone Calls *Time Index 24:28 - 24:58*

AG Legal Opinions pertaining to Phone Calls for Governmental Bodies

<https://www.oag.state.tx.us/opinions/opinions/47mattox/op/1986/pdf/JM0584.pdf> Participating

<https://www.oag.state.tx.us/opinions/opinions/49cornyn/op/2000/pdf/JC0194.pdf> Participating

<https://www.oag.state.tx.us/opinions/opinions/49cornyn/op/2001/pdf/JC0352.pdf> Participating

<https://www.oag.state.tx.us/opinions/opinions/50abbott/op/2012/pdf/ga0908.pdf> Participating

<https://www.oag.state.tx.us/opinions/opinions/48morales/lo/1994/pdf/lo1994028.pdf> Voting

BUSINESS ORGANIZATION CODE

- **Sec. 22.215. VOTING IN PERSON OR BY PROXY (Bylaw 9.12)**
A director of a corporation may vote in person or, if authorized by the certificate of formation or bylaws of the corporation, by proxy executed in writing by the director.
- **Sec. 22.219. OTHER COMMITTEES (Bylaw 6.4).**
 - (a) The board of directors of a corporation, by resolution adopted by the majority of the directors at a meeting at which a quorum is present, or the president, if authorized by a similar resolution of the board of directors or by the certificate of formation or bylaws of the corporation, may designate and appoint one or more committees that do not have the authority of the board of directors in the management of the corporation.
 - (b) The membership on a committee designated under this section may be limited to directors.
- **Bylaw 9.12. Proxy voting is not allowed for matters of the Board (06/11/02)**
DOES PROXY VOTING, VOTING TO APPROVE, OR ENCOURGING TO ALLOW A PROXY VOTE CONSTITUTE ANY FORM OF CRIMINALITY TO VIOLATE THE OATH OF OFFICE, BYLAWS, OR TEXAS STATE LAWS?

(WAS) TNPCA – (NOW) BOC TERMS

The following chart provides the terms used by the Texas Non-Profit Corporation Act and the terms used to describe the same filing instrument under the BOC. (TNPCA OBSOLETE 01/01/2010 HB1156)

Texas Non-Profit Corporation Act		Texas Business Organizations Code
○ Articles of Incorporation	<i>now</i>	Certificate of Formation
○ Articles of Amendment	<i>now</i>	Certificate of Amendment
○ Restated Articles of Incorporation	<i>now</i>	Restated Certificate of Formation
○ Articles of Correction	<i>now</i>	Certificate of Correction
○ Articles of Dissolution	<i>now</i>	Certificate of Termination
○ Articles of Merger	<i>now</i>	Certificate of Merger
○ Articles of Consolidation	<i>now</i>	Certificate of Merger
○ Application for Certificate of Authority	<i>now</i>	Application for Registration

DUTY

The primary responsibility of each and every board member is to come together to act as one leadership voice for the community, recognizing that their fiduciary duty is to follow Federal & Texas Statutory Law, CLCCA Governing Documents, IE: Certificate of Formation, Bylaws Policies & Resolutions, while preserving, maintaining, and enhancing the value of the assets of the community and corporation as defined in the Oath of Office and Policy 401-14 Code of Conduct.

...AS SERVANT LEADERS

- Board members see their role as one of serving the property owners of the association and the community at large, not feeding their own personal agendas
- Board members see their role as temporary stewardship of the Property Owner's whom they serve
- Board members act as process facilitators, finding out the best way to do things in their community legally
- Board members emphasize empowering others in the community to build strong relationships

...AS STAFF FACILITATORS

- Board members see staff members as part of the team, not as opponents
- Board members are respectful of staff inquiries, rather than demanding a response
- Board members establish and follow protocols in working with staff per CLCCA Governing Documents.
- Normally but not always, the President is the Single Point of Contact (POC) with the General Manager for all staff inquiries by Trustees
- Board members rely on staff to implement board decisions and policies
- Board members differentiate between policy making decisions and managerial task managing

SUCCESSFUL CHARACTERISTICS

“Texas courts have upheld the statutory duty of public officials to conduct open meetings, except in certain limited circumstances, and have affirmed that ignorance of the law does not shield anyone from compliance with the law.”

[OM 2012 HB second page, behind title page]

- Presiding Officer maintains control throughout the meeting
- Listening first is a priority
- Strive for unanimity and community harmony
- Separate business from social matters
- Time efficient and conscientious
- **Support board decisions – based upon Texas Statutory Laws & CLCCA Governing Resolutions**
- They come prepared to meetings reviewing meeting packet
- Understand they are responsible for other’s castles

PROPERTY OWNER ASSOCIATION (POA) BASICS

- Plan and Prepare for Board Meetings – Board Packet
- Conduct Board Meetings in a Business Environment
- Provide Notice to the Public & Property Owners Pursuant to TOMA Code 551.043 (72 Hour Minimum Notice)
- Follow the Texas Open Meetings Act (TOMA Code 551) as interpreted by the Texas Attorney General OM Handbook
- Follow the Texas Business Organization Code (BOC) Specifically Chapter 22*
- Adhere to Certificate of Formation/Certificate of Amendment

