

Memorandum

To: Board Members
From: Best Fit Solutions, LLC.
Date: August 21, 2009
Subject: Management Certificates

The Texas State Legislature passed several new laws this past session and one in particular that effects all Associations is SB 1919. Now, all Associations are required to have a "Management Certificate" recorded with the county that it resides, in order to collect the transfer fee and any outstanding amounts owed to the Association.

If the Association *fails* to record a management certificate or an amended management certificate, the purchaser, lender, or title insurance company or its agent in a transaction involving property in the Association is *not* liable to the Association for:

- 1 *any amount due* to the Association on the date of a transfer to a bona fide purchaser, or
- 2 *any debt or claim* of the Association that accrued before the date of a transfer to a bona fide purchaser.

For more information on the SB1919, please see a few more details in the following pages.

We have attached the Management Certificate for your Association that we are going to file with the Harris County Clerk's Office. The format of the Certificate was provided by an attorney that specializes in the industry. The filing fee is based on the number of pages in the document, which is \$16 for the first page and \$4 for each additional page.

We have had these documents notarized and with your email approval will be issuing checks to the County Clerk and filing these documents prior to the suggested deadline of September 1, 2009.

Please let us know if you have any questions or want any additional clarification.

SB 1919

Background

While Section 209.004 of the Code currently requires all POAs to file a management certificate, there are no stated consequences for the failure to do so. There are now! By way of background, all POAs in the state of Texas are currently required to file a “management certificate” in all counties where the POA is located, advising of the:

- 1 name of the subdivision;
- 1 name of the POA;
- 2 the “recording data” of the subdivision (i.e., the plat);
- 3 recording data for the declaration;
- 4 the mailing address of the POA, or the name of and mailing address of the person managing the POA; and
- 5 other information the POA considers appropriate.

The term “management certificate” is somewhat misleading, especially for many self-managed POAs who believe the provision does not apply to them because they are not “managed” by a professional management company. Of course, the requirement for a management certificate *does* apply to all POAs and now there is a severe penalty for the failure of a (non-condominium) POA to file one as required by statute.

(This bill does *not* apply to condominiums, but Section 82.116 of TUCA does require a condominium to file a management certificate. Currently, there are still no stated statutory consequences for the failure of a condominium to file a management certificate, although it is highly recommended.)

Effect

Section 209.004 of the Code is amended by this bill to amend subsections (a) and (c) and add subsections (d) and (e).

Interestingly, subsection (a)(2) already required the name of the POA to be included in the certificate, but now subsection (a)(5) also requires the name of the POA to be repeated along with the address. This could have been a legislative counsel oversight, but it is a new requirement. And, while subsection (a)(6) already required the “mailing address” of the POA or “person” managing the POA, this subsection was amended to include the POAs “designated representative.” This appears to be “clean-up language” to make it clear that:

- 1 the name of the “person” managing the POA must be included (if that is the case), or
- 2 the “designated representative.”

The bottom line is there must now be the name of a person or management company listed in the certificate. In the case of self-managed POAs (that do not have

employees), an officer of the POA (who does not manage the POA, but is only the contact person) would need to be included.

If the POA *fails* to record a management certificate or an amended management certificate, the purchaser, lender, or title insurance company or its agent in a transaction involving property in the POA is *not* liable to the POA for:

- 3 any amount due to the POA on the date of a transfer to a bona fide purchaser, or
- 4 any debt or claim of the POA that accrued before the date of a transfer to a bona fide purchaser.

The bill specifies that a lien of a POA that fails to file a management certificate or an amended management certificate to secure an amount due on the effective date of a transfer to a bona fide purchaser is still enforceable, but only for an amount incurred after the effective date of sale.

The effective date of this bill is September 1, 2009, but Section 3 of the bill provides POAs that currently have a management certificate on file have until **May 1, 2010** to file the information "required by the changes in the law." Due to the wording of this Section 3 of the bill, we believe it is the best advice for POAs to update their management certificates. And those POAs that do not currently have a management certificate MUST have one on file by **September 1, 2009** to avoid the new penalties.

