AMENDING THE GOVERNING DOCUMENTS FOR CONDOMINIUMS AND HOMEOWNERS' ASSOCIATIONS

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"*Have Judgment Lien Creditors Become 'Bona Fide Purchasers'?*", 68 Oklahoma Bar Journal 1071 (March 29, 1997)*;
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INTRODUCTION

Corporations are usually created by the adoption of a set of Articles, a set of Bylaws, and, when dealing directly with real property, by a Declaration as well.

The Declaration for a corporation, which is operating a condominium or homeowners' association, acts as an operating document for the entity as well as establishing a set of restrictive covenants for the use of the subject real property.

Such Declarations are usually created under two different sets of statutes: one specifically designed by condominium regimes and the other for real estate developments.

Condominium Associations are governed generally by the Oklahoma General Corporation Act (discussed below) and specifically by the Unit Ownership Estate Act, found at 60 O.S.§§501-530 (discussed below).

Homeowners' Associations are governed generally by the Oklahoma General Corporation Act (discussed below), and specifically by the Real Estate Development Act, found at 60 O.S.§§851-857 (discussed below).

A. AMENDING: ARTICLES

The Articles for any corporation, whether "for profit" or "not for profit" (aka "non-profit"), provide the initial framework for the creation and initial operation of a corporation. Such Articles can be amended by following statutory guidelines and any stricter guidelines for amendments found in the Articles themselves. The amendments are filed – as were the initial set – with the Secretary of State.

1. Amendment Topics and Process

18 O.S.§1077: AMENDMENT OF CERTIFICATE OF INCORPORATION AFTER RECEIPT OF PAYMENT FOR STOCK - NONSTOCK CORPORATIONS

A. 1. After a corporation has received payment for any of its capital stock, it may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and if a change in stock or the rights of shareholders, or an exchange, reclassification, subdivision, combination, or cancellation of stock or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, subdivision, combination, or cancellation. ***In particular, and without limitation upon the general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:***

a. to change its corporate name,

b. to change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes,

c. to increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares or by subdividing or combining the outstanding shares of any class or series of a class of shares into a greater or lesser number of outstanding shares,

d. to cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared,

e. to create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued, or

f. to change the period of its duration.

2. Any or all changes or alterations provided for in paragraph 1 of this subsection may be effected by one certificate of amendment.

B. Every amendment authorized by the provisions of subsection A of this section shall be made and effected in the following manner:

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3. If the corporation has no capital stock, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If a majority of all the members of the governing body, shall vote in favor of the amendment, a certificate thereof shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of Section 1007 of this title. The certificate of incorporation of a corporation without capital stock may contain a provision requiring an amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of the corporation in which event the proposed amendment shall be submitted to the members or to any specified class of members of the corporation without capital stock in the same manner, so far as applicable, as is provided for in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof by the members, a certificate evidencing the amendment shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of Section 1007 of this title.

4. Whenever the certificate of incorporation shall require for action by the board of directors, by the holders of any class or series of shares or by the holders of any other securities having voting power the vote of a greater number or proportion than is required by the provisions of

the Oklahoma General Corporation Act, the provision of the certificate of incorporation requiring a greater vote shall not be altered, amended or repealed except by such greater vote.
C. The resolution authorizing a proposed amendment to the certificate of incorporation may provide that at any time prior to the effectiveness of the filing of the amendment with the Secretary of State, notwithstanding authorization of the proposed amendment by the shareholders of the corporation or by the members of a nonstock corporation, the board of directors or governing body may abandon the proposed amendment without further action by the shareholders or members.

2. Execution, Acknowledgment, and Filing Process

18 O.S.§1007: EXECUTION, ACKNOWLEDGMENT, FILING AND EFFECTIVE DATE OF ORIGINAL CERTIFICATE OF INCORPORATION AND OTHER INSTRUMENTS; EXCEPTIONS