*** The Texas Nonprofit Corporation Act (TNPCA) also known as the Vernon's Texas Civil Statue Article 1396 was codified into the Business Organization Code (BOC). This was created by HB 1156 signed into law on 05/19/2003. The BOC became a Mandatory Statue for all Nonprofit Corporations that also revoked the TNPCA on 01/01/2010. REF: Pages 1&2 Hyperlink.**

www.sos.state.tx.us/corp/forms/boc/boc-np-2010.pdf

POA BASICS

- Conduct Brief Homeowner Forum at the Beginning of Regular & Special Meetings of the Board (Policy 401-8) Limit 2 Minutes per person
- Use Agenda and Stick To It (Code 551.041 & 551.042)
- Follow Robert's Rules of Order (Bylaw 6.8) Parliamentary Procedures
- Keep Meetings Moving
- Dealing with Conflicts During Meetings
- Taking Proper Meeting Minutes and record all Board actions (TOMA Code 551.021 & TOMA Code 551.022 Retention)
- Refrain from taking unilateral actions without majority Board quorum consent (Bylaws 2.1 & 6.7) upon duly made motions and voted and approved by the quorum of Board of Trustees present

www.legis.state.tx.us/BillLookup/Text.aspx?LegSess=73R&Bill=SB248

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.551.htm#551.021>

Open Meetings 2012 Handbook (Page 53)

“551.021. MINUTES OR TAPE RECORDING OF OPEN MEETING REQUIRED.

(a) A governmental body shall prepare and keep minutes or make a tape recording of each open meeting of the body.

(b) The minutes must:

- (1) state the subject of each deliberation; and**
- (2) indicate each vote, order, decision, or other action taken.”**

OTHER ISSUES TO BE AWARE

Conflicts of Interest CLCCA Policy 401-12

- Removal and Replacement of Directors
(Bylaws 5.1 – 5.4 & BOC 22.211 & BOC 22.212)
- CLCCA Required to Ensure Property Owner Compliance with Rules, Regulations, and Deed Restrictions (Policies 409-1 & 409-2)

www.clcca.org/doc/AdobeViewer.asp?doc_filename=%2Fhoa%2Fassn16427%2Fdocuments%2F401-12.pdf&sfind=&print=1&docid=461864 – Policy 401-12

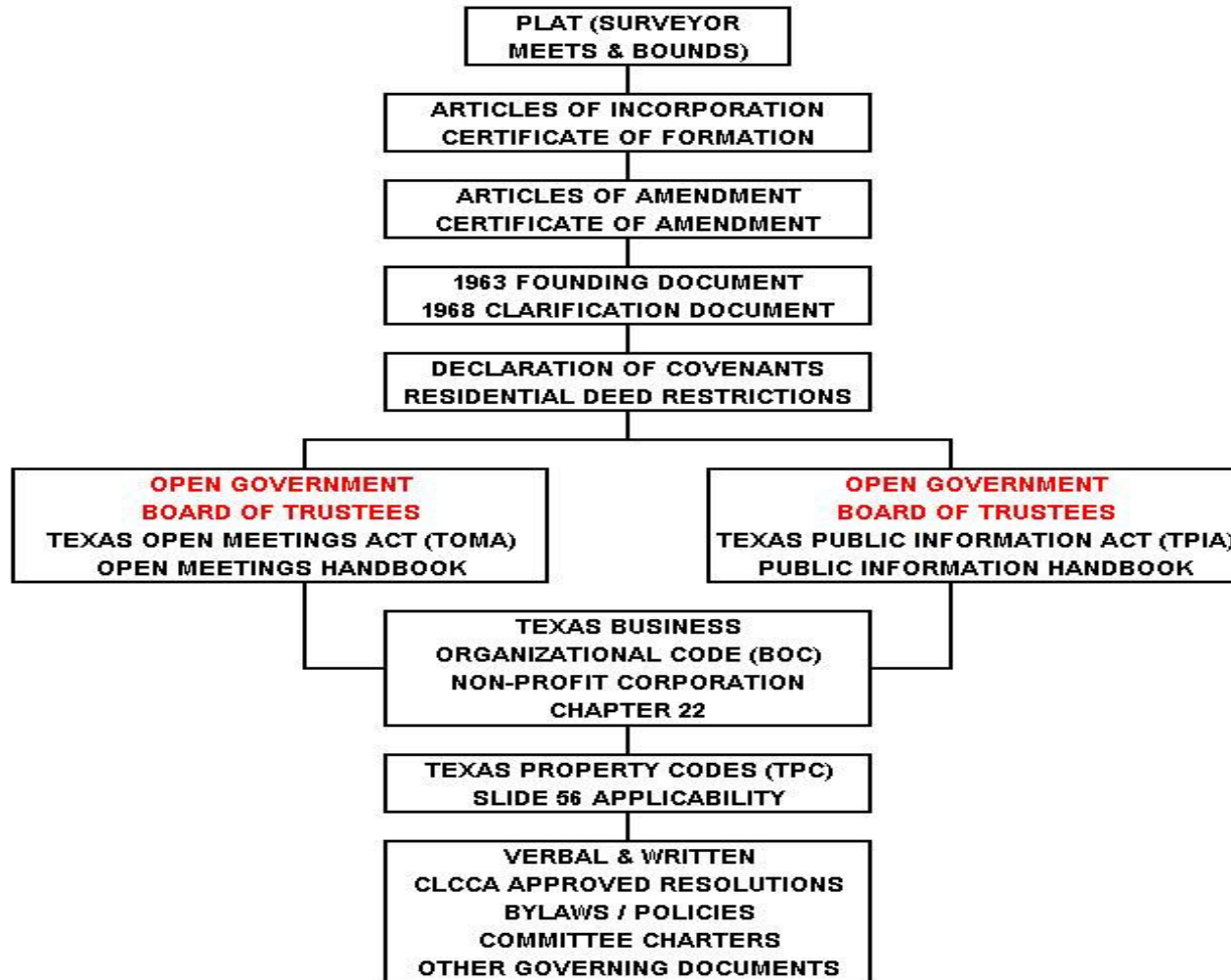
“A conflict of interest is defined as an actual or perceived interest by a Board member in an action that results in, or has the appearance of resulting in, personal, organizational, or professional gain. Officers and members are obligated to always act in the best interest of the organization.”

