2021 Texas Legislative Update:

Issues Affecting Master-Planned Community & Condominium Developers and Developer-Controlled Communities

The 2021 Texas Legislative Session has come to an end and a few changes are coming for planned communities. Compared to the 2019 Legislative Session, 2021 was more active with approximately thirty bills filed that would have had some effect on the administration of Texas planned communities. In the end, four meaningful bills passed (five if you count a bill with duplicate language). Fortunately, for developers, there are no major changes to how we structure communities for our clients, or any meaningful dilution of declarant rights to develop, operate, market, and sell lots or condominium units.

Below is a brief summary of each bill with a few observations on sections of each bill, and what steps should be considered related to existing or future governance systems, and association operations in order to ensure compliance with the new laws. A caveat first. These bills are "fresh" and one is somewhat complex. It will take time to see how practitioners will interpret them over time and what best practices will result therefrom.

Senate Bill 318 (by Huffman (R); District 17, Houston) Effective September 1, 2021

CONDOMINIUMS ONLY: RECORDS AND DOCUMENT RETENTION

Change to Chapter 82 of the Texas Property Code

During the 2019 Legislative session, Senator Huffman filed Senate Bill 639, which would have conformed condominiums to the same voting rules, board eligibility standards, open board meeting requirements, and records production requirements applicable to non-condominium associations under Chapter 209 of the Texas Property Code. If passed, Senate Bill 639 would have been problematic for condominiums since the new requirements could have made it more difficult for consumers to obtain home loans and/or mortgage insurance. The bill did not advance.

In 2021, Senator Huffman filed Senate Bill 318, removing the problematic provisions of the 2019 bill, but retaining the same records production requirements already applicable to non-condominium associations. In substantive effect, on September 1, 2021, both non-condominium and condominium associations will have to comply with the same procedures and timelines when responding to an owner's request for association records. Since these "new" requirements for condominiums have been in effect for non-condominiums since 2012, compliance should not be overly burdensome. One change for condominiums that does not apply to non-condominiums, relates to the remedy should the association fail to provide records in accordance with the new law. For condominiums, if a member is denied access, and a court awards court costs and attorney's fees to the member, the member is not permitted to deduct the award from condominium association dues.

There are, however, two new requirements that will have to be implemented **before September 1, 2021**:

Requirement 1: All condominium associations will be required to adopt a records production and copying policy, which includes the costs for production of the records. Costs are limited to the costs for copying public information, which may be found in Title 1, Texas Administrative Code, Section 70.3, and may not exceed the actual costs incurred by the association. This policy will be similar to the policy required to be adopted by a non-condominium association (since the requirements are the same). The records production and copying policy must be recorded in the county records where the regime is located.

Requirement 2: If the condominium association has eight or more units, the association will have to adopt and comply with a document retention policy. This policy will be similar to the policy required to be adopted by a non-condominium association (since the requirements are the same). Though not expressly stated, we believe that the document retention policy must be recorded in the county records where the regime is located.

Senate Bill 581 (by Hancock (R): District 9; Taylor (R): District 11; West (D): District 23) Effective Immediately

CONDOMINIUMS (KIND OF) AND NON-CONDOMINIUMS: RELIGIOUS DISPLAYS

Change to Chapter 202 of the Texas Property Code

Senate Bill 581 is essentially a "rinse and repeat" of similar bills that have been filed over the past few sessions, each of which sought to provide homeowners more flexibility to display religious signs or other religious content outside or on their home. The prior bills, for a number of reasons not necessarily related to their content, never passed. That has changed. Those of you reading this who have followed this issue may recall that in 2011 the Legislature did pass a bill that provided some flexibility, allowing owners to display a religious item to the entry door of their home, but allowing the association to limit the item to 25 square inches. 25 inches is now "infinity and beyond" and not just limited to the entry of a residence.

You may have to beef up your knowledge of constitutional rights as they relate to religious freedom and what constitutes a sincere religious belief when evaluating whether a sign can be regulated by the association, but there are a few carve-outs in Senate Bill 581 that might help. Some of these carve-outs were in the prior law, but they are repeated here with underlined text showing what was changed in Senate Bill 581 and our commentary enclosed by brackets. Namely, you can prohibit a sign or display that: (1) threatens the public health or safety; (2) violates a law other than a law prohibiting the display of religious speech [meaning that if there is another law prohibiting the display of religious items the association cannot prohibit because of that law]; (3) contains language, graphics, or any display that is patently offensive to a passerby for reasons other than its religious content; (4) is installed on property: (A) owned or maintained by the property owners' association [CONDO AND MAYBE NON-CONDO CARVE-OUT]; or (B) owned in common by members of the property owners' association [CONDO CARVE-OUT]; (5) violates any applicable building line, right-of-way, setback, or easement; or (6) is attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture.

