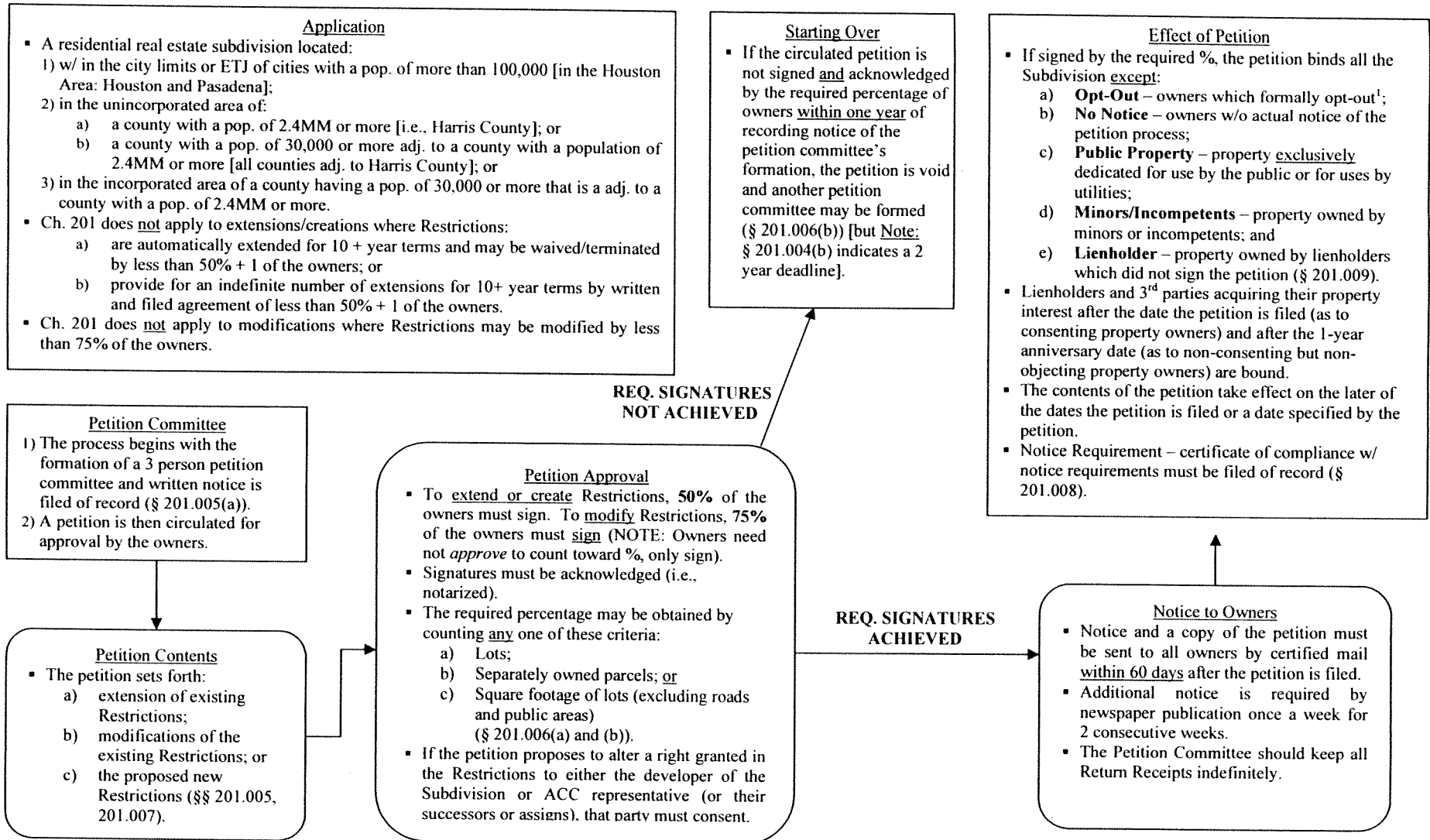


TEXAS PROPERTY CODE CHAPTER 201:
Creating, Extending, Renewing, Adding to, or Modifying Restrictions



REQ. SIGNATURES NOT ACHIEVED

REQ. SIGNATURES ACHIEVED



¹ An owner may "opt-out" of the Restrictions by:

- Petition** – Signing the petition and affirmatively electing to exclude their property. The petition is required to include an "opt-out" blank to check; or
- Lawsuit** – Suit challenging the petition process filed w/ in 6 months after the filing of the petition; or
- Opt-Out Statement** – Filing a statement affirmatively electing to be excluded from the Restrictions in the real property records within 1 year after actual notice. Evidence of receipt by all owners of the certified mail notice to each owner is critical (§§ 201.009-010).