“**Record of Conflict**--The official minutes of the Board shall reflect that the conflict of interest was disclosed and the interested person (s) did not participate in the final discussion or vote and did not vote on the matter.”

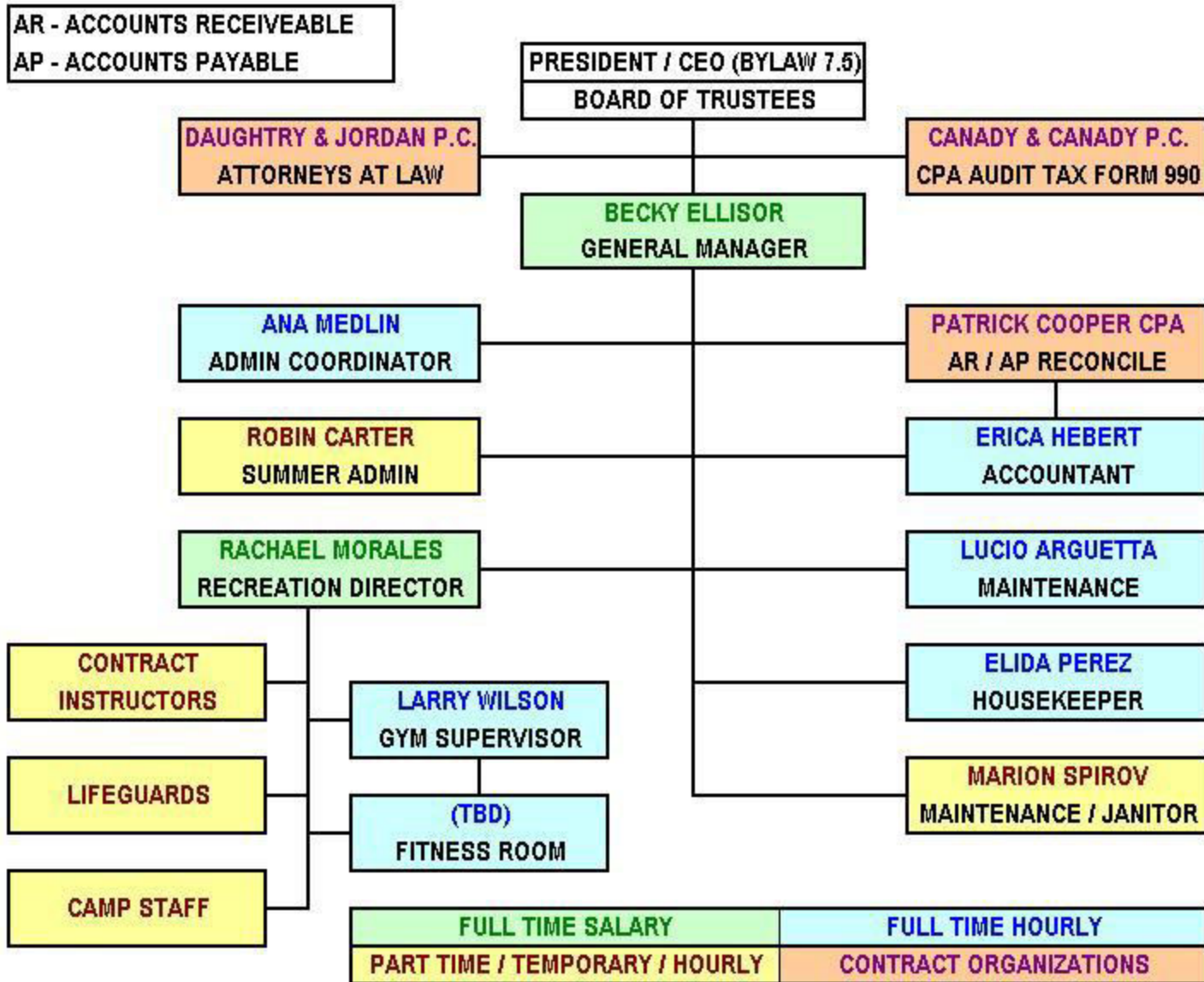
LEGAL DOCUMENTS HIERARCHY

- Legal Documents for Association (in order of hierarchy)
[Management Certificate relevant documents plus Texas Laws]
 - Plat
 - Certificate of Formation / Certificate of Amendment
 - 1963 CLCCA Founding Document (Boundaries & CSC Fee)
 - 1968 CLCCA Clarification to Founding Document
 - Declaration of Covenants, Conditions & Restrictions (aka Residential Deed Restrictions)
 - TOMA Code 551 & TPIA Code 552
 - Texas Business Organizational Code Chapter 22
 - Texas Property Codes 201 – 215 [Slide 56 Applicability]
 - Bylaws
 - Operational & Administrative Policies, Resolutions (Written & Verbal), Regulations, and Governing Documents (Based upon Bylaws 2.1 / 6.7 & TPC 202.001 & 202.006) [Slide 57]