What does this mean?

- ☑ Signs in the yard? Yes, unless 1, 2, 3, 5 or 6 apply.
- ☒ Signs in the yard maintained by the association? No.
- ☑ Signs on the home? Yes, unless 1, 2, 3, 5 or 6 apply.
- ☒ Signs on a part of the home or lot (yard) maintained by the association? No.

What does this mean for governance?

If your declaration includes the typical post-2011 (25 square inches allowed) language, it no longer applies. We don't believe you need to go back and amend to remove language limiting religious displays to conform to the law since...it's the law. Just be aware that you cannot limit to 25 square inches. For pre-2011 declarations and new ones, most likely there will be a prohibition against signs (or improvements which is defined broadly enough to cover signs) unless approved by the architectural review authority. Just be aware that you have your parameters for a denial. Despite commentary we have seen to the contrary, don't panic! Best practices when confronted with new changes like this take time to develop. In the meantime,

we recommend you consult with counsel when confronting the new paradigm and please don't try and write a policy on sincere religious beliefs!

When structuring governance systems, we do think it is worth thinking about what is characterized as general common elements versus a unit (since a unit is not owned in common and religious signs would be allowed on units), and how association maintenance is defined relative to the unit, home, or yard space, and running those thoughts through the prism of Senate Bill 581.

Senate Bill 1588 (by Hughes (R): District 1)
Effective September 1, 2021
TREC Management Certificate Filing Required before June 1, 2022

Senate Bill 1588 is a "kitchen sink" bill incorporating some of the themes we have seen in past sessions, plus some new items. This bill was initiated by, and the brainchild of, the Texas Association of Realtors and originally filed in the House by Representative Turner (D), being House Bill 3367. A companion bill was filed in the Senate, Senate Bill 1588, which is the bill that passed. As originally filed, the bill was very problematic, but was improved considerably as the bill moved through the process. As it moved, several amendments (10 to be precise, one being an amendment to an amendment) were added to incorporate text of other bills that dealt with association issues that were stalled for various reasons. Hence, the kitchen sink characteristics, and a little bit of something for everyone.

At least for our developer clients and owing to the developer carve-outs related to the architectural review authority in the bill, there is not much here. There are changes that will likely need to be incorporated into new non-condominium governance systems, and association operational changes that will need to be understood and considered.

So, without further ado, here we go:

CONDOMINIUMS AND NON-CONDOMINIUMS: COLLECTING ASSESSMENTS

Change to Chapter 202 of the Texas Property Code

Senate Bill 1588 provides that an association cannot collect assessments unless the declaration allowing the association to collect assessments has been recorded. That's something that goes without saying and it is a mystery why it remained in this bill. Section 202.006 (d) already provides that a "dedicatory instrument" has no effect until recorded, and a dedicatory instrument includes a declaration. There has been some commentary regarding this change and that it means the declaration must reserve lien rights, as opposed to relying on the automatic lien rights allowed to an association by statute. We do not think that was the intent or the effect of the change.

What You Need to Know: Record the declaration before levying assessments, but you knew that already.

CONDOMINIUMS (KIND OF) AND NON-CONDOMINIUMS: RELIGIOUS DISPLAYS

Change to Chapter 202 of the Texas Property Code

File this under the category that maybe you have to repeat yourself to be heard. Senate Bill 1588 included the same language on religious displays as Senate Bill 581 summarized above.

What You Need to Know: See summary of Senate Bill 581 above.

CONDOMINIUMS AND NON-CONDOMINIUMS: SWIMMING POOL ENCLOSURES

Change to Chapter 202 of the Texas Property Code

Senate Bill 1588 provides that an association has to approve a "swimming pool enclosure" if it complies with applicable safety requirements, the enclosure "is black in color and consists of transparent mesh set in metal frames," is not taller than 6 feet, and is not "designed to be climbable." The association can adopt "limitations" as to the appearance of the enclosure and acceptable colors, but those requirements have to be in a dedicatory instrument, i.e., a policy that is recorded.

