

SUMMER 2014 NEWSLETTER

HOMEOWNER'S ASSOCIATION Q & A

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Homeowner's Associations as Unincorporated Nonprofit Associations

Q: Does a homeowner's association have to be an incorporated legal entity?

A: No, a homeowner's association is not required to incorporate in order to conduct business as a homeowner's association. Chapter 252 of the Texas Business Organizations Code governs an unincorporated nonprofit association, defining the entity as an organization "consisting of three or more members joined by mutual consent for a common, nonprofit purpose." TEX. BUS. ORG. CODE § 252.001(2).

Q: If a homeowner's association is an unincorporated nonprofit association, is it a separate legal entity from its members?

A: Yes, Chapter 252 states that "a nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort." TEX. BUS. ORG. CODE § 252.006. Additionally, an unincorporated nonprofit association also has the capacity to defend and participate in a judicial proceeding. TEX. BUS. ORG. CODE § 252.007.

Q: Is a plaintiff who sues a homeowner's association that is an unincorporated nonprofit association required to sue each individual owner/member?

A: No, a plaintiff suing an unincorporated nonprofit association is not required to sue each individual owner, but can sue the association because it is a legal entity separate and distinct from its members and can participate and defend in a judicial proceeding.

Q: Who should be served if a homeowner's association that is an unincorporated nonprofit association is sued?

A: Service of process on an officer, managing agent, or general agent of the nonprofit association is proper. Tex. Bus. Org. Code § 252.013.

Protections Offered for a Homeowner's Association in a Civil Lawsuit

Q: Is a homeowner's association granted any statutory caps or protections against liability in a civil lawsuit?

A: Yes. Most homeowner's associations qualify for statutory damage caps against civil liability under Chapter 84 of the Texas Civil Practices and Remedies Code, The

Texas Charitable Immunity and Liability Act of 1987. The Texas Charitable Immunity and Liability Act grants charitable organizations certain protections and damage caps. Charitable organizations is defined as “an exempt organization in Section 501(c) (3) or 501(c) (4) of the internal revenue code...[or] a homeowners association as defined by Section 528 of the Internal Revenue Code of 1986 or which is exempt from income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c) (4) of the code.

Q: Aside from qualifying as a charitable organization under the statute, are there any other prerequisites to being entitled to the statutory damage caps provided by the Texas Charitable Immunity and Liability Act?

A: Yes, a homeowners association is only entitled to the statutory damage caps provided by the Texas Charitable Immunity and Liability Act if it maintains requisite liability insurance coverage for the acts or omissions of its employees or volunteers in the amount of at least \$500,000 for each injured person, \$1,000,000 for each single occurrence for death or bodily injury, and \$100,000 for each single occurrence for injury or destruction of property. If the homeowner’s association maintains the requisite insurance coverage, the amount of civil liability that the organization can incur as a result of the acts or omissions committed by its employees or volunteers is limited to the coverage limits of the insurance policy.

Q: Are there any instances that the damages cap provided by the Texas Charitable Immunity and Liability Act does not apply?

A: Yes, the damage cap limitations do not apply to damages resulting from an act or omission that is intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others. TEX. CIV. PRAC. REM. CODE §84.006.

Q: Are the individual directors or officers of the homeowner’s association offered any protections under the Texas Charitable Immunity and Liability Act?

A: Yes, the directors and officers of the organization are granted the same damages caps as the homeowner’s association if the association carries the requisite insurance coverage. In a civil action brought against an employee of a homeowner’s association for damages based on an act or omission by the person in the course and scope of the person’s employment, the liability of the employee is limited to money damages in a maximum amount of \$500,000 for each person and \$1,000,000 for each single occurrence of bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property. TEX. CIV. PRAC. REM. CODE §84.005

Q: If the board members, directors, or officers are not employees of the organization, but instead are only volunteers, are they offered any protections under the Texas Charitable Immunity and Liability Act?

A: Yes, a volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of the volunteer's duties or functions, including as an officer, director, or trustee within in the organization. TEX. CIV. PRAC. REM. CODE §84.004