LEGAL DOCUMENTS HIERARCHY



CLCCA MANAGEMENT STRUCTURE



EXPECTATIONS AND BOUNDARIES

For Board Members of Employees:

- ✓ Staff works for the community
- ✓ Staff works when others are not
- ✓ Staff is paid to do a job, an exemplary job
- ✓ Untold number of hours spent by full-time employees....be respectful of their time off
- ✓ When you leave your job and go home, how do you expect to be treated?

EXPECTATIONS AND BOUNDARIES

For Staff Employees of Board Members:

- ✓ Board Members have volunteered and have lives...this is our job as staff, not theirs.
- ✓ Board Members have a Fiduciary Duty to act in the best interest of the Association as a WHOLE according to law, not just their Core or their own personal political agenda. It's a temporary "Stewardship."
- ✓ Board Members will support board decisions regardless of how they voted as an individual.
- ✓ Board Members have the right to ask questions. IN FACT ITS AN OBLIGATION. But the manner in which they ask will be a respectful inquiry per Robert Rules of Order during Board & Committee Meetings.
- ✓ Board Members will be respectful of staff member's time, especially at night meetings when the staff member has already worked a full day.
- ✓ When you leave your job and go home, how do you expect to be treated?

BOARD MEETINGS OF TRUSTEES

- This is a business meeting of the Board of Trustees, where directors make decisions concerning the operation and administration of the association in compliance with Federal & Texas Statutory Laws and CLCCA Governing Resolutions.
- Two types – open meetings and closed executive meetings (As described in TOMA Code 551 and the OM 2012 HB)

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.551.htm>

Meetings of Less than a Quorum in Attempt to Evade the Act: “Walking Quorums” (OM 2012 HB Page 18)

On occasion, a governmental body has tried to avoid complying with the Act by deliberating about public business without a quorum being physically present in one place and claiming that this was not a “meeting” within the Act. (TOMA 551.143)

CONDUCT AT BOARD MEETINGS

- Comply with CLCCA Resolutions and Governing Documents and relevant Texas Laws (Policy 401-14)
- Act in the best interests of the community as a whole
- Work within the association's framework (documents) and refrain from unilateral action (Bylaws 2.1 & 6.7)
- Hold themselves to high standards [Fiduciary].

CLCCA Policy 401-14 Code of Conduct

www.clcca.org/doc/AdobeViewer.asp?doc_filename=%2Fhoa%2Fassn16427%2Fdocuments%2F401-14%20code%20of%20conduct.pdf&sfind=&print=1&docid=782568

CONDUCT AT BOARD MEETINGS

- Seek Professional Advice (when requested by Trustees)
- Don't Debate
- Behave Professionally at meetings. Do not hold side conversations while other Trustees are speaking concerning topics listed on the agenda. Only one Trustee speaks at a time and when it is your turn to speak and recognized by the Presiding Officer
- Maintain confidentiality when appropriate
- **Disclose conflicts of interests**
- Refrain from defaming or harassing others
- If the association has a normally unruly type attending the meetings the chair of the meeting should have a gavel to restore order when needed.
- Come prepared to conduct business and limit comments to the topic being discussed.
- Trustees – Announcement Turn **OFF** PDA & Cell Phones.

CONDUCT AT BOARD MEETINGS

- Come prepared
- Review the meeting agenda packet in advance of the meeting.
- Address all questions & corrections to the entire Board including the GM **24 Hours PRIOR to the meeting so the manager and Board Members can have responses for the meeting.**

http://www.clcca.org/doc/AdobeViewer.asp?doc_filename=%2Fhoa%2Fasn16427%2Fdocuments%2F401-11.pdf&sfind=&print=1&docid=445889

Policy 401-11 First Paragraph 03/09/2010

“Clear Lake City Community Association (CLCCA) requires trustees, officers and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. As employees and representatives of the CLCCA, we must practice honesty and integrity in fulfilling our responsibilities and comply with all applicable laws and regulations.”

TYPES OF BOARD MEETINGS

- Regular – Held on the 3rd Tuesday of Every Month [Bylaw 6.1]
- Special – Called for any purpose by the President or two Trustees acting together [\[Does not require the President to approve or endorse the effort\]](#) with a minimum ten (10) days notice to all board members or if eight (8) board members waive their notice to ten (10) days it may be called sooner but not less than three (3) days public notice in compliance with [TOMA 551.043 & Bylaw 6.3].
- After the 72 Hour notice requirement has passed, any additional item added to the agenda, must be of an emergency nature [TOMA 551.045] requires the information to be posted 2 hours prior to the start of the meeting in their normal locations (Web & Bulletin Board).
- Special Meetings also allow, but not required, a public comment period by homeowners. [Policy 401-8].