A. ***Whenever any provision of the Oklahoma General Corporation Act requires any instrument to be filed*** *in accordance with the provisions of this section or with the provisions of this act,* ***the instrument shall be executed as follows:***
1. The certificate of incorporation and any other instrument to be filed before the election of the initial board of directors, if the initial directors were not named in the certificate of incorporation, shall be signed by the incorporator or incorporators, or in case of any other instrument, the incorporator's or incorporators' successors and assigns. If any incorporator is not available by reason of death, incapacity, unknown address, or refusal or neglect to act, then any other instrument may be signed, with the same effect as if the incorporator had signed it, by any person for whom or on whose behalf the incorporator, in executing the certificate of incorporation, was acting directly or indirectly as employee or agent; provided that the other instrument shall state that the incorporator is not available and the reason therefor, that the incorporator in executing the certificate of incorporation was acting directly or indirectly as employee or agent for or on behalf of the person, and that the person's signature on the instrument is otherwise authorized and not wrongful;
2. All other instruments shall be executed:
a. by the chair or vice-chair of the board of directors, or by the president, or by a vice-president, and attested by the secretary or an assistant secretary*; or by officers as may be duly authorized to exercise the duties, respectively, ordinarily exercised by the president or vice-president and by the secretary or an assistant secretary of a corporation,*
b. if it appears from the instrument that there are no such officers, then by a majority of the directors or by those directors designated by the board,
c. if it appears from the instrument that there are no such officers or directors, then by the holders of record, or those designated by the holders of record, of a majority of all outstanding shares of stock, or
d. by the holders of record of all outstanding shares of stock.
B. ***Whenever any provision of this act requires any instrument to be acknowledged, that requirement is satisfied by either:***
1. ***The formal acknowledgment by the person or one of the persons signing the instrument*** *that it is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true. The acknowledgment shall be made* ***before a person who is authorized*** *by the law of the place of* ***execution to take acknowledgments of deeds and who shall affix a seal of office, if any, to the instrument****; or*
2. ***The signature, without more, of the person or persons signing the instrument****, in which case* ***the signature or signatures shall constitute the affirmation or acknowledgment of the***

signatory, under penalty of perjury*, that the instrument is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true.*
C. ***Whenever any provision of this act requires any instrument to be filed*** *in accordance with the provisions of this section or with the provisions of this act,* ***the requirement means that:***
1. ***Two signed instruments****, one of which may be a conformed copy,* ***shall be delivered*** *to the Office of the Secretary of State;*
2. ***All delinquent franchise taxes*** *authorized by law to be collected by the Oklahoma Tax Commission* ***shall be tendered*** *to the Oklahoma Tax Commission as prescribed by Sections 1201 through 1214 of Title 68 of the Oklahoma Statutes;*
3. ***All fees authorized by law*** *to be collected by the Secretary of State in connection with the filing of the instrument* ***shall be tendered*** *to the Secretary of State; and*
4. ***Upon delivery of the instrument, and upon tender of the required taxes and fees, the Secretary of State shall certify that the instrument has been filed*** *in the Secretary of State's office by endorsing upon the signed instrument the word "Filed", and the date of its filing. This endorsement is the "filing date" of the instrument, and is conclusive of the date of its filing in the absence of actual fraud. Upon request, the Secretary of State shall also endorse the hour that the instrument was filed, which endorsement shall be conclusive of the hour of its filing in the absence of actual fraud. The Secretary of State shall thereupon file and index the endorsed instrument.*
D. ***Any instrument filed in accordance with the provisions of subsection C of this section shall be effective upon its filing date****. Any instrument may provide that it is not to become effective until a specified time subsequent to the time it is filed, but that date shall not be later than a time on the ninetieth day after the date of its filing. If any instrument filed in accordance with subsection C of this section provides for a future effective date or time and if the transaction is terminated or its terms are amended to change the future effective date or time prior to the future effective date or time, the instrument shall be terminated or amended by the filing, prior to the future effective date or time set forth in the instrument, of a certificate of termination or amendment of the original instrument, executed in accordance with subsection A of this section, which shall identify the instrument which has been terminated or amended and shall state that the instrument has been terminated or the manner in which it has been amended.*
E. If another section of this act specifically prescribes a manner of executing, acknowledging, or filing a specified instrument or a time when an instrument shall become effective which differs from the corresponding provisions of this section, then the provisions of the other section shall govern.