CHAPTER 201 DEFINITIONS

Restrictions: 1 or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records, or deed records.

Residential real estate subdivision or subdivision: all land within 1 or more maps or plats of land that is divided into 2 or more parts if the maps or plats cover land within a city, town, or village, or within the ETJ of a city, town, or village and are recorded in the deed, map, or real property records of a county, and the land within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only; or all land located within a city, town, or village, or within the ETJ of a city, town, or village that has been divided into 2 or more parts and that is or was burdened by restrictions limiting at least a majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county.

Owner: an individual, fiduciary, partnership, joint venture, corporation, association, or other entity that owns record title to real property in a subdivision, or the personal rep. of an individual who owns record title to subdivision property.

Petition: 1 or more instruments, however designated or entitled, by which 1 or more of the purposes authorized by Ch. 201 are sought to be accomplished.

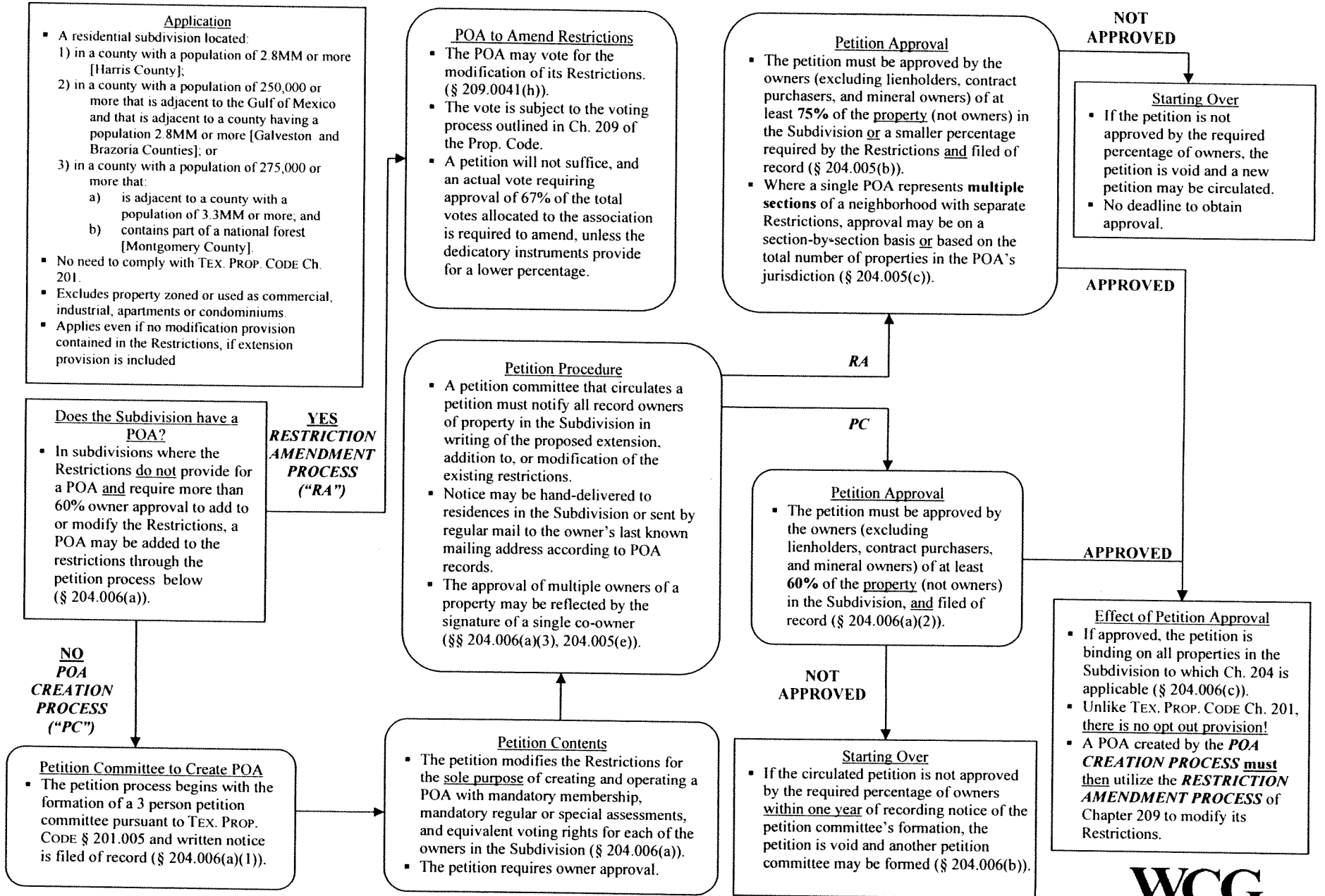
Real property records: the applicable records of a county clerk in which conveyances of real property are recorded.