TYPES OF BOARD MEETINGS

- Emergency – TOMA Code 551.045 Called regarding an unexpected situation (NO pre-existing conditions). Generally an emergency is such that without immediate action the Association would be exposed to new legal liability, severe loss to capital equipment or condition of land, or loss of normal operations. President may call alone – or two Trustees acting together **[Does not require the President to approve or endorse the effort].** (Bylaw 6.5)
- An Emergency Item can also be added to an existing Agenda, as long as it complies with TOMA Code 551.045.

BOARD MEETING AGENDA

- The most important part of a Board Meeting (TOMA 551.041). This is the plan of action for the Board to follow. Board meetings should last no more than two (2) hours with a homeowner Comments included (Policy 401-8).
- Draft agenda is emailed out two Friday's before the regular meeting date. (Policy 401-1) [**current violation of Policy 401-1**]
- Submissions to be placed on the agenda are due (along with all attachments) the Tuesday Noon of the week prior to the meeting at Noon. (Policy 401-1)
- Vague items like: "Discuss Maintenance and Possible Motion" will NOT be included (Violates Policy and OMA); A proper item would be: "Discuss Maintenance Frequency of Bathrooms at Recreation Center and any Necessary Motion to increase frequency."

Rights of the Public

OM 2012 Handbook Page 40

- A meeting that is “open to the public” under the Act is one that the public is permitted to attend.
- The Act does not entitle the public to choose the items to be discussed or to speak about items on the agenda.
- A governmental body may, however, give members of the public an opportunity to speak at a public meeting. (Policy 401-8)
- If it does so, it may set reasonable limits on the number, frequency and length of presentations before it, but it may not unfairly discriminate among speakers for or against a particular point of view. (Policy 401-8 – Two Minutes)

OPEN MEETINGS

What do I do if an un-posted issue is raised at an open or closed executive meeting? (TOMA Code §551.042)

Four OPTIONS

- a. A Trustee may respond with a statement of specific factual information or recite the governmental body's existing policy on that issue.
- b. A Trustee may direct the person making the inquiry to visit with staff about the issue.
- c. The governing body may offer to place the item on the agenda for discussion at a future meeting.
- d. The governing body may offer to post the matter as an emergency item, but **ONLY IF** the item meets the criteria for an emergency posting (Bylaw 6.5 & Code 551.045).

Items which do not appear on the written agenda of the regular scheduled meeting **shall not** be taken up. **[Not to be discussed]**
(Monthly Agenda & Packet: Policy 401-1D Item #2 08/18/2008)

USING AGENDA = SUCCESSFUL MEETING

Motion / Second / Discussion / Vote **Motion shall be in the Meeting Agenda**

Stick to the Agenda – Do not Deviate!

If you are reviewing the financials and the landscaper's invoice comes up, don't start talking about the landscaper's performance, or how bad the grass looks. Wait until committee reports. Finish the agenda before starting another subject.

The motion should be specific!

When making decisions ensure that a motion is made (with a second) PRIOR to beginning discussion.

MEDIA RELATIONS

The US Navy Expression – Loose Lips Sink Ships

If you don't want to see it on TV or in print, DON'T SAY IT!

Know who you are dealing with.....and talk to them.

Build a relationship with the reporter –
the reporters are key, not the editor.

Declining to comment may be the best policy

MEDIA RELATIONS

Terms of Engagement:

On-the-record – Automatically assumed once the reporter identifies him/herself.

Off-the-record – Has different meanings to different reporters – YOU MUST CLARIFY MEANING. If you don't want to be "Quoted" then make the reporter put his pen down, this reduces the chance that an off-the-record comment will be published accidentally, and serves as a signal that the reporter acknowledges the off-the-record status of the comment.

Background: Information you provide that is simply meant to educate the reporter. You should clarify to what extent the source will be revealed.

Off-the-record is NOT recommended! If you don't want to see it on TV or in print, DON'T SAY IT!

MEDIA RELATIONS

Tips In Dealing

- Ask reporter to read back any quotes/comments to avoid being misquoted.
- You can manage the process to minimize errors and show organization in best light – but do not attempt to control the process. Reporters hate to feel pushed or manipulated.
- Published out of context??? ALWAYS be thoughtful about what you say.
- Don't joke!!! It might become a headline.
- There is no shame in saying "I Don't Know."
- If it's a difficult question – you MAY ask to think about it for a minute.
- Press the POSITIVE side of what you do.
- Off-the-record is NOT recommended!
- If at all possible, utilize ONE spokesperson.