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B. AMENDING: BYLAWS

The Bylaws for any corporation, whether "for profit" or "not for profit" (aka "non-profit"), provide the initial framework for the operation of a corporation. Such Bylaws can be amended by following statutory guidelines and any stricter guidelines for amendments found in the Bylaws themselves. The amendments are not filed with any third parties, such as the Secretary of State, but are kept with the official records (such as corporate meeting minutes) for the corporation.

Specific statutes dealing with Bylaws for corporations running condominiums and real estate developments (aka homeowner's associations) are dealt with in more detail below in the discussion of Declarations.

1. Amendment Process

18 O.S.§1013: BYLAWS

*A. **The original or other bylaws of a corporation may be** adopted, **amended** or repealed by the incorporators, by the initial directors if they were named in the certificate of incorporation, or, before a corporation has received any payment for any of its stock, by its board of directors. After a corporation has received any payment for any of its stock, except as otherwise provided in its certificate of incorporation, **the power to** adopt, **amend** or repeal **bylaws shall be** in the board of directors, or, **in the case of a nonstock corporation, in its governing body.***
B. The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its shareholders, directors, officers or employees.

2. Notice Process

18 O.S.§1067: NOTICE OF MEETINGS AND ADJOURNED MEETINGS
*A. Whenever shareholders are required or permitted to take any action at a meeting, a **written notice of the meeting** shall be given which shall state **the place**, if any, **date and hour** of the meeting, the **means of remote communications**, if any, by which shareholders and proxyholders may be deemed to be present in person and vote at the meetings and, in the case of a special meeting, **the purpose** or purposes for which the meeting is called.*
*B. Unless otherwise provided for in the Oklahoma General Corporation Act, the written notice of any meeting shall be **given not less than ten (10) nor more than sixty (60) days before the date of the meeting** to each shareholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the shareholder at his address as it appears on the records of the corporation. **An affidavit of the secretary** or an assistant secretary or of the transfer agent or other agent of the corporation **that the notice has been given**, in the absence of fraud, shall be prima facie evidence of the facts stated therein.*
C. When a meeting is adjourned to another time or place, unless the bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which shareholders and proxyholders may be deemed to be present in person and vote at the adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting.

C. AMENDING: DECLARATIONS

The Declaration for a corporation, which is operating a condominium or homeowners' association, acts as both an operating document for the entity as well as establishing a set of restrictive covenants for the use of the subject real property.

Such Declarations are usually created under two different sets of statutes: one specifically designed by condominium regimes and the other for real estate developments.

Condominium Associations are governed generally by the Oklahoma General Corporation Act (discussed above) and specifically by the Unit Ownership Estate Act, found at 60 O.S.§§501-530 (discussed below).

Homeowners' Associations are governed generally by the Oklahoma General Corporation Act (discussed above), and specifically by the Real Estate Development Act, found at 60 O.S.§§851-857 (discussed below).

1. Amendment Process For CONDOMINIUMS

60 O.S.§514: Recording and Particulars of Declaration Creating and Establishing Unit Ownership Estates.

The declaration *creating and establishing unit ownership estates as provided in Section 502 of this title, shall be recorded and* ***shall contain the following particulars****:*

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(g) ***The method which the declaration may be amended****, consistent with the provisions of this act,*

It should be noted that – apparently in order to ensure that property owners are aware of the contents of the Condominium Bylaws – a copy of such Bylaws for the corporate entity governing the Condominium must be attached to the first deed from the developer for each unit when it is filed in the land records:
60 O.S.§519: Administration of Property to be Governed by Bylaws.

A. The administration of every property shall be governed by bylaws, ***a true copy of which shall be annexed to the declaration and to the first deed of each unit****. The bylaws may be detached from the deed prior to recording if the bylaws are filed of record and described on said deed by reference to book and page, or if the grantee shall certify on the first deed that the bylaws were so annexed and detached prior to recording.*
B. Any first deed to a unit prior to the effective date of this act without a copy of the bylaws attached, shall be deemed to have complied with the provisions of this section.

