

***CHAPTER 81 CONDOMINIUMS vs. *CHAPTER 82 CONDOMINIUMS**
***Texas Property Code**

Chapter 82 – Condominiums for which the Declaration was recorded on or after January 1, 1994;
governed exclusively by Chapter 82

Chapter 81 – Condominiums for which the Declaration was recorded before January 1, 1994;
governed by Chapter 81 and certain provisions of Chapter 82

Chapter 81 Condominiums can elect to be governed exclusively under Chapter 82 by enacting and recording substantially the following amendment to the Condominium's declaration:

In accordance with the declaration amendment process for the [name of condominium], the owners of units in the condominium amend the Declaration to have Chapter 82 of the Texas Property Code in its entirety govern the condominium regime, upon recordation of this amendment in the real property records for the county in which the condominium is located.

Pros and Cons of Adopting Chapter 82 in its entirety:

- Chapter 82 may clarify the Owners' and Association's respective rights and obligations in certain instances
e.g., 82.052 (unit boundaries); 82.109 (quorum); 82.102 (additional powers of Association)
 - Eliminates some arguments that lead to litigation in the Courts
 - Also gives the Board greater power over common elements (e.g., to grant easements, licenses over common elements) without needing owner consent
- Many provisions of Chapter 82 already apply to Chapter 81 Condominiums
see list in 82.002(c)
- Of the Chapter 82 provisions that currently do not apply to Chapter 81 Condominiums
 - Many were designed to protect the Owner/Buyer against the Developer/Declarant/Seller (who generally is no longer around in Chapter 81 condos) e.g., 82.152-.156, .162, .163
 - Many expressly state what is probably already the law, thus diminishing a litigant's ability to engage the Association in protracted and expensive litigation about what the law is e.g., 82.008, .061-.063, .066-.068, .102(b), .103(a), .106-.107, .117
 - The Chapter 82 provisions that do contain substantive differences from Chapter 81 either
 - generally affect matters that would be of no consequence to most owners/associations e.g., 81.112 vs. 82.0675 (regarding restrictions on club memberships), 82.112 (assessment of limited common elements), 82.110 (proxies and cumulative voting)
 - give the Owners more explicit rights to notice before a change is made to the condominium governing documents 82.070 or the Owner is subjected to fine/penalty 82.102(d) & (e)

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