

West Galveston Island Property Owners Association

The WGIPOA held a Board of Directors Meeting on August 19, 2017 at the Galveston Country Club. Jerry Mohn, President called the meeting to order at 9:00 A.M. A quorum was established by the attendance of Bill Leitch – Bermuda Beach, Dunes of West Beach – Jay Lendrum, Steve Kendziera – Jamaica Beach, Dick Kuriger – Pirates Beach/Cove, Kim Foley – Pointe West, Charley Jones – Sea Isle, Peggy Zahler – Spanish Grant Beach, Barbara Hankins – Sportsman Road, and Craig Vance – Terramar. Susan Gonzales – CKM and recording Secretary was present.

Jerry Mohn recognized City Council Member Carolyn Sunseri, Constable Jimmy Fullen, and County Commissioner Joe Giusti (409-771-3888). Commissioner Giusti stated that in November there will be a Bond election for drainage, roads and bridges and he asked for the members vote in support.

Sponsors recognized were Johnson Space Center Credit Union and CKM Property Management. Candidates were introduced. Jerry Mohn introduced candidate Johnny Smecca who is running for a Galveston Independent School District seat.

The Board reviewed the Minutes & financial reports. Motion made by Peggy Zahler and seconded by Dick Kuriger, the Board approved the June minutes and financial report as presented.

Carolyn Sunseri District 6 representative stated the budget presentation will go through public hearings prior to adoption. The city is continuing to work on getting visitors to have longer stays in Galveston. The community pool is now open for use. Additional police officers will be added to the Galveston police force. Dustin Henry has taken over the position held by Minh Thach.

Margaret Maddox – Daughtry & Jordan law firm – Residential Governance. Susan Gonzales introduced Margaret Maddox who is with Daughtry & Jordan, she graduated Cum Laude from Texas A & M University and University of Houston School of Law. She is a member of the State Bar of Texas, Houston Bar Association, Galveston County Bar Association and was selected as one of Houston’s “Top Lawyers”. Mrs. Maddox focuses her legal practice on community association law, real estate litigation, and property transactions.

RESIDENTIAL GOVERNANCE

Margaret stressed the importance of knowing your governing documents. There is a hierarchy of documents. **You need to know where to look.**

For Governance Issues – Articles of Incorporation & bylaws.

For Enforcement Issues – Declaration of Covenants, Conditions, and Restrictions; and Guidelines and Rules. – Boards may clarify and expound upon Declaration via Guidelines per Texas Property Code 204.010(a) (18) and pass Rules per Texas Property Code 204.010(6) to “regulate the use, maintenance, repair, replacement, modification and appearance of the subdivision.” ACC Guidelines, Board Policies; Rules and Regulations.

State Law - Texas Property Code, Texas Business Organization Code, and Texas Transportation Code (private streets).

Federal Law – Fair Housing Act and ADA

City & County Ordinances

It is recommended that you ask for help and obtain a written opinion from your attorney or CPA for protection.

Amending the Covenants, Conditions and Restrictions: A declaration may be amended only by a vote of 67% of the “total votes allocated to property owners entitled to vote on the amendment,” unless the Declaration has a lower percentage. Texas Property Code 209.0041 (h).

How to enforce a policy: All dedicatory instruments must be filed of record in the county real property records or they have no effect. Texas Property Code 202.006(b)

Dedicatory Instruments must be published online if you have a website. Texas Property Code 207.006.

What is a Dedicatory Instrument? A Dedicatory Instrument is defined as a “document governing establishment, maintenance, or operation of a residential subdivision” (i.e., CC&R’s, bylaws, Board policies, ACC Guidelines, etc.) Texas Property Code 202.001(a) and 209.002(4).

Records not to be released:

Deed restriction violation history of an individual owners. Summaries which do not identify the owner or property, or address.

Delinquent assessment history of individual owners. Personal financial information of owners, including records of payment or nonpayment of amounts due.

Owner’s contact information other than owner’s name and address. Email addresses or phone numbers – Not specifically mentioned as allowed in statute, so this law firm does not recommend they be released.

When a RECORDS REQUEST is made, contact your association attorney as there are very specific requirements and deadlines set forth in the statute. Texas Property Code 209-005

Action Items for Board of Directors:

1. Make sure the Association’s **Management Certificate is updated** to include any changes to registered agent’s name, address or phone number and any Declaration Amendments, replats, etc. and filed in the real property records.
2. Make sure your Association has filed the **2 required policies** which are **MANDATORY** under Texas Law: (A) **Records Retention, Inspection, and Production Policy**, and (B) **Payment Plan Policy**.
3. Check if your Association has filed the **By-Law Amendment Regarding Quorum** which allows Associations to elect Board Members with a majority of those present in person or by

proxy (even if there is no quorum) per Texas Property Code Section 209.0593(b). (Note: This is optional but **highly recommended**.) The By-Law Amendment Regarding Quorum is designed to allow Associations elect members of the Board of Directors when their term is up, even when a quorum of members is not present. Historically, some Associations had problems reaching quorum so old Board Members simply stayed on the Board indefinitely since no new Board Members could be elected. Texas Property Code Section 209.0593(b) allows the Board to unilaterally amend their By-Laws to provide for a lower quorum requirement for Board Member elections to ensure those Directors whose terms have expired are elected, not appointed (as required by Section 209.0593(a)).

4. File all Governing Documents including Board policies you want to enforce later. When in doubt, file it!

5. Check if your Association has filed the following **optional (but recommended)** policies in the real property records: Resolution Regarding Flags, Resolution Regarding Rain Barrels, Resolution Regarding Solar Energy Devices, Resolution Regarding Religious Items, Resolution Regarding Roof Shingles, Resolution Regarding Xeriscaping, Resolution Regarding Standby Electric Generators, and Resolution Regarding Rentals

BOARD MEMBERSHIP: Any property owner can run for the board.

All restrictions, bylaws & policies otherwise are void if they state: Term limits, Violation of use restrictions, Failure to pay assessments, fines or fees, and Suing or being sued by the POA. Texas Property Code 209-00591(a) –

The only exception is documented evidence from database of law enforcement showing Board member convicted less than 20 years ago of felony or crime of moral turpitude (dishonesty, fraud, deceit, misrepresentation, or deliberate violence). The Board member immediately ineligible to serve, automatically removed from the board and prohibited from future service. Texas Property Code 209.00591(b).

Examples of Moral Turpitude: Theft, Forgery, Hindering Secured Creditors, Issuance of Bad Check, Refusal to Execute Release of Fraudulent lien or claim, Insurance Fraud, Burglary of Vehicles, Coercion of Public Servant or Voter, Perjury, False Report to Peace Officer or Law Enforcement Employee, tampering with or fabricating Physical Evidence, and False Identification as Peace Officer. (Non-exclusive list)

Husband & wife may both run and serve unless both are not on the deed. Texas Property Code 209.002(6) defines owner as a person who holds record title to property. Bylaws may require that one or more board members reside in the subdivision but may not require all to do so. Texas Property Code 209-00591(a-1).

An Association may still have a nominating committee, but POA must solicit Board candidates ten (10) days prior to sending out any ballots using same notice provisions as if for a Board meeting. All eligible candidates who express their intention to run must be on the ballot.

Directors with expired terms must be elected. Directors who resign can be replaced by the Board by Board appoint for the remaining term.