What You Need to Know: If you want to regulate, you will need to adopt and record a policy, but you cannot prohibit (must allow) a swimming pool enclosure if it complies with safety requirements, is black in color and has transparent mesh set in metal frames, is not taller than 6 feet, and is not climbable.

NON-CONDOMINIUMS: SECURITY MEASURES AND PERIMETER FENCING

Change to Chapter 202 of the Texas Property Code (WITH A CARVE-OUT SO IT DOES NOT APPLY TO CONDOMINIUMS)

An association can no longer prevent (meaning cannot deny or prohibit) an owner from building or installing any "security measures, including but not limited to a security camera, motion detector, or perimeter fence (thankfully, they left "moat" out, but arguably that's covered). An association can prohibit an owner from installing a camera on someone else's property (that would be trespass, which goes without saying) and can regulate the "type" of fencing (but note the ability to regulate the location is conspicuously absent).

What You Need to Know: Security measure is not defined, but the common definition is "a precaution taken against terrorism, espionage or other danger." If the measure has a credible and reasonable security purpose, the association cannot prohibit. Most governance systems include a definition of improvements that is broad enough to cover security devices and might even have specific requirements related to fence height and location. The association may not be able to enforce these requirements. There is, however, no prohibition against declarant enforcement. Consideration should be given to ensuring that the declarant has the right to enforce specific prohibitions, or vesting architectural control approval in the declarant, as opposed to a committee of the association, during the development period.

NON-CONDOMINIUMS: RESALE CERTIFICATES FEE LIMITATION AND DELIVERY TIME PERIODS

Change to Chapter 207 of the Texas Property Code

There has been a trend in other states to limit the amount an association can charge to deliver a "resale certificate" or to update the certificate. For example, Arizona, Nevada, and Virginia, to name three, have limitations on these charges. Senate Bill 1588 limits the fee in Texas to $375 for the initial resale certificate fee, and $75 for an update. Traditionally, the fee is paid to the association management company directly from the seller or buyer.

There are new changes to the time periods by which the association must deliver the resale certificate once requested and new penalties for failure to provide the certificate if the delivery time period is exceeded. The time period for delivery was reduced from 7 business days to 5 business days. A court may enter judgment against the association in favor of the owner for no more than $5,000 (increased from $500), plus court costs and reasonable attorney's fees.

What You Need to Know: If the management contract between the association and management company provides that the association will pay the resale certificate fee, consider whether the fee should be adjusted to conform to the new limits, otherwise the association and its members will subsidize the difference between the higher fee and the maximum fee allowed by statute. Also consider whether the association should adopt procedures that require notification of each request for a resale certificate or

update made to the management company and if the management company should indemnify the association from any damages associated with failure to meet the statutory timelines.

NON-CONDOMINIUMS: ONLINE SUBDIVISION INFORMATION

Change to Chapter 207 of the Texas Property Code

During the 2011 Legislative session, a bill was passed to require an association to make its "dedicatory instruments," e.g., declaration, rules, etc., available on a website if the association or its management company maintained a publicly accessible website. The statute was not clear as to whether the public must be provided access to the dedicatory instruments through the website. Senate Bill 1588 adds exemptions to the "make available" requirement which now applies only if the association includes 60 or more lots or if the association has contracted with an association management company. In addition, the bill provides that the availability requirement applies only to association members.

What You Need to Know: The big difference between the old and new law related to online access is the old law only required that dedicatory instruments be available on a website if the association or the management company, on behalf of the association, maintained a publicly available website. The new law requires these documents be made available to members on a website if the association includes 60 or more lots or if the association has contracted with an association management company. Even though this is not a meaningful change since the 2011 law required that dedicatory instruments be available, and that would seem to cover all dedicatory instruments, the new law adds specific language that "the current version of the dedicatory instruments" be made available on the website. The change underscores the importance of ensuring that any amendments to the declaration annexation instruments, rules, changes to the rules, or policies be posted to the website. This may require closer coordination with the management company if the management company administers the website.