60 O.S.§520: Necessary Contents of Bylaws.

The bylaws must necessarily provide for at least the following:

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(g) ***That seventy-five percent (75%) of the unit owners****, computed on the basis set forth in Section 3(n) of this act,* ***may at any time modify or amend the bylaws****, but each one of the particulars set forth in this Section shall always be embodied in the bylaws.* ***Such modification or amendment shall not become operative unless set forth in an amended declaration and duly recorded.***

2. Amendment Process For HOMEOWNERS' ASSOCIATIONS

Homeowner's associations, with responsibility for managing the affairs of a neighborhood, are usually created pursuant to the Real Estate Development Act, found at 60 O.S.§§851-857. Such Declaration – acting as a set of restrictive covenants – was executed, and acknowledged by all of the initial owners of the lands located in a real estate development, and were then filed in the county land records. Such recording gave constructive notice to subsequent purchasers and encumbrancers. 16 O.S.§§15 –16

There was not initially a specific statutory process provided for the amendment of a Declaration/Restrictive Covenants adopted as part of the creation of a real estate development. Therefore, under general contract law, it would normally require a 100% vote from the land owners to amend the declaration, unless contrary provisions are expressly provided in the Declaration/Restrictions themselves (e.g., only requiring a 75% vote). However, as will be discussed below, recent statutory amendments relating to real estate restrictions and homeowners' associations may have reduced this implied requirement for a 100% vote, where the restrictions fail to already provide for a lesser vote.

AMENDING: CREATING A MANDATORY ASSOCIATION

1. INTRODUCTION

It is standard practice for all condominium associations to have a governing corporation created at the same time that the condominium structures are built or, if apartments are converted to condominiums, to have a governing corporation created when such conversion occurs. Ownership of a condominium unit usually carries with it a mandatory membership in the governing corporation. Mandatory dues, assessments and enforcement actions, including the

securing of money judgments and the imposition and foreclosing of liens for non-payment are all standard. See the Unit Ownership Act, 60 O.S.§§501-530

By statute there must be bylaws for the condominium and:

> *"The bylaws must necessarily provide for at least the following:*
> *(a) Form of administration, indicating whether in charge of an administrator or a board of administration, or otherwise, and specifying the powers, manner of removal and, where proper, the compensation therefor*." §520

However, there are 3 separate time frames that need to be considered when discussing whether it is possible in Oklahoma to revise existing subdivision restrictions for any variety of purposes, including the creation of a mandatory homeowners' association. This split is because the statute has been changed twice concerning the legality of the various neighborhood associations' efforts to amend their local private restrictions, especially to create a homeowners' association for the first time while simultaneously making membership in such association mandatory, including a requirement for the payment of dues to such association. Failure to pay such dues would result in enforcement actions including seeking money judgments and foreclosing a lien on the homeowner's land.

The time periods are: (1) pre-1995, (2) 1995 to 2002, and (3) post-2002. Statutes containing language relating to such amendments to the restrictions, were adopted as of 1995 and 2002.

2. PRE-1995 PERIOD

There is a pre-1995 Oklahoma Supreme Court case which held that (1) absent a provision in the restrictions themselves expressly allowing an amendment on any topic with less than a 100% vote, it will take a 100% vote (of all land owners subject to such restrictions) to amend any of the real estate restrictive covenants, (2) this particular set of covenants expressly made it possible to amend the restrictions with a 60% vote (rather than 100%), but only after they had been in effect for 10 years, (3) and, where there are multiple owners for a lot, all of the owners for that lot would have to vote in the same way for the vote to be valid (there could not be any "splitting of a

vote"). In re Wallace's Fourth Southmoor Addition to the City of Enid, 1994 OK CIV APP 73, 874 P.2d 818 [See a copy of the *Wallace Fourth* case attached hereto as Exhibit "A"]

3. 1995 LEGISLATIVE CHANGE

In 1995 the legislature tried to create a means to modify existing restrictions with less than 100% consent by adopting 11 O.S.§42-106.1:

11 O.S. §42-106.1: Amending Restrictive Covenant

*A. Any restrictive covenant on property contained in a residential addition may be **amended** if:*
*1. The restrictive covenant has been in existence for at least **ten (10) years** and the amendment is approved by the owners of at least **seventy percent (70%)** of the parcels contained in the addition or the amount specified in the restrictive covenant, whichever is less; or*
*2. The restrictive covenant has been in existence for at least **fifteen (15) years** and the amendment is approved by the owners of at least **sixty percent (60%)** of the parcels contained in the addition or the amount specified in the restrictive covenant, whichever is less.*
B. Where a preliminary plat has been filed for a residential addition, the requirements of paragraphs 1 and 2 of subsection A of this section shall include all the parcels contained in the preliminary plat.
C. In the absence of a provision providing for the amendment of the restrictive covenants of a residential addition the requirements of paragraphs 1 and 2 of subsection A of this section shall apply. A thirty-day notice of any meeting called to amend the restrictive covenants shall be provided to the owners of every parcel contained in the addition. Each parcel shall be entitled to one vote.