MANAGEMENT CERTIFICATE
for
Thornwood Fund, Inc.

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

The undersigned, being the Designated Representative of Thornwood Fund, Inc., a non-profit corporation ("Association") organized and existing under the laws of the State of Texas, submits the following information pursuant to Section 209.004 of the Texas Property Code which supersedes any prior Management Certificate filed by the Association:

1. Name of Subdivisions: The name of the subdivisions are Thornwood Section I, Thornwood Section II, Thornwood Section III, Thornwood Section IV.
2. Name of Association: The name of the Association is Thornwood Fund, Inc.
3. Recording Data for the Subdivision:

Thornwood Section I, a subdivision in Harris County, Texas, according to the map or plat thereof, recorded in volume 143, page 51 of the Map Records of Harris County, Texas and all amendments to or replats of said maps or plats, if any.

Thornwood Section II, a subdivision in Harris County, Texas, according to the map or plat thereof, recorded in volume 143, page 1 of the Map Records of Harris County, Texas and all amendments to or replats of said maps or plats, if any.

Thornwood Section III, a subdivision in Harris County, Texas, according to the map or plat thereof, recorded in volume 149, page 81 of the Map Records of Harris County, Texas and all amendments to or replats of said maps or plats, if any.

Thornwood Section IV, a subdivision in Harris County, Texas, according to the map or plat thereof, recorded in volume 164, page 84 of the Map Records of Harris County, Texas and all amendments to or replats of said maps or plats, if any.

4. Recording Data for the Declaration:
 - a. Documents:
 - (1) Declaration of Covenants, Conditions and Restrictions for Thornwood Section I, dated January 10, 1967, and all subsequent amendments to said document, if any.

- (2) Declaration of Covenants, Conditions and Restrictions for Thornwood Section II, dated July 27, 1966 and all subsequent amendments to said document, if any.
- (3) Declaration of Covenants, Conditions and Restrictions for Thornwood Section III, recorded May 28, 1968, and all subsequent amendments to said document, if any.
- (4) Declaration of Covenants, Conditions and Restrictions for Thornwood Section IV, recorded October 30, 1969, and all subsequent amendments to said document, if any.

b. Recording Information:

- (1) Harris County Clerk's Book & Page Nos. 6672-237.
- (2) Harris County Clerk's Book & Page Nos. 6446-619.
- (3) Harris County Clerk's Book & Page Nos. 7223-391.
- (4) Harris County Clerk's Book & Page Nos. 7834-312

5. Name and Mailing Address of the Association: The name and mailing address of the Association is Thornwood Fund, Inc. 11152 Westheimer, #722, Houston, Texas 77042.

6. Name and Mailing Address of Person Managing the Association or Its Designated Representative: The name and mailing address of the Designated Representative of the Association is: Ricky Hux, Best Fit Solutions, LLC, 11152 Westheimer, #705, Houston, TX 77042.

7. Telephone Number to Contact the Association: The telephone number to contact Thornwood Fund, Inc. is 713-598-3022.

Executed on this 20th day of August, 2009.

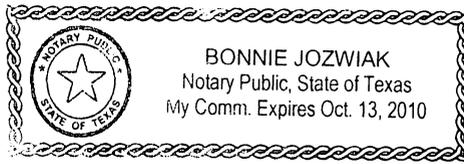
Thornwood Fund, Inc.

By: 
 Ricky Hux, Designated Representative

THE STATE OF TEXAS §
 §
 COUNTY OF HARRIS §

BEFORE ME, the undersigned notary public, on this 20 day of August, 2009 personally appeared Ricky Hux, Designated Representative of Thornwood Fund, Inc., known to me to be the person whose name is subscribed to the foregoing

instrument, and acknowledged to me that he executed the same for the purpose and in the capacity therein expressed.



Bonnie Jozwiak
Notary Public in and for the State of Texas

Return to:
Thornwood Fund
11152 Westheimer, #722
Houston, Texas 77042