OPEN MEETINGS

Committee Meetings – Is committee “advisory”? (Bylaw 6.4)

If recommendations of committee are generally “rubber-stamped” they are not “advisory” and ARE subject to Open Meetings. (Advisory Bodies – OM 2012 HB Page 13)

■ Notice Requirements (TOMA Code 551.041 – 551.056)

Minimum 72 hrs – Regular / Special Meeting (TOMA Code 551.043)

Minimum 2 hrs – Emergency Meeting or Emergency Agenda Item (TOMA Code 551.045)

■ MUST have date, hour, and place of meeting AND a description of each subject to be discussed. (TOMA Code 551.041)

■ A governmental body must give the public advance notice of the subjects it will consider in an open meeting or a closed executive session. (OM 2012 HB Page 22)

BUSINESS ORGANIZATION CODE

○ **Sec. 22.002. MEETINGS BY REMOTE COMMUNICATIONS TECHNOLOGY.**

Subject to the provisions of this code and the certificate of formation and bylaws of a corporation, a meeting of the members of a corporation, the board of directors of a corporation, or any committee designated by the board of directors of a corporation may be held by means of a remote electronic communications system, including videoconferencing technology or the Internet, **only if**:

- (1) each person entitled to participate in the meeting consents to the meeting being held by means of that system; and
- (2) the system provides access to the meeting in a manner or using a method by which each person participating in the meeting can communicate concurrently with each other participant.

See TOMA 551.125 & 551.045 for more Restrictions

CLOSED EXECUTIVE MEETINGS

Allowed Executive Session Subjects:

1. Consideration of specific personnel matters;
2. Attorney consultations;
3. Discussions about the value or transfer of real property;
4. Discussions about security personnel, security devices, or a security audit;
5. Discussions about a prospective gift or donation to the city;
6. Discussions by a governing body of potential items on tests that the governing body conducts for purposes of licensing individuals to engage in an activity;
7. Discussions of certain economic development matters;
8. Discussions of certain competitive matters – utility and city related
9. Certain information relating to the subject of emergencies and disasters.

CLOSED EXECUTIVE MEETINGS

Executive Session - Personnel

- ❖ Appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee
- ❖ Complaints or charges against such officer or employee – UNLESS the employee or officer requests that it be heard in open session
- ❖ Employee does not necessarily have the right to attend.
- ❖ The public can NOT be invited selectively to give feedback on employee.

CLOSED EXECUTIVE MEETINGS

Executive Session - Attorney Consultations

- ❖ Legal advice about pending or contemplated litigation or about settlement offers
- ❖ Does NOT include discussions about general policy matters.
- ❖ Potential contracts may be discussed ONLY in closed to receive advice on legal issues raised by contract. Merits of the contract MUST be reviewed in open session.

CLOSED EXECUTIVE MEETINGS

Executive Session – Who May Attend?

“Only the members of a governmental body have a right to attend an executive session, except that the governmental body’s attorney **must** be present when it meets under section 551.071.” (OM 2012 HB Page 51)

Attorney – If discussion involves litigation, opposing party may not be present.

Consider:

1. whether the person’s interests are adverse to the governmental body’s;
2. whether the person’s presence is necessary to the issues to be discussed; and
3. whether the governmental body may waive the attorney-client privilege by including the non-member.

Staff attendance is not required – they may be excluded or included based on above.

CLOSED EXECUTIVE MEETINGS

Executive Session - Records of Meeting

- Certified Agenda OR Tape Recording
 - ❖ You may turn the recording off when consulting with the attorney.
 - ❖ Records (Agenda/Tape) must be kept for 2 yrs!
- Records of meeting may ONLY be released to the public under COURT ORDER. - CRIMINAL PENALTIES APPLY
- Texas Courts have held that a member of a governmental body has NO RIGHT to tape an executive session over the objection of a majority of the governmental body's members.
- There is a CHANCE that an individual's notes taken during an executive session COULD be subject to TPIA Request.

(551.102) FINAL ACTION "A governmental body's final action, decision or vote on any matter within its jurisdiction may be made only in an open session held in compliance with the notice requirements of the Act."

(OM 2012 HB Page 36) **TOMA 551.041 / 551.042 / 551.043.**

OPEN MEETINGS & PUBLIC INFORMATION PENALTIES

Civil penalties and potential jail time exist for the following violations:

- a. Unauthorized Executive Sessions**
- b. Meeting in Numbers Less than a Quorum with intent to Circumvent the Act (TOMA Code 551.143)**
- c. Failure to keep a Certified Agenda**
- d. Deliberately violating the Texas Open Meetings Act (TOMA)**
- e. Violating the Texas Public Information Act (TPIA) [Slide 53]**

Americans with Disabilities Act (ADA)

- Bylaw 4.1 – “Rules governing elections shall be those which govern elections for public office in the State of Texas except as required by the Texas Property Code or stated specifically herein.”
- Bylaw 4.3 - Elections for Trustees shall be held on the first Saturday of May in any given year. Early voting will begin two (2) business weeks prior to election day. Voters must appear in person at the place of voting which shall be the Clear Lake Recreation Center, 16511 Diana Lane, Houston, Texas 77062-5796. Absentee ballots will be provided by mail to voters with disabilities or conflicts who are unable to attend in person. The Absentee ballot will be returned by mail to the CLCCA, 16511 Diana Lane, Houston, TX 77062, ATTN: Election Judge. The Absentee ballot must be received by Friday, prior to the election day on Saturday. If a voter has requested and received an Absentee ballot and comes to vote in person on the day of the election, the voter must present the unmarked Absentee ballot to the election judge.
- Title II of the Americans with Disabilities Act of 1990 (the “ADA”) prohibits discrimination against disabled individuals in the activities, services and programs of public entities. All the activities of state and local governmental bodies are covered by the ADA, including meetings. (Page 64 OM 2012 Handbook)
<http://www.legis.state.tx.us/tlodocs/80R/billtext/pdf/HB00556F.pdf#navpanes=0>
<http://www.statutes.legis.state.tx.us/Docs/EL/htm/EL.61.htm#61.012>
- ACCESS BY PERSONS WITH DISABILITIES. (a) Except as provided by Section 61.013, each polling place must provide at least one voting station that:
 - (1) complies with:
 - (A) Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments;
 - (B) Title II of the federal Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments; and
 - (C) the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) and its subsequent amendments; and
 - (2) provides a practical and effective means for voters with physical disabilities to cast a secret ballot.