4. INTERPRETATION OF THE 1995 LEGISLATION

In 2000 the Oklahoma Attorney General was asked for an opinion interpreting whether the 1995 legislation was constitutional; specifically the AG was asked: *"May a restrictive covenant be amended, pursuant to 11 O.S. Supp. 1999, §42-106.1, to provide for mandatory participation in a homeowner association?"* [See a copy of the 2000 OK AG 38 opinion attached hereto as Exhibit "B"]

The final answer that was give by the AG was: (1) *"the statute can only be used to **amend an existing restrictive covenant**, **not add a new restrictive covenant**",* (2) the statute may be used *"to amend an existing restrictive covenant to require mandatory homeowner association membership if the restrictive covenant was **created on or after November 1, 1995"***, and (3) the statute may not be used *"to amend a restrictive covenant to require mandatory homeowner*

association membership if the restrictive covenant ***existed prior to November 1, 1995***." In any event, without regard to the date the restrictions were adopted, the statute *"does not permit homeowners to add a new restrictive covenant pertaining to a homeowner association* ***if the homeowner association is not already referenced in an existing restrictive covenant****."*

The likelihood approaches "zero" that a restrictive covenant *"referenced"* a homeowner association but failed to make membership mandatory and failed to grant the association powers to enforce the restrictions. There is no conceivable reason to refer to a voluntary association, which has no enforcement powers, in the restrictions.

Hence, the AG opinion is nonsensical and is based upon a false assumption, and, as a result is practically useless, when it appears to allow the changing of a voluntary association to a mandatory one, for those restrictions adopted after 1995.

The term "amend", under the Webster's dictionary definition relied on by the AG, is clearly much broader that the AG treats it during its analysis. According to Webster, as quoted by the AG, *"Webster's defines 'amend' to mean 'to change or alter in any way esp[ecially] in phraseology.'"*

However, until a court issues a different ruling, this AG Opinion is the only guidance available. Therefore, one must advise their clients – consistent with the AG Opinion – that for both the pre-1995 and the post-1995 periods (up until 2002), a restrictive covenant (1) cannot be amended to cover any topic or matter not already addressed in some way in the existing covenant, and (2) cannot be amended to impose on the neighborhood the requirement to join an association (and to face fines and foreclosure) and to follow the dictates of the association in interpreting and enforcing the restrictions (except in the highly unlikely event that the voluntary association is "referred" to in the initial restrictions).

5. 2002 LEGISLATIVE CHANGE

In apparent reaction to the 2000 AG Opinion – which effectively eliminated the use of the 1995 legislation to allow the creation of a mandatory homeowner association -- the legislature tried again in 2001 (effective in 2002) with the adoption of an amendment to the 1995 statute.

11 O.S.§42-106.1 was amended by the addition of a part D:

> *D. **The recorded restrictive covenants** on property contained in a residential addition **may be amended by the addition of a new covenant creating a neighborhood association for the addition that would require the mandatory participation of the successors-in-interest of all record owners of parcels within the addition at the time the amendment is recorded**. **The amendment must be approved by the record owners of at least sixty percent (60%) of the parcels** contained in the addition and shall be subject to the following:*
> *1. The amendment shall provide that participation in the neighborhood association created by the amendment shall not be mandatory for persons who are record owners of parcels within the residential addition at the time the amendment is filed of record, but **such participation shall be mandatory for all successors-in-interest of the record owners;***
> *2. The amendment must provide that the concurring vote of not less than sixty percent (60%) of the record owners of parcels contained in the addition shall be necessary for the establishment or change of dues for the neighborhood association; and*
> *3. Following approval, the amendment shall be filed of record in the office of the county clerk of the county wherein the residential addition is located against all parcels within the addition. **The term amendment may apply to an existing covenant or to a new subject not addressed in existing covenants.***
> *A thirty-day written notice of any meeting called to approve any such amendment shall be provided to the owners of every parcel contained in the residential addition. The notice of such meeting shall be published in a newspaper in the county at least fourteen (14) days before the meeting. The notice shall also be given by publication in the neighborhood newsletter. Each parcel within the addition shall be entitled to one vote. Any amendment approved and recorded pursuant to this subsection may thereafter be revoked by approval of sixty percent (60%) of the record owners of parcels within the addition.*

