



NOVEMBER 2018 | COMMUNITY ASSOCIATION NEWSLETTER

Roberts Markel Weinberg Butler Hailey Named to 2019 Best Law Firms List

HOUSTON – Roberts Markel Weinberg Butler Hailey PC has earned selection as one of the best law firms for real estate law in the annual guide published by U.S. News & World Report and The Best Lawyers in America.

The firm is ranked as a Tier 1 law firm in the Houston area in the 2019 Best Law Firms listing. Receiving the top tier designation reflects the highest level of respect a firm can earn among other leading lawyers and clients in the same practice areas and communities.

“We have a talented team of attorneys who remain committed to solving our clients’ most challenging business and legal needs,” said firm founding shareholder Marc Markel who is board certified in both commercial and residential real estate law. “Recognition as a Best Law Firm is affirmation of those efforts.”

The Best Law Firms rankings are based on a rigorous evaluation that includes client and lawyer evaluations and a review of additional information provided by the law firms.

To be eligible, a law firm must have at least one lawyer individually listed in The Best Lawyers in America for that office location and legal specialty. Mr. Markel and shareholder Rick Butler are both recognized for their real estate law expertise.

For more information on the U.S. News and Best Lawyers “Best Law Firms” rankings, visit bestlawfirms.usnews.com.

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Mia Lorick Honored as Woman to Watch by *Houston Business Journal*

Associate Mia Lorick was honored as a Woman to Watch by the *Houston Business Journal* at their annual Women Who Mean Business Awards.

The event recognized Houston's most successful women business leaders in for-profit and nonprofit industries.

"I'm so honored to receive this award and to be among a fierce group of women—it is very empowering," said Mia.

Mia has a bright future ahead at RMWBH and that is echoed in Shareholder Gregg Weinberg's congratulations. "Wow. Finally the rest of the world sees what we see. Mia Lorick is a rock star litigator. Our clients can rest easy at night that we have the best of the best on their case," said Weinberg.

Congratulations Mia on your great achievement!





Can HOA's Enforce Short-Term Rentals After the Tarr v. Timberwood Park Decision?

By Mia Lorick

In *Tarr v. Timberwood Park*, homeowner Kenneth Tarr filed a lawsuit against the Timberwood Park Owners' Association seeking a declaration from the court that his short-term rentals were not a violation of Timberwood Park deed restrictions. After the Association prevailed in the trial court and on appeal, the Texas Supreme Court reversed the decision and held that Mr. Tarr's short-term rentals are not a violation of the residential-use restriction found in Timberwood Park's restrictive covenants. But what does this mean for other HOA communities?

Many HOA's are interpreting the court's ruling in *Tarr* to mean that HOA's can no longer enforce short-term rentals. But this is not true. While the court held that Timberwood Park could not enforce Mr. Tarr's short-term rentals, the court's conclusion is specific to the restrictive covenants for Timberwood Park.

Specifically, in reaching its conclusion, the Texas Supreme Court considered the following restriction:

“All tracts shall be used solely for residential purposes, except tracts designated . . . for business purposes, provided, however, no business shall be conducted on any of these tracts which is noxious or harmful by reason of odor, dust, smoke, gas, fumes, noise or vibration”

Based on the above restriction, the court found that short-term rentals, in which occupants eat, sleep, drink and watch TV, are not a violation of the residential-use restriction because Timberwood Park did not prohibit leasing by duration nor did it define what constitutes a business. The court noted, however, the result may be different with different restrictive covenants: meaning that a different set of restrictive covenants could bar short-term rentals.

The Tarr v. Timberwood Park case does not mean that HOA's can no longer enforce short-term rentals. It simply means an HOA cannot rely solely on a general residential-use restriction without anything more. If an HOA prohibits businesses on residential lots and defines the term business to include short-term rentals, then the HOA may be able to enforce that restriction. If an HOA has a recorded leasing policy that prohibits short-term rentals, then the HOA may be approved to enforce that policy. Either way, if HOA's want to enforce short-term rentals, it should have an attorney review the relevant restrictions to determine whether it can prohibit or limit short-term rentals.