Criminal Violations of Chapter 552 Texas Public Information Act (TPIA)

Criminal violations of Chapter 552 of the Texas Government Code, the Texas Public Information Act. Texas law specifies only three criminal offenses arising from violations of the Act:

- **Code 552.351 Destruction, removal or alteration of public information**
- **Code 552.352 Distribution or misuse of confidential information**
- **Code 552.353 Failure or refusal of an officer for public information to provide access to or copying of public information**

All other violations of the Public Information Act are civil violations. Remedies for civil violations, please call the Texas Attorney General's Open Government Hotline at 877.673.6839

www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm#552.351

www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm#552.352

www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm#552.353

POTENTIAL PENAL CODE CRIMINAL VIOLATIONS:

Could repeated violations of the TOMA & TPIA subject a Trustee to Penal Code for official misconduct and possible theft or fraud?

www.legis.state.tx.us/tlodocs/80R/billtext/pdf/HB03674F.pdf#navpanes=0

A property owners' association is subject to this chapter (TOMA 551.0015 & TPIA 552.0036) in the same manner as a governmental body.

<http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.6.htm>

TITLE 2: GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY CHAPTER 6 CULPABILITY GENERALLY:

Sec. 6.01. REQUIREMENT OF VOLUNTARY ACT OR OMISSION.

- (a) A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession.
- (b) Possession is a voluntary act if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control.
- (c) A person who omits to perform an act does not commit an offense unless a law as defined by [Section 1.07](#) provides that the omission is an offense or otherwise provides that he has a duty to perform the act.

POTENTIAL PENAL CODE CRIMINAL VIOLATIONS:

<http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.1.htm>

TITLE 1: INTRODUCTORY PROVISIONS CHAPTER 1 GENERAL PROVISIONS:

Sec. 1.07. DEFINITIONS EXCERPT. (32) "Oath" includes affirmation. (34) "Omission" means failure to act.

www.statutes.legis.state.tx.us/Docs/PE/htm/PE.31.htm#31.01

Sec. 31.01. TITLE 7: OFFENSES AGAINST PROPERTY CHAPTER 31 THEFT DEFINITIONS:

1) "DECEPTION" (A) creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment of another in the transaction, and that the actor does not believe to be true; (B) failing to correct a false impression of law or fact that is likely to affect the judgment of another in the transaction, that the actor previously created or confirmed by words or conduct, and that the actor does not now believe to be true;

www.statutes.legis.state.tx.us/Docs/PE/htm/PE.32.htm#32.03

Sec. 32.03 . TITLE 7: OFFENSES AGAINST PROPERTY CHAPTER 32 FRAUD DEFINITIONS: AGGREGATION OF AMOUNTS INVOLVED IN FRAUD. When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of offense.

www.statutes.legis.state.tx.us/Docs/PE/htm/PE.39.htm#39.02

Sec. 39.02. TITLE 8: OFFENSES AGAINST PUBLIC ADMINISTRATION CHAPTER 39 ABUSE OF OFFICE: ABUSE OF OFFICIAL CAPACITY. (a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly: (1) violates a law relating to the public servant's office or employment; or (2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

Texas Property Codes (TPC) Attorney Charles Jordan CLCCA Trustee Workshop 08/11/12

★ TPC 209.003 ARTICLES NOT APPLICABLE 209.0041 / 005 / 0056 / 0057 / 0058 / 00592 / 0062

http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.201.htm	001 – 013
http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.202.htm	001 – 011 & 018
http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.203.htm	001 – 005
http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.204.htm	001 – 011
http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.205.htm	N/A
http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.206.htm	N/A
http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.207.htm	001 – 006
http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.208.htm	N/A
http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.209.htm	★ 001 - 004 / 007 - 014
http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.210.htm	N/A
http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.211.htm	N/A
http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.212.htm	001 – 012
http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.215.htm	N/A

TPC 202.001 & 202.006

Should all Board Approved Resolutions that govern the CLCCA Administration and Operations need to be registered?

<http://www.legis.state.tx.us/tlodocs/82R/billtext/pdf/HB01821F.pdf#navpanes=0>

- **Sec. 202.001. DEFINITIONS. (Effective Date 01/01/2012)**
- (1) "Dedictory instrument" means each document governing the establishment, maintenance, or operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to:
 - (A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association;
 - (B) properly adopted rules and regulations of the property owners' association; or
 - (C) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.
- (2) "Property owners' association" means an incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by the dedicatory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the residential subdivision, planned unit development, condominium or townhouse regime, or similar planned development.
- **Sec. 202.006. PUBLIC RECORDS. (Effective Date 01/01/2012)**
- (a) A property owners' association shall file all dedicatory instruments in the real property records of each county in which the property to which the dedicatory instruments relate is located.
- (b) A dedicatory instrument has no effect until the instrument is filed in accordance with this section.