Lienholder: an individual, corporation, financial institution, or other entity that holds a vendor's or deed of trust lien secured by land within the subdivision.

Petition committee or committee: a group of 3 or more owners who file with the county clerk a notice as required by Section 201.005(a) and who prepare and circulate a petition as allowed under Ch. 201.

TEXAS PROPERTY CODE CHAPTER 204:

Creating a Property Owners' Association and Extending, Adding to, or Modifying Existing Restrictions



CHAPTER 204 DEFINITIONS

Restrictions: 1 or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records, or deed records.

Residential real estate subdivision or subdivision: all land within 1 or more maps or plats of land that is divided into 2 or more parts if the maps or plats cover land within a city, town, or village, or within the ETJ of a city, town, or village and are recorded in the deed, map, or real property records of a county, and the land within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only; or all land located within a city, town, or village, or within the ETJ of a city, town, or village that has been divided into 2 or more parts and that is or was burdened by restrictions limiting at least a majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county.

Owner: an individual, fiduciary, partnership, joint venture, corporation, association, or other entity that owns record title to real property in a subdivision, or the personal rep. of an individual who owns record title to subdivision property.

Petition: 1 or more instruments, however designated or entitled, by which 1 or more actions relating to restrictive covenants are sought to be accomplished.

Property Owners' Association ("POA"): a designated representative of the owners of property in a subdivision and may be referred to as a "homeowners association," "community association," "civic association," "civic club," "association," "committee," or similar term contained in the restrictions. The membership of the association consists of the owners of property within the subdivision. The association must be nonprofit and may be incorporated as a Texas nonprofit corporation. An unincorporated association may incorporate under the Texas Non-Profit Corporation Act (Sec. 22.001 et seq., Business Organization Code). The association's board of directors or trustees must be elected or appointed in accordance with the applicable provisions of the restrictions and the association's articles of incorporation or bylaws.

Real property records: the applicable records of a county clerk in which conveyances of real property are recorded.

Lienholder: an individual, corporation, financial institution, or other entity that holds a vendor's or deed of trust lien secured by land within the subdivision.

Dedicator instrument: each governing instrument covering the establishment, maintenance, and 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 restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the POA, or to all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

Restrictive covenant: any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

Regular assessment: an assessment, charge, fee, or dues that each owner of property within a subdivision is required to pay to the POA on a regular basis and that are to be used by the association for the benefit of the subdivision in accordance with the original, extended, added, or modified restrictions.