Mia Lorick

Mia is an associate with the firm's Litigation and Appellate sections. Her practice focuses on general civil and complex commercial litigation as well as professional liability and labor and employment. Mia graduated from University of Houston Law Center.





Four Important Things to Know About 209 Letters

By Noelle Hicks

The infamous 209 letter. This is a topic that raises many questions in the community association industry. What is a 209 letter? What purpose does it serve? What happens if the letter isn't compliant with the Property Code? This article will address four important things to know, and remember, about 209 letters for both curable deed restriction violations and collection matters.

1) What is a 209 Letter and Why is It Important?

The 209 letter is a manifestation of Texas Property Code's notice requirement. Section 209.006 and 209.0064 necessitate that a property owner's association notify an owner before it takes any enforcement action. For example, prior to filing suit for deed restriction enforcement, suspending an owner's right to use a common area, charging an owner for property damage, or levying a fine for a violation of the restrictions or bylaws or rules of the association, the association must give notice that contains all the elements listed in Section 209.006.

Furthermore, per Section 209.0064, an association may not hold an owner liable for attorney's fees unless the association has provided the owner with written notice, by certified mail, of any past due assessments, the total amount required to make the account current and provide a period of at least 30 days to cure the delinquency amongst other things. Additionally, Section 209.008 of the Code requires written notice that attorney's fees and costs will be charged to the owner if any delinquency or violation occurs after a certain date as a precursor.

Why is this important? If the association intends to recover any fees or expenses from the owner, the sections of the Code must be strictly adhered to. Otherwise, the association will be responsible for these costs.

2) FDCPA/TDCA Violation

Per Section 209.0064 of the Code, and the federal Fair Debt Collection Practices Act (“FDCPA”), proper notice must be sent prior to the initiation of any collection efforts. The Fair Debt Collection Practices Act was designed to eliminate abusive, deceptive and unfair debt collection practices. It also protects reputable debt collectors from unfair competition and encourages consistent state action to protect consumers from abuses in debt collection. Collection of delinquent annual assessments is a practice covered under the FDCPA. A lawsuit may be filed to enforce the association’s security interest, but written notice is required. Failure to provide the debtor with the proper notice constitutes a violation of the FDCPA.

Notice under the FDCPA must contain, (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and (5) a statement that, upon the consumer’s written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

Therefore, it is imperative that statutory notice is sent to avoid any implications of harassment, false or misleading representations or unfair practices.

3) Owner’s Responsibility

Typically, association notices are sent to the property address. This includes 209 letters, notices regarding meetings, newsletters and other important information related to the community. Often, an owner will assert the defense that they were not notified of the debt. However, the Association is not required to seek alternate methods of providing notice. Section 209.0042 of the Property Code indicates that an association may adopt a method to provide notice. Section 209.006 and 209.0064 requires that such letters must be sent by certified mail and we recommend that it also be sent return receipt requested and a copy by regular mail.

However, this section also assigns a responsibility to the owner. Accordingly, each property owner is responsible for affirmatively opting to allow the association to use the alternate method of providing notice to the owner for which another method is prescribed by law.

Many associations have a policy in place requiring an owner to provide the alternate method of providing service in writing.

4) Due Process

The concept of due process requires that a violator of the restrictive covenants be given notice and an opportunity to be heard before sanctions are imposed. The violator must be promptly notified of the violation and a specific description of the violation that is the basis for any suspension action, charge or fine. The notice must also state the amount due to the association from any owner. The notice should also demand that the violator cease the violation or refrain from repeating the violation.

The Exceptions

There are exceptions to Chapter 209's notice requirements. For example, Section 209.006 provides that if the violation is considered incurable and does not pose a threat public health or safety, then the association must give notice but is not required to give the owner a reasonable period to cure the violation and avoid the fine. Additionally, per Section 209.007, the notice provisions do not apply if the association files suit seeking a temporary restraining order, temporary injunction, or files a suit that includes foreclosure as a cause of action. That same section of the Code indicates that the notice requirements do not apply to a temporary suspension of a person's right to use common areas if the suspension is a result of a violation that occurred in a common area and involved significant and immediate risk of harm to others in the subdivision.