Trustee Election Requirements

CLCCA Resolutions & State Documents

- 1968 Clarification Document Film Code 096-23-1161 File Number C756528 (Page 4): Regulations governing elections shall be those which govern elections for public office in the State of Texas
- Bylaw 4.1: Rules governing elections shall be those which govern elections for public office in the State of Texas except as required by the Texas Property Code or stated specifically herein.
(Last Update to Article 4.1: 10/18/2011)
- Bylaw 8.3 - The Board may adopt policy statements and other resolutions not inconsistent with these Bylaws, the Articles of Incorporation and the Deed Restrictions.
(First Created 03/01/1988)
- Bylaw 9.13 - The Board of Trustees may adopt policy statements to clarify the deed restrictions and operational procedures.
(First Created 09/14/1999)
<http://www.statutes.legis.state.tx.us/Docs/EL/htm/EL.1.htm>
- Sec: 1.007. DELIVERING, SUBMITTING, AND FILING DOCUMENTS.
- Sec. 1.011. SIGNING DOCUMENT BY WITNESS.
- Sec. 1.018. APPLICABILITY OF PENAL CODE.

CLCCA Trustee Election Resolutions

http://www.clcca.org/doc/AdobeViewer.asp?doc_filename=%2Fhoa%2Fassn16427%2Fdocuments%2Fmarch%2015.pdf&sfind=&print=1&docid=659984 (Page 4)

03/15/2011 Board Meeting – “The Candidate Filing Application was approved as presented to include the requirement that the “Form must be returned in person to the CLCCA Office, 16511 Diana Lane, Houston, TX 77062” - Motion Passes

http://www.clcca.org/doc/AdobeViewer.asp?doc_filename=%2Fhoa%2Fassn16427%2Fdocuments%2Fapril%2019.pdf&sfind=&print=1&docid=659986 (Pages 4 & 6)

04/19/2011 Board Meeting “Election Committee – Leslie Alvarez reported on the slate of candidates and indicated that one candidate could not be certified by her office because of her failure to appear in person to submit her application.”

“A motion was made to certify all candidates with the exception of Mrs. Cynthia Heimlich MOTION – Leslie Eaton; SECOND – Kathy White *The motion was tabled to closed to review a legal opinion on the matter”*

(The current GM can not find the Legal Opinion or any written Legal Opinions)

After Close - “Leslie Eaton withdrew her prior motion regarding certifying the candidates” A motion was made to certify all candidates submitting applications for the 2011 Election. Motion – Leslie Eaton; SECOND – Jerry Gaff” - Motion Passes

Note: Per Dr. Heimlich, he submitted an Affidavit (Power of Attorney) from Mrs. Heimlich to the GM along with the application when submitting her name to be placed onto the 2011 Ballot.

My Opinion: Whatever occurred during closed session, the application went forward without being presented in person since the Board apparently agreed in close, that the Power of Attorney was acceptable to allow Mrs. Heimlich to appear on the Ballot, thus modifying the 3/15/2011 Board Resolution or possibly, a one time exception.

HELPFUL HYPERLINKS

Texas Statues, AG Legal Opinions, OMHB & AG FAQ, Secretary of State Instructions for Nonprofit Corporations, Black's Law Dictionary, and Robert Rules of Order Online.

- ❖ <http://www.statutes.legis.state.tx.us/> Index to Texas Governmental Statues
- ❖ <http://www.legis.state.tx.us/Home.aspx> State Legislature Home
- ❖ <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.551.htm> TOMA
- ❖ <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm> TPIA
- ❖ <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.1.htm> BOC
- ❖ <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.2.htm> BOC All Entities
- ❖ <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.20.htm> BOC
- ❖ <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.22.htm> BOC
- ❖ https://www.oag.state.tx.us/open/publications_og.shtml AG Publications
- ❖ https://www.oag.state.tx.us/AG_Publications/pdfs/openmeeting_hb.pdf OM HB
- ❖ https://www.oag.state.tx.us/AG_Publications/pdfs/openmeetings_easy.pdf OM HB Easy
- ❖ https://www.oag.state.tx.us/AG_Publications/pdfs/publicinfo_hb.pdf PI HB
- ❖ <https://www.oag.state.tx.us/open/pia/piasign.pdf> TPIA Sign
- ❖ https://www.oag.state.tx.us/open/og_faqs.shtml AG FAQ
- ❖ <https://www.oag.state.tx.us/opin/opindex.shtml> Index by INTS
- ❖ https://www.oag.state.tx.us/opin/op_letters.shtml Index by LO
- ❖ <http://www.sos.state.tx.us/corp/forms/boc/boc-np-2010.pdf> SOS BOC NPC
- ❖ <http://livingfreeandclear.com/downloads/files/Black'sLaw4th.pdf> Law Dictionary
- ❖ <http://rulesonline.com/> Robert Rules of Order On-Line 4th 2000 Edition
- ❖ www.oag.state.tx.us/media/videos/2005openmeetings.wmv TOMA Video
- ❖ <https://www.oag.state.tx.us/media/videos/2005openrecords.wmv> TPIA Video