NON-CONDOMINIUMS: MANAGEMENT CERTIFICATE

Change to Chapter 209 of the Texas Property Code

Changes to the content requirements, filing requirements, and deadlines for filing of management certificates is one of the most significant changes wrought by Senate Bill 1588. The completion and recording of management certificates have been a common requirement of Texas associations and has not seen much in the way change over the past 10 years. New additions required by Senate Bill 1588, include listing all amendments to the declaration (though a close reading of current law would so require), the telephone number and e-mail address of the community manager, the website address where the association's dedicatory instruments are available (if the information in the management certificate is intended for public consumption, Senate Bill 1588 may have inadvertently missed the fact that website access to dedicatory instruments need not be publicly available—see the discussion above), and any fees charged by the association related to the sale or transfer of lots within the community (this would include all fees due from an owner or their purchaser, e.g., transfer fees, resale certificate fees, working capital or reserve fees, and community enhancement fees).

In addition to recording the management certificate in the public records of the county where the community is located, the management certificate must now also be filed with the Texas Real Estate Commission. There was much concern as this bill was discussed among stakeholders whether this was the first step to ultimate governmental oversite of association administration. Ostensibly, the reason advanced for the filing requirement was to provide a one-stop shop for access to basic details regarding the community, and that it was too much trouble to expect purchasers, the public, or realtors to search out the certificate in the public records, or otherwise make efforts to determine how to contact the association or its management company. Whether this is the proverbial "camel's nose under the tent," only time will tell.

The current law requires that the association update a management certificate, if the information in the certificate has changed, within 30 days after the association has notice of the change. Senate Bill 1588 will require that the updated certificate (or the first filed certificate) also be filed with TREC within 7 calendar

days after the certificate is recorded in the public records. The requirement to file the management certificate with TREC requires filing no later than **June 1, 2022.** The filing date was delayed to allow TREC to adopt procedures for filing.

The penalties for failure to file a certificate, whether in the public records or with TREC, have also expanded. Current law provides that a lien for the payment of past due amounts owed to the association is only effective for amounts incurred after a transfer of the property. Senate Bill 1588 adds a further penalty. No attorney's fees incurred to collect the past due amount, or interest accrued thereon, during the period when a management certificate has not been filed in the public records or with TREC, is collectable. In other words, if the association fails to file an initial or updated management certificate, the costs incurred prior to the recordation date are not recoverable.

What You Need to Know: File management certificates on a timely basis.

- ☑ Upon recordation of the declaration, prior to levying any assessments record the management certificate (preferably with the declaration) and file the same certificate with TREC within 7 days of recordation.
- ☑ Upon learning of a change in the contents of the management certificate, within 30 days record the updated management certificate and file the same with TREC within 7 days of recordation.

Similar to the new deadlines for delivery of resale certificates, discussed above, the changes may require that the association closely coordinate with the management company to ensure that if a change to the information is made, that the management certificate is updated and recorded on a timely basis. The association should consider whether the management contract with the management company should address updates to, and recoding of, management certificates and who will be primarily responsible for this requirement. For developer-controlled communities that are actively being developed with the prospect for multiple on-going amendments or annexations, governance counsel for the developer should adopt internal procedures to track updates and record updated certificates as appropriate. For new communities, and unless an exemption applies (less than 60 lots or if the association has not contracted with an association management company), the declarant should consider creating a website for the association, or arranging for the management company to do so, so the website information can be provided in the management certificate. As noted, the management certificate should be recorded at the same time as the declaration, but certainly no later than the date assessment are first levied against lots in the community.

NON-CONDOMINIUMS: ARCHITECTURAL REVIEW AUTHORITY AND RIGHT TO APPEAL

Change to Chapter 209 of the Texas Property Code

Most governance systems use an architectural review authority or committee to review and approve improvements proposed by owners within the community. Most often this authority has different members than the board of directors, but not always, or board members serve on the review authority with other non-board members. Senate Bill 1588 will require that the board and architectural review authority be composed of different persons with some exceptions as further described below. Additionally, a spouse of a board member, or a person residing in the same house as a board member, are disqualified from serving on the architectural review authority. The purpose of requiring different participants on the board and architectural review authority is to provide for a meaningful appeal right for an owner who is denied approval by the review authority.

Senate Bill 1588 provides each member of the association the right to appeal decisions of the architectural review authority. The architectural appeal right is similar to the appeal right related to a covenant violation, but less formal. In addition, only one appeal is allowed.

