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Wenonah Blevins may not be a household name. However, her legal battle with the Champions East Subdivision in Houston prompted Texas legislators to pass a new law. SB 507, which added Chapter 209 to Texas Property Code, was effective Jan. 1, 2002. The new statute limits the power of property owner associations to collect attorney fees from homeowners and foreclose on homes. The provisions of the new law were featured in the January 2002 issue of *Tierra Grande*.

Blevins made headlines when the property owner's association foreclosed on her home for nonpayment of \$814.50 in maintenance fees. Her \$150,000 home subsequently sold for \$5,000. Eventually she recovered her home and received a \$300,000 settlement from the property owner's association.

In part, the settlement was based on a provision in the association's bylaws that Blevins' attorney discovered while researching the case. The association's amended maintenance fund bylaws filed in Harris County in 1965 state that maintenance fees cannot exceed \$72 per year through 1996. The maintenance fees in the subdivision averaged \$400 annually since 1987. The fees are now \$460.

More than 100 of the 900 homeowners in the subdivision have lived there since 1987. They joined Blevins in filing a class action lawsuit in January 2002 seeking actual damages for the overpayment of maintenance fees, punitive damages, prejudgment interest and court costs. In addition to the overcharges, Blevins claims the homeowners paid late fees and were charged interest exceeding 6 percent — a violation of the association's bylaws.

Blevins is not alone in questioning maintenance fee increases. A 2001 case decided by the Texarkana Court of Appeals focused on the proper way to raise maintenance fees when the subdivision's deed restrictions conflict with the bylaws (*Ostrowski v. Ivanhoe Property Owners Improvement Assn., Inc.*, 38 S.W. 3rd 248, 1/25/01).

The maintenance fee agreement (MFA), a part of the deed restrictions, allowed annual fee increases if approved by majority vote of the lot owners. The homeowners assumed that this meant a vote taken of all the lot owners in the entire development. The development consisted of approximately 1,000 lot owners, so about 501 affirmative votes were needed.

Homeowners association officials, on the other hand, felt a second method described in the bylaws, not the deed restrictions, controlled. This method permitted the association to implement initiatives by a majority vote of the members present at a duly called meeting at which a quorum was present. According to the bylaws, a quorum required 50 members. Thus, a vote of 26 members when 50 members were present could raise the fees for 1,000 lot owners.

Twenty-three subdivisions made up the development. The association followed the bylaws and raised the fees based on votes taken in each subdivision. As a result, a different increase was levied on each one.

The homeowners in two of the subdivisions protested the use of this method in court. The trial court agreed with the association's use of the second method described in the bylaws and

granted the association a summary judgment. Texas Property Code Section 204.009, which provides that bylaws control over contradictory provisions found in deed restrictions, was the primary basis for the decision.

The homeowners appealed the summary judgment. The appellate court reversed the trial court, arguing that the question is not *whether* the fees can be increased but *how*.

When no ambiguity is found in the MFA or bylaws, as was the case here, the appellate court determines the drafter's intent by reconciling all the provisions in the documents.

When an irreconcilable conflict exists between two provisions, the specific provision controls over the general one. In this instance, the method described in the MFA is geared specifically to fee increases. The method described in the bylaws is a general provision pertaining to the process by which initiatives are decided. Thus, the specific provision of the MFA takes precedence over the bylaws' general provision regarding fee increases.

In this instance, a fee increase requires the vote of at least 501 lot owners.

Homeowners in subdivisions governed by property owner associations should learn from this case not to blindly accept maintenance fee increases. Check the bylaws and deed restrictions to see what fee increases are authorized and how they must be approved. ♣

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