If the foregoing items are taken into consideration, the association can be sure that it is uniformly and consistently enforcing any rules and can avoid claims related to notice during litigation.



Noelle Hicks

Noelle is an associate with the firm's Real Estate section and is a member of the Community Association Team. She has handled community association deed restriction enforcement and assessment collection throughout the state of Texas. Her practice area focuses, primarily on creditor's rights, breach of contract, post judgment collections, negligence, replevin, and foreclosure. Noelle graduated from Thurgood Marshall School of Law at Texas Southern University in 2008.



2018 Skeet and Sporting Clays Shoot a Great Success

RMWBH hosted their annual Skeet and Sporting Clays Shoot at the Greater Houston Gun Club on October 18th. This year's event featured over 80 friends of the firm enjoying a fun afternoon of shooting, music, cigars, drinks and bbq.

Shooters competed in both a skeet and sporting clay shoot, and the winners are:

Skeet Shoot Winners

- 1st Place Jody Wells
- 2nd place Mike Baker
- 3rd place Derek Crandell

Sporting Clays Winners

- 1st Place Ryan Johnson
- 2nd place Nick Blutworth
- 3rd place Richard Blutworth

Thank you for everyone who came out, and mark your calendars now shooters! The 2019 Skeet and Sporting Clays shoot will be held October 24, 2019 at the Greater Houston Gun Club.



Clockwise from top left: RMWBH Shareholder Marc Markel, 1st place skeet winner Jody Wells and RMWBH Shareholder Rick Butler; Adam Collins, Adam Hudson, Chris Tarase and RMWBH Executive Director Shawn Isakson; Monroe Ashworth, Larry Warren, Jennifer Johnson, Tom Wilcox and RMWBH Associate Casson Wen;

Upcoming Events

2018 CLM (Claims/Litigation Management) Southeast Conference

Associate Mia Lorick will be speaking as part of a panel discussion on “Billions: Mass Loss and Natural Disasters. The panel will discuss historical mass loss and natural disasters; how these events impact the insurance industry; tips on managing large property loss claims; and exploring the use of weather experts.

November 8, 2018

Sheraton Atlanta Hotel
165 Courtland Street NE
Atlanta, Georgia

[More Information »](#)

CAI Dallas/Ft. Worth Annual Legal Update

Shareholders Marc Markel and Clinton Brown will be providing CAI Dallas/Ft. Worth with their annual legal update. The update will cover the opinions issued by the courts in Texas over that last year that affect how POAs should be operating.

Understanding the cases and the outcomes will help you avoid pitfalls of association operations.

November 14, 2018

11:30 a.m. - 1:00 p.m.

The Brookhaven Country Club
333 Golfing Green Drive
Farmers Branch, Texas 75234

[Register Today »](#)

CAI San Antonio Board Leadership Development Workshop

The workshop is designed to teach you how to become a more successful board member and how you can recruit and support new volunteers. You'll learn the role of the board, the president and other leadership positions, and you'll identify effective ways to work with professional managers and service providers. Shareholder Brady Ortego will be presenting during the workshop on Professional Advisors and Service Providers and Association Rules and Conflict Resolution.

November 14, 2018

6:00 p.m. - 9:00 p.m.

RMWBH San Antonio
4630 N Loop 1604 West, Ste. 311
San Antonio, Texas 78249

[Register Today »](#)

Save the Date: 2019 Legislative Session

Pre-filing of legislation starts in November with the 2019 session official opening in January. Learn what you may expect in relation to community association legislation and what community managers and boards can do to increase the chance that community associations keep the ability to self-govern.

December 5, 2018

4:00 p.m. - 6:00 p.m.

RMWBH Training Room
4630 N Loop 1604 West, Ste. 311
San Antonio, Texas 78249

Appetizers will be provided.

[Register Here »](#)



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