The separation requirements and appeal rights, in fact the entire section, does not apply to a community with less than 40 lots, during the development period (the period declarant may reserve in the declaration to control aspects of the community), if the declarant appoints a majority of the members of the architectural

review authority, or if the declarant has the right to veto or modify a decision of the architectural review authority.

What You Need to Know: For the declarant who is in the development period, who controls the architectural review authority, or has retained the right to veto or modify decisions of the architectural review authority, nothing has changed. The developer can still appoint the same individuals to serve on the board as are appointed to the architectural review authority. We do believe the new law will necessitate some changes to standard governance systems on a go–forward basis, at least to provide guidance related to appointment and the appeal right once the declarant exemption no longer applies. This will be a major change for resident-controlled communities and may require that they re-populate their architectural review authority, or at a minimum, adopt procedures for an appeal consistent with the new requirements.

NON-CONDOMINIUMS: NOTICE BEFORE A BOARD MEETING; OPEN BOARD MEETING REQUIREMENTS

Change to Chapter 209 of the Texas Property Code

Notice of a regular board meeting must now be provided to members at least 144 hours, i.e., 6 days, in advance. A special board meeting notice must be provided at least 72 hours, i.e., 3 days, in advance. Current law has a long list of actions a resident-controlled board must take at an open board meeting. Previously, approval of an increase in the annual budget by 10% or less could be accomplished by unanimous consent (or a written consent of the majority of board members if the governance documents so permitted). Senate Bill 1588 requires that any increase in the annual budget be approved by the board in an open board meeting. No change was made to the declarant exemptions for open board meetings.

NON-CONDOMINIUMS: CONTRACTS FOR BID

Change to Chapter 209 of the Texas Property Code

Senate Bill 1588 added a new requirement for proposed service contracts by and between an association and a vendor. If the contract is for an amount greater than $50,000, the board must solicit bids and develop a process for solicitation.

What You Need to Know: Since the new law requires that the association develop bid procedures, such procedures will need to be developed and approved prior to solicitation of bids. The association's management company should be able to assist in advising on the process. The board should also review the management agreement to determine and confirm that the bid amount trigger in the management agreement is no less than the statutory threshold.

NON-CONDOMINIUMS: CREDIT REPORTING SERVICES

Change to Chapter 209 of the Texas Property

Reporting owners with delinquent assessments, fines, or other fees to credit reporting agencies is a penalty used by associations and management companies to encourage timely payment of assessments. Senate Bill 1588 will require that certain pre-conditions be satisfied prior to credit agency reporting, namely that there is no dispute between the owner and the association over the payments, the owner be provided a notice at least 30 business days before a report is made, and that the owner has been offered a payment plan to discharge the past-due amounts. Furthermore, the association may not charge a fee to the owner for submission of a report to the credit agency.

What You Need to Know: Prior to Senate Bill 1588, there were no statutory preconditions or standards related to credit agency reporting. An association would be advised to review the new requirements with their management company to ensure that the management contract and procedures that will be used by the management company are in compliance with the new requirements. In addition, since the association

may no longer charge an owner for the reporting fee, the board should consider whether reporting, as a general tool to encourage timely payment, remains of benefit to the community.

NON-CONDOMINIUMS: NON-ARCHITECTURAL COVENANT VIOLATION APPEALS

Change to Chapter 209 of the Texas Property Code

Senate Bill 1588 includes additional appeal procedures and requirements related to covenant violations. Existing law allows an owner the right to request a hearing to discuss, verify and resolve covenant violations prior to the association taking further enforcement action. Currently, the hearing was before the board, or a committee appointed by the board. Most governance systems include existing procedures related to the conduct of violation hearings and best practices should include the sharing of information related to the matter at issue between the board and the owner prior to the hearing date. Senate Bill 1588 formalizes some of these best practices.

Specifically, the bill eliminates the ability to refer the hearing to a committee of the board. All hearings must now be heard by the board. The bill also requires the association provide information to the owner prior to the hearing. The association, no later than 10 days before the hearing, is required to provide a packet of information with documents, photos, and communications that will be introduced at the hearing. If the information packet is not provided within the 10-day period, the owner may request a postponement of 15 days. At the hearing, the association first presents its information and then the owner is provided an opportunity to respond.

As the bill advanced through the legislative process, some stakeholders argued that these procedural changes would create a more adversarial process. We don't think that will be the case. As noted, it is sensible to require the association to present information that will be discussed at the hearing to an owner prior to the hearing to allow the owner sufficient time to prepare. In fact, failure to do so is more likely to create an adversarial environment and, in any event, avoids ambush tactics. The ordering requirements, first to present being the association with the owner having the ability to respond afterwards, inserts a level of order to the proceedings.