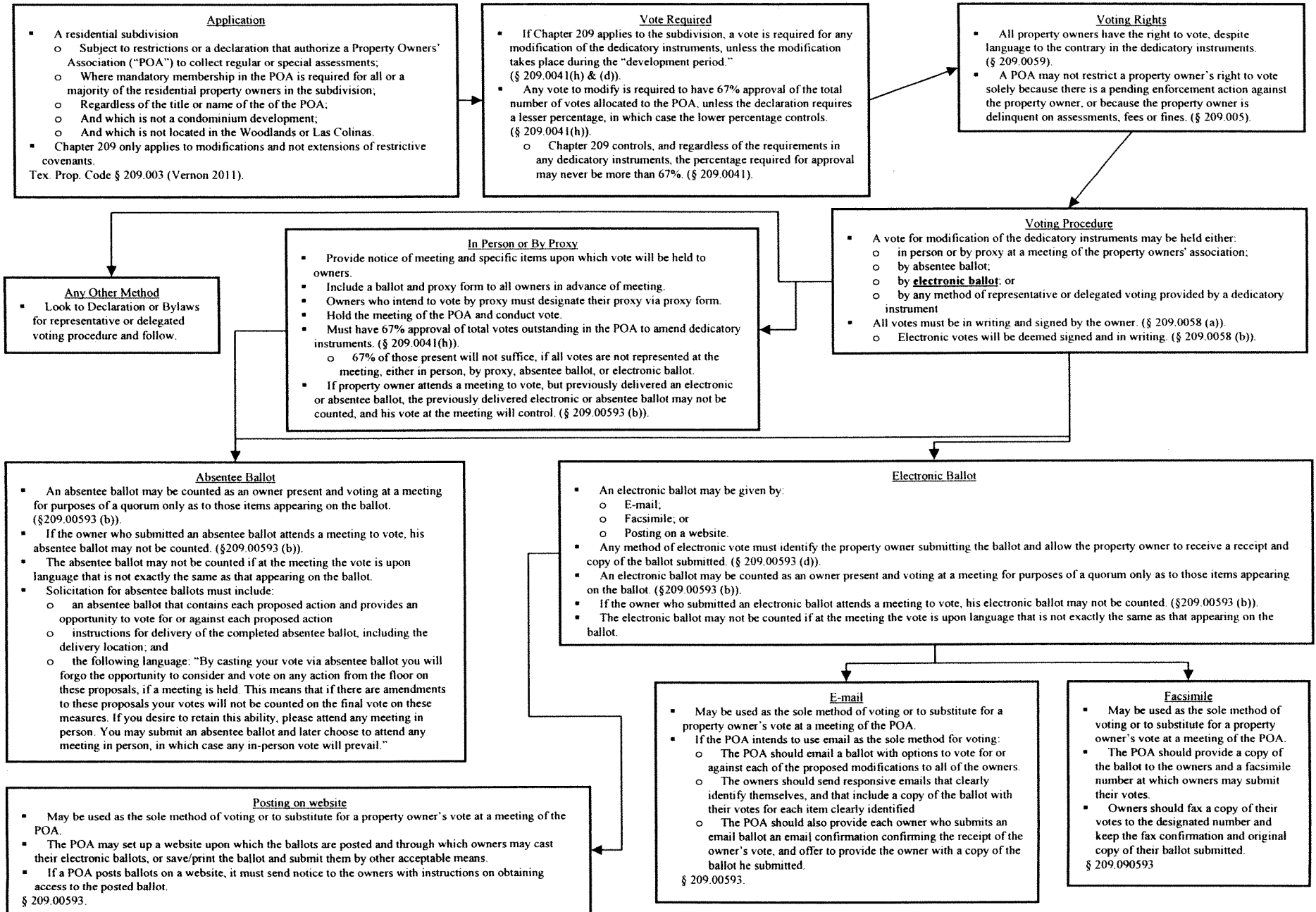
Special assessment: an assessment, charge, fee, or dues that each owner of property within a subdivision is required to pay to the POA, after a vote of the membership, for the purpose of paying for the costs of capital improvements to the common areas that are incurred or will be incurred by the association during the fiscal year. A special assessment may be assessed before or after the association incurs the capital improvement costs.

CHAPTER 204: STATUTORY POWERS OF A PROPERTY OWNERS' ASSOCIATION

Unless otherwise provided by the restrictions or the association's articles of incorporation or bylaws, the POA, acting through its board of directors or trustees, may:

- (1) adopt and amend bylaws;
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect regular assessments or special assessments for common expenses from property owners;
- (3) hire and terminate managing agents and other employees, agents, and independent contractors;
- (4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings on matters affecting the subdivision;
- (5) make contracts and incur liabilities relating to the operation of the subdivision and the POA;
- (6) regulate the use, maintenance, repair, replacement, modification, and appearance of the subdivision;
- (7) make additional improvements to be included as a part of the common area;
- (8) grant easements, leases, licenses, and concessions through or over the common area;
- (9) impose and receive payments, fees, or charges for the use, rental, or operation of the common area and for services provided to property owners;
- (10) impose interest, late charges, and, if applicable, returned check charges for late payments of regular assessments or special assessments;
- (11) if notice and an opportunity to be heard are given, collect reimbursement of actual attorney's fees and other reasonable costs incurred by the POA relating to violations of the subdivision's restrictions or the POA's bylaws and rules;
- (12) charge costs to an owner's assessment account and collect the costs in any manner provided in the restrictions for the collection of assessments;
- (13) adopt and amend rules regulating the collection of delinquent assessments and the application of payments;
- (14) impose reasonable charges for preparing, recording, or copying amendments to the restrictions, resale certificates, or statements of unpaid assessments;
- (15) purchase insurance and fidelity bonds, including directors' and officers' liability insurance, that the board considers appropriate or necessary;
- (16) if the restrictions allow for an annual increase in the maximum regular assessment without a vote of the membership, assess the increase annually or accumulate and assess the increase after a number of years;
- (17) subject to the requirements of the Texas Non-Profit Corporation Act (Sec. 22.001 et seq., Business Organization Code) and by majority vote of its board of directors, indemnify a director or officer of the POA who was, is, or may be made a named defendant or respondent in a proceeding because the person is or was a director;
- (18) if the restrictions vest the architectural control authority in the POA or if the authority is vested in the POA under Section 204.011:
 - (A) implement written architectural control guidelines for its own use or record the guidelines in the real property records of the applicable county; and
 - (B) modify the guidelines as the needs of the subdivision change;
- (19) exercise other powers conferred by the restrictions, its articles of incorporation, or its bylaws;
- (20) exercise other powers that may be exercised in this state by a corporation of the same type as the POA; and
- (21) exercise other powers necessary and proper for the governance and operation of the POA.

TEXAS PROPERTY CODE CHAPTER 209 Modifying Existing Restrictions in Certain Subdivisions



TEXAS PROPERTY CODE CHAPTER 209
Modifying Existing Restrictions in Certain Subdivisions

CHAPTER 209 DEFINITIONS

Assessment: a regular assessment, special assessment, or other amount a property owner is required to pay a property owners' association under the dedicatory instrument or by law.

Board: the governing body of a property owners' association.

Declaration: an instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision.

Dedicatory instrument: each governing instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or similar instruments subjecting property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, and to all lawful amendments to the covenants, bylaws, rules, or regulations.

***H.B. 1821 (effective 1/1/2012) Changing § 202.001 Definition:

"**Dedicatory 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

Lot: means any designated parcel of land located in a residential subdivision, including any improvements on the designated parcel.

Owner: a person who holds record title to property in a residential subdivision and includes the personal representative of a person who holds record title to property in a residential subdivision.

Property owners' association or association ("POA"): an incorporated or unincorporated association that:

- (A) is designated as the representative of the owners of property in a residential subdivision;
- (B) has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; and
- (C) manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision.

Regular assessment: an assessment, a charge, a fee, or dues that each owner of property within a residential subdivision is required to pay to the property owners' association on a regular basis and that is designated for use by the property owners' association for the benefit of the residential subdivision as provided by the restrictions.

Residential subdivision or subdivision: a subdivision, planned unit development, townhouse regime, or similar planned development in which all land has been divided into two or more parts and is subject to restrictions that:

- (A) limit a majority of the land subject to the dedicatory instruments, excluding streets, common areas, and public areas, to residential use for single-family homes, townhomes, or duplexes only;
- (B) are recorded in the real property records of the county in which the residential subdivision is located; and
- (C) require membership in a property owners' association that has authority to impose regular or special assessments on the property in the subdivision.

Restrictions: one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.

Restrictive covenant: any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

Special assessment: an assessment, a charge, a fee, or dues, other than a regular assessment, that each owner of property located in a residential subdivision is required to pay to the property owners' association, according to procedures required by the dedicatory instruments, for:

- (A) defraying, in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in common areas owned by the property owners' association, including the necessary fixtures and personal property related to the common areas;
- (B) maintenance and improvement of common areas owned by the property owners' association; or
- (C) other purposes of the property owners' association as stated in its articles of incorporation or the dedicatory instrument for the residential subdivision.