At first glance, this statute seems to cover all bases: (1) it changes Webster by providing (in "Alice in Wonderland" fashion) "***The term amendment may apply to an existing covenant or to a new subject not addressed in existing covenants."*** (2) it eliminates any ambiguity about legislative intent by expressly providing that existing restrictions "***may be amended by the addition of a new covenant creating a neighborhood association for the addition that would require the mandatory participation"***, and (3) it (inadequately) attempts to appease any claim that it is unconstitutionally affecting the property rights of the existing owners by pushing the adverse impact of any amendment onto the current owner's successor.

However, if a current owner has any aspect of the constitutionally protected rights found in his "bundle of sticks" affected (present or future) by legislative fiat, such imposition is at least seriously suspect. If the prospective buyer is concerned about expenses and interference with his quiet enjoyment of his property, and he is trying to choose between two otherwise identical parcels: one with this requirement on it to join a mandatory association while the competing tract does not have such a requirement, the seller is clearly affected by such an imposition of mandatory membership on his successor.

The Oklahoma and US Constitutions protect against government action to take existing property rights and to impair contract rights. U.S. Const. Amend. XIV, §1; Okla. Const. Art. II, §23; Okla. Const. Art. II, §24; Okla. Const. Art. II, §15. This governmental enabling of the imposition of mandatory dues, assessments, liens, and possible foreclosure seems a mite intrusive.

There are also several unanswered questions, as there usually are with new legislation, including:

1. The introductory language of part C of the statute (which existed in the 1995 and the 2002 versions) appears to restrict the application of the Act to those circumstances where the restrictions are completely silent on the amendment process (i.e.,*"In the absence of a provision providing for the amendment of the restrictive covenants…")*.
2. What does the phrase *"successors-in interest"* mean? Does it include heirs, devisees, grantor trusts, mortgagees taking a deed in lieu of foreclosure, buyers under a contract for deed or a lease/purchase option, buyers at a foreclosure sale, probate homestead interest holders, etc.?
3. Must the *"record owners"* who approve such an amendment include those who hold non-record interests, such as spouses (regarding homestead interests), renters, squatters, etc.?
4. *"Each parcel within the addition is entitled to one vote."* How are votes handled where there are multiple owners for a particular lot and they do not agree on how to cast their

vote? Under *Wallace's Fourth* they must all agree on how to cast the single ballot or it is void.

5. What form of evidence is needed to establish the list of *"record owners"*? The tax rolls, or an abstracter's certificate? Does this list have to be filed in the land records, for the benefit of the title examiner?
6. What form of delivery of the notice of a meeting for consideration of an amendment is required: simple mailing, e-mailing, certified, return receipt, hand delivered; and is proof of receipt required? Does notice have to be simply sent to but not necessarily received by each separate owner of a particular lot? Does the notice have to be sent or have to be received 30 days before the meeting? What if there is a failure to send any of the notices? Are proxies allowed, and if so in what form? Can the neighborhood be canvassed to secure the needed signatures, or is a meeting required, perhaps to permit general discussion and informed group decision-making?
7. How far in advance does the notice have to be given in the "neighborhood newsletter"? What constitutes a "neighborhood newsletter"?
8. Does the amendment have to be documented at the meeting with notarized signatures? Do such original signatures need to be filed in the land records, or is an officer's certification sufficient?

It is evident – as reflected in these two legislative efforts – that public policy is leaning towards encouraging collective action through mandatory associations, hopefully, to improve the quality of life in residential neighborhoods.

Industry statistics echo this public policy trend, because the percentages of both new and old residential additions which have mandatory associations is ever increasing.

Your thoughts and comments on these general and specific issues are invited.