What You Need to Know: While a thoughtful governance system will include procedures for the hearing, and perhaps a script, those procedures should be re-examined based on the new requirements. To the extent the association has created a committee separate from the board to conduct hearings, the committee will need to be disbanded. To ease assembly of material in advance, the association should develop procedures to capture relevant material prior to the hearing, including violation notice letters, photos, and any non-privileged email communication to and from the owner and the association and/or the association's management company. Most likely, the management companies will have this information already assembled and organized in the owner's folio.

NON-CONDOMINIUMS: LEASING INFORMATION

Change to Chapter 209 of the Texas Property Code

Existing law prohibits the association from enforcing a provision in a dedicatory instrument, e.g., declaration, rules, or policies that requires a tenant to be approved by the board or a credit report or application from a tenant be provided to the association. Existing law does allow the association to obtain a copy of the lease, and if so requested, the party providing the lease may redact sensitive personal information.

Senate Bill 1588 added a new section which also allows the association to request the contact information for the tenant and the commencement date and term of the lease. Interestingly, we understood the bill author's intent was to replace the provision allowing the association to request a copy of the redacted lease which would then only allow the association to obtain the tenant contact information, commencement date, and term of the lease. While the section allowing the association to request a redacted lease was removed from Chapter 209, there is nothing in Chapter 209 that expressly prohibits an association from requesting a lease.

What You Need to Know: An association may require that an owner provide tenant contact information, and the commencement date and term of the lease.

NON-CONDOMINIUMS: JUSTICE COURT

Change to Chapter 209 of the Texas Property Code

Senate Bill 1588 added a new section which will allow an owner to file suit against an association in justice court over an alleged violation of Chapter 209. Justice courts have long been viewed as a consumer-friendly forum with lower filing fees and fewer procedural requirements for hearings and trials. Because justice courts are courts of limited rather than general jurisdiction, the inclusion of this provision affords owners an alternate forum to have matters presented for judicial determination. One drawback is that justice court proceedings may be appealed by either side and the new trial is "de novo," which means the parties must go through the entire process again if there is an appeal.

What You Need to Know: An owner may sue an association for a violation of Chapter 209 in any justice court for a precinct in which all or part of the subdivision is located.

House Bill 1281 (by Wilson (R); District 20, Burnet, Milam, Williamson) Effective Immediately

CONDOMINIUMS AND NON-CONDOMINIUMS: UNLICENSED GOLF CARTS

House Bill 1281 is a clarification of a portion to the Transportation Code which makes it clear that unlicensed golf carts are permitted to operate in a "master planned community." However, master planned community was not defined and remains undefined by this bill. Current law was modified during the 2019 Legislative session with the intent to allow unlicensed golf carts in a master planned community, but the language was confusing. Senate Bill 1281 provides that unlicensed golf carts may be operated in a residential subdivision as defined by Chapter 209. Unfortunately, the language is still confusing.

What You Need to Know: Unlicensed golf carts are permitted in planned communities, or at least that's the intent.

House Bill 1659 (by Murphy (R); District 133, Harris)
Effective Immediately

NON-CONDOMINIUMS: AMENDMENTS

Current law provides that except during the development period, a declaration may be amended by 67% of the votes allocated to members in the association. House Bill 1659 adds another exception. If a portion of the land subject to the declaration is zoned for, contains, or previously contained, a commercial structure, industrial structure, apartment or condominium, the amendment provisions in the declaration control. In other words, if the declaration requires the consent of the non-residential owner as a precondition to amendment, the 67% amendment rule does not apply. Interestingly, the exception applies even if the portion of the community included a non-residential use and if the formerly non-residential area will be redeveloped for residential use.

What You Need to Know: For a mixed-use project with residential and non-residential components, if the declaration includes an amendment consent from the non-residential owner, then irrespective of whether residential members have 67% or more of the votes, the non-residential owner must still consent for any amendment to be effective.

Contacts:

Bob Burton | 512.370.2869 | rburton@winstead.com

Alex Valdes | 512.370.2842 | avaldes@winstead.com

Jennifer Martin | 512.370.2883 | jlmartin@winstead.com