DEED RESTRICTIONS CHECKLIST

SUBDIVISION: _____

ORIGINAL PLAT RECORDED AT: _____

RE-PLATS (IF ANY) RECORDED AT: _____

RESTRICTIONS RECORDED AT: _____

AMENDMENTS TO RESTRICTIONS (IF ANY) RECORDED AT: _____

Q: Do my restrictions...	YES	NO	Things to consider...	Questions/Concerns
have an expiration date?	<p style="text-align: center;">_____</p> <p style="text-align: center;">When do they expire?</p> <p style="text-align: center;">_____</p>	_____	<ul style="list-style-type: none"> ➤ If your restrictions do not expressly state when they expire, they are effective until otherwise terminated by the lot owners. Many restrictions provide for an initial term, then automatic renewals (usually for 10 year terms). ➤ If your restrictions have <u>already</u> expired, refer to the Tex. Property Code Ch. 201 procedure chart to see how you can create new restrictions. ➤ If your restrictions expire soon, check to see if there is a procedure for extending the term, or consider using Tex. Property Code Chapters 201 or 204. 	
have a procedure to extend the term?	<p style="text-align: center;">_____</p> <p style="text-align: center;">Section _____</p>	_____	<ul style="list-style-type: none"> ➤ If your restrictions do not provide a procedure to extend the term, you may use the amendment procedures in your restrictions or Tex. Property Code Chapters 201 or 204 to do so. 	
regulate use?	<p style="text-align: center;">_____</p> <p style="text-align: center;">Section _____</p>	_____	<ul style="list-style-type: none"> ➤ If your restrictions do not already regulate use (e.g., single family residential), consider amending them to do so. The City of Houston will enforce use restrictions at no cost to you! 	
regulate lot size?	<p style="text-align: center;">_____</p> <p style="text-align: center;">Section _____</p>	_____	<ul style="list-style-type: none"> ➤ If your restrictions do not already regulate lot size (e.g., no structure may be built on any lot smaller than 5,000 sq. ft.), consider amending them to do so. This is another type of restriction the City will enforce! ➤ If your neighborhood is located inside the Beltway 8 loop, refer to the Prevailing Lot Size procedure chart for a great way to establish this type of restriction block-by-block. 	
regulate setback lines?	<p style="text-align: center;">_____</p> <p style="text-align: center;">Section _____</p>	_____	<ul style="list-style-type: none"> ➤ If your restrictions do not already regulate setbacks (e.g., no structure may be built closer than 10 ft. from any adjoining property line), consider amending them to do so. This is another type of restriction the City will enforce! ➤ If your neighborhood is located inside the Beltway 8 loop, refer to the Special Minimum Building Line procedure chart for a great way to establish this type of restriction block-by-block. 	

Q: Do my restrictions...	YES	NO	Things to consider...	Questions/Concerns
regulate the size, type or number of structures per lot?	____ Section ____	____	<ul style="list-style-type: none"> ➤ If your restrictions do not already regulate size, type, or number of structures per lot, consider amending them to do so. These are more types of restriction the City will enforce! 	
regulate the direction a structure must face?	____ Section ____	____	<ul style="list-style-type: none"> ➤ If your restrictions do not already regulate orientation (e.g., all homes must face north or south), consider amending them to do so. This is another type of restriction the City will enforce! 	
create a property owner's association ("POA")?	____ Section ____	____	<ul style="list-style-type: none"> ➤ If your restrictions do not provide for a POA, refer to Tex. Property Code Ch. 204 procedure chart for a way to create one (or use the amendment procedures in your restrictions if they are more favorable). Once you have created a POA, you may then use the Ch. 204 petition process to amend your restrictions. 	
have a procedure to modify the restrictions?	____ Section ____	____	<ul style="list-style-type: none"> ➤ If your restrictions do not contain a procedure for modification, consider using Tex. Property Code Ch. 204 to do so. You will have to create a POA first, but amendments under Ch. 204 are binding on all lot owners! Tex. Property Code Ch. 201 is available to some areas without POAs, but is cumbersome and not all owners are necessarily bound. ➤ If your restrictions do allow for modification, read carefully to make sure you are not in a "Freeze-out" Period. Some restrictions limit modifications and extensions to specified time periods (e.g., 6 months prior to an automatic renewal date). 	
have performance standards for development?	____ Section ____	____	<ul style="list-style-type: none"> ➤ Height limit, open space, construction materials, pervious area, etc., are all examples of additional performance standards (but not enforced by the City); typically non-discretionary limitations on development. 	
create an architectural control committee ("ACC")?	____ Section ____	____	<ul style="list-style-type: none"> ➤ An ACC is an appointed/elected panel which exercises discretionary authority to ensure compliance of new construction and remodeling of existing structures with the restrictions and to ensure consistency of architectural design. ➤ Modifying restrictions to add an ACC where none has existed before can be a difficult and divisive task, unless the ACC has significantly limited discretion. Consider limiting ACC discretion to ensuring that stated performance standards have been satisfied. 	

