

PROXY RETENTION RESEARCH

The Texas Uniform Condominium Act specifically addresses and requires the retention of voting records and proxies.

PROPERTY CODE

TITLE 7. **CONDOMINIUMS**

CHAPTER 82. UNIFORM CONDOMINIUM ACT

Sec. 82.114. **ASSOCIATION RECORDS.** (a) The association shall keep:

- (1) detailed financial records that comply with generally accepted accounting principles and that are sufficiently detailed to enable the association to prepare a resale certificate under Section 82.157;
 - (2) the plans and specifications used to construct the condominium except for buildings originally constructed before January 1, 1994;
 - (3) the condominium information statement prepared under Section 82.152 and any amendments;
 - (4) the name and mailing address of each unit owner;
 - (5) voting records, proxies, and correspondence relating to amendments to the declaration; and
 - (6) minutes of meetings of the association and board.
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Unlike the Texas Uniform Condominium Act, Chapter 209 does NOT contain an expressed requirement for the retention of voting records and proxies by a Texas Subdivision Association.

PROPERTY CODE

TITLE 11. **RESTRICTIVE COVENANTS**

CHAPTER 209. TEXAS RESIDENTIAL PROPERTY OWNERS PROTECTION ACT

Sec. 209.005. **ASSOCIATION RECORDS.**

(m) A property owners' association composed of more than 14 lots shall adopt and comply with a document retention policy that includes, at a minimum, the following requirements:

- (1) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;
- (2) financial books and records shall be retained for seven years;
- (3) account records of current owners shall be retained for five years;
- (4) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;

- (5) minutes of meetings of the owners and the board shall be retained for seven years; and
- (6) tax returns and audit records shall be retained for seven years

Chapter 209 DOES specifically address the confidentiality of the votes as provided in Sec 209.00594.

Sec. 209.00594. **TABULATION OF AND ACCESS TO BALLOTS.**

(a) Notwithstanding any other provision of this chapter or any other law, a person who is a candidate in a property owners' association election or who is otherwise the subject of an association vote, or a person related to that person within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, may not tabulate or otherwise be given access to the ballots cast in that election or vote except as provided by this section.

(b) A person other than a person described by Subsection (a) may tabulate votes in an association election or vote but may not disclose to any other person how an individual voted.

(c) Notwithstanding any other provision of this chapter or any other law, a person other than a person who tabulates votes under Subsection (b), including a person described by Subsection (a), may be given access to the ballots cast in the election or vote only as part of a recount process authorized by law.

Chapter 209 DOES address the retention of voting records and proxies for at least 15 days, as required in Sec 209.0057.

Sec. 209.0057. **RECOUNT OF VOTES.**

(a) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(b) Any owner may, not later than the 15th day after the date of the meeting at which the election was held, require a recount of the votes. A demand for a recount must be submitted in writing either:

(1) by certified mail, return receipt requested, or by delivery by the United States Postal Service with signature confirmation service to the property owners' association's mailing address as reflected on the latest management certificate filed under Section 209.004; or

(2) in person to the property owners' association's managing agent as reflected on the latest management certificate filed under Section 209.004 or to the address to which absentee and proxy ballots are mailed.

(c) The property owners' association shall, at the expense of the owner requesting the recount, retain for the purpose of performing the recount, the services of a person qualified to tabulate votes under this subsection. The association shall enter into a contract for the services of a person who:

(1) is not a member of the association or related to a member of the association board within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and

(2) is:(A) a current or former: (i) county judge; (ii) county elections administrator; (iii) justice of the peace; or (iv) county voter registrar; or (B) a person agreed on by the association and the persons requesting the recount.

(d) Any recount under Subsection (b) must be performed on or before the 30th day after the date of receipt of a request and payment for a recount in accordance with Subsections (b) and (c). If the recount changes the results of the election, the property owners' association shall reimburse the requesting owner for the cost of the recount. The property owners' association shall provide the results of the recount to each owner who requested the recount. Any action taken by the board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.