Q: Do my restrictions...	YES	NO	Things to consider...	Questions/Concerns
have a variance procedure for unusual circumstances?	____ Section ____	____	<ul style="list-style-type: none"> ➤ If your restrictions do not have a variance procedure, consider adding one. This will give your restrictions the flexibility to deal with unusual circumstances of specific property where unusual hardship would occur from strict compliance. ➤ Unforeseen changes in use, construction techniques and technological advances make variance procedures practical for any subdivision. 	
have mandatory assessments?	____ Section ____	____	<ul style="list-style-type: none"> ➤ A POA needs funding to be effective. Exceptions may be provided for the elderly. Assessments may be fixed, relate to value (HCAD) or be set by a POA (usually with specific limits for annual increases) ➤ Where concerns are raised about liens, consider making the liens only judicially enforceable and add safeguards for the elderly. In some cases the best course is to eliminate any lien but retain a legally enforceable assessment. 	

OTHER HELPFUL DEED RESTRICTION RESOURCES

- ◆ **City of Houston Deed Restriction Hotline** – 832-393-6333.
- ◆ **City of Houston General Information on Deed Restrictions** - <http://www.houstontx.gov/legal/deed.html>.
- ◆ **City of Houston Deed Restriction Pro Bono Program** - Provides free legal assistance to qualifying neighborhoods. To qualify, a subdivision must meet all of the following criteria:
 - 1) Average home value is less than the City average;
 - 2) Subdivision does not have mandatory assessment fees; and
 - 3) At least 51% of the properties are occupied by homeowners.
 For more information, visit the City of Houston’s website at www.houstontx.gov/planning or call 713.837.7701.
- ◆ To view **deed restriction articles written by Reid Wilson**, visit the Wilson, Cribbs & Goren, P.C. website at www.wcglaw.net.
- ◆ **Resources for homeowners’ associations** can be found on the Community Associations Institute website at www.caionline.org.
- ◆ **Get a copy of your deed restrictions.** Copies of deed restrictions for your subdivision are available for a nominal fee from the County Clerk of the county in which you reside. Harris County residents should contact: Harris County Clerk, 201 Caroline, 3rd Floor, Houston, Texas 77002.



CITY OF HOUSTON DEED RESTRICTION COMPLAINT FORM

ABOUT THE VIOLATION

Date: _____ Council District: _____

Type of Violation: Business _____ Setback _____ 2nd Residence _____ Vehicle _____ Other _____

Address of Violation: _____ Zip: _____

Violator and / or Property Owner's Name: _____

Description of Violation (include days & times that our investigators are likely to witness the violation):

NOTE: if you have any photographs or other documentation pertaining to the deed restriction violation, please attach to the complaint form. Thank you.

ABOUT THE SUBDIVISION

Subdivision: _____ Section _____

Civic Club / Homeowner's Association: _____

ABOUT THE CONTACT PERSON

Name: _____

Mailing Address: _____ Zip: _____

Phone Number: _____

Signature of Contact Person / Representative

Mail To: City of Houston Legal Department
Neighborhood Services Division
Deed Restriction Enforcement Team
P.O. Box 368
Houston, Texas 77001-0368

Deed Restriction Hotline: (832) 393-6333

MINIMUM LOT SIZE AND SETBACK PROCESS

