

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 17-9129

ORDER AMENDING STANDARDS FOR ATTORNEY CERTIFICATION IN FAMILY LAW AND REAL ESTATE LAW

ORDERED that:

1. The Court approves amendments to the Standards for Attorney Certification by the Texas Board of Legal Specialization in Family Law and Real Estate Law. The amendments to the Real Estate Law Standards include the addition of a new specialization in Property Owners Association Law. The amendments are effective immediately.
2. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

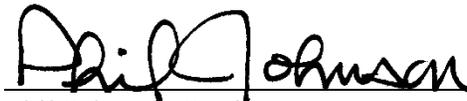
Dated: September 29, 2017.



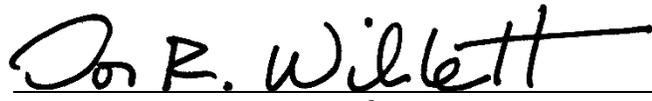
Nathan L. Hecht, Chief Justice



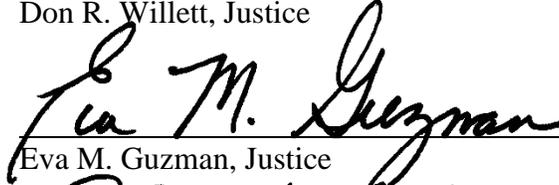
Paul W. Green, Justice



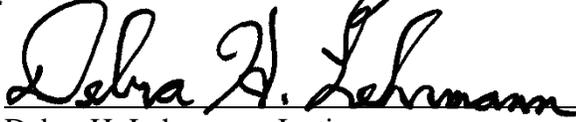
Phil Johnson, Justice



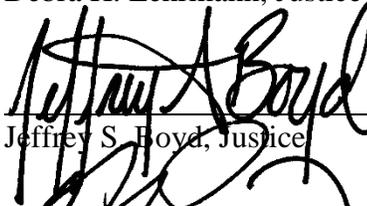
Don R. Willett, Justice



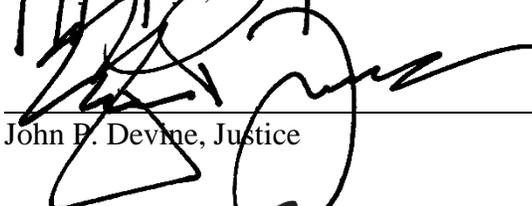
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

TEXAS BOARD OF LEGAL SPECIALIZATION

STANDARDS FOR ATTORNEY CERTIFICATION

PART II

SPECIFIC AREA REQUIREMENTS

These are specific requirements that apply to the specialty area listed below. The specific requirements include the definitions, substantial involvement, reference, and other certification and recertification requirements for the specialty area. You will also need to refer to the Standards for Attorney Certification, Part I – General Requirements for requirements that apply to all specialty areas.

SECTION II

FAMILY LAW

(Area ID: FM / Year Started: 1975)

- A. **PURPOSE.** The purpose of these Standards is to recognize those attorneys having special competence in Family Law. In making the determination of special competence, TBLS will consider the following:
1. The substance and complexity of the tasks submitted to show the required substantial involvement in the specialty area;
 2. The professional accomplishments of the attorney in the specialty area;
 3. The skill and ability of an attorney in the specialty area;
 4. The knowledge of the attorney as shown on the specialty area examination; and
 5. The character and fitness of the attorney.
- B. **DEFINITION.** Family law is the practice of law dealing with, by way of definition not limitation, matters involving:
- the Texas Family Code, Titles 1, 2, 4 or 5;
 - Texas Penal Code, Chapter 25 (offenses against the family);
 - the law of homestead and other exempt property; the taxation law of divorce and inter-spousal transactions;
 - torts relevant to family law matters;
 - the trial of cases arising out of the above matters; and
 - appeals arising out of the above matters.
- C. **SUBSTANTIAL INVOLVEMENT.** To demonstrate substantial involvement and special competence in Texas family law, applicant must, at a minimum, meet the following requirements.
1. **Certification.**
 - a. **Percentage of Practice Requirement.** Applicant must have devoted a minimum of 35% of his or her time practicing family law in Texas during each year of the 3 years immediately preceding application as defined in Section II, B of the Specific Area Requirements for Family Law.
 - b. **Task Requirements.** Applicant must provide information concerning specific tasks he or she has performed in Texas family law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.
 - (1) Applicant must meet each of the following 3 categories within the 5 years

immediately preceding application:

- (a) Participated as lead counsel (or as an attorney with significant and substantial involvement in the case, including actively participating in court appearances and hearing preparation) for a party or child(ren) in a total of 9 contested final trials or binding arbitrations in Texas family law cases:
 - i. in which oral testimony was taken;
 - ii. in which issues were determined by a finder of fact in a court of record or in a binding arbitration, excluding default judgments;
 - iii. at least 4 of the trials must have involved issues of property division; and
 - iv. at least 4 trials must have involved appointment or modification of conservatorship.
- (b) Participated as lead counsel (or as an attorney with significant and substantial involvement in the case, including actively participating in court appearances and hearing preparation) for a party or child(ren) in 30 contested court appearances involving issues pertaining to Texas Family Code, Titles 1, 2, 4, or 5, handled and disposed of prior to and without the necessity of a contested final hearing or trial of the matters on the merits. Contested court appearances may include, but are not limited to, temporary order hearings, discovery hearings, motions for summary judgment hearings, and other hearings if deemed sufficient for qualification by the advisory commission.
- (c) Satisfied 2 of the following 3 categories:
 - i. Within seven years preceding application, applicant must have handled the trial as lead counsel (or as an attorney with significant and substantial involvement in the case, including actively participating in court appearances and hearing preparation) for a party or child(ren) in one Texas jury trial involving family law OR 2 Texas non-family law jury trials at the county court at law, state district court level, or federal district court level submitted to the jury for decision.
 - ii. Within five years preceding application, applicant must have served as lead counsel for a party or child(ren) and filed a brief on the merits in the appeal of one civil case involving family law to a Texas court of appeals or the Supreme Court of Texas. TBLs will consider the nature, complexity, and duration of a mandamus or writ of habeas corpus in determining whether it qualifies for this category.
 - iii. Within five years preceding application, applicant must have represented a party or child(ren), or served as a mediator or arbitrator in a cumulative total of 25 Texas mediations, arbitrations, and/or collaborative law cases involving family law. TBLs will consider the nature, complexity, and duration of the mediations, arbitrations, and/or collaborative law cases in determining whether they qualify in this category.

2. **Other Considerations.** TBLS is dedicated to maintaining the highest standards in qualifying applicants for Board Certification. The members of the advisory commission embody those high standards and their judgment and discretion are a critical part of the evaluation process. In addition to the total number of matters in each category, the advisory commission can consider other factors brought to their attention. The advisory commission has discretion to recommend approval or disapproval of applicants to the TBLS Board regardless of whether the numbers in each category are met, based on circumstances such as the nature, complexity, and duration of the tasks handled by the applicant as well as the character and integrity of the applicant.
3. **Recertification.** Applicant must have devoted a minimum of 35% of his or her time practicing family law in Texas during each year of the 5 year period of certification as defined in Section II, B of the Specific Area Requirements for Family Law except as provided for in Part I—General Requirements, Section VI, C,1(b).

C. **REFERENCE REQUIREMENTS.** Applicant must submit a minimum of 5 names and addresses of persons to be contacted as references to attest to his or her competence in family law. These persons must be substantially involved in family law, and be familiar with applicant’s family law practice.

1. **Certification.** Applicant must submit names of persons with whom he or she has had dealings involving family law matters within the 3 years immediately preceding application.
2. **Recertification.** Applicant must submit names of persons with whom he or she has had dealings involving family law matters since certification or the most recent recertification.
3. **Reference Types.** Applicant must submit the following types of references:
 - a. Four Texas attorneys who practice in the applicant’s geographic area and who are substantially involved in family law. Applicant must be an opposing counsel to one of these attorneys either in litigation, hearing, or negotiation of a family law matter.
 - b. One judge of any court of record in Texas whom applicant has appeared before as lead counsel in the trial of a family law matter.

TEXAS BOARD OF LEGAL SPECIALIZATION

STANDARDS FOR ATTORNEY CERTIFICATION

PART II

SPECIFIC AREA REQUIREMENTS

These are specific requirements that apply the specialty area listed below. The specific requirements include the definitions, substantial involvement, reference, and other certification and recertification requirements for the specialty area. You will also need to refer to the Standards for Attorney Certification, Part I – General Requirements for requirements that apply to all specialty areas.

SECTION VIII

REAL ESTATE LAW

(Area ID: RC – Commercial Real Estate Law / Year Started: 1983)

(Area ID: RF – Farm and Ranch Real Estate Law / Year Started: 1983)

(Area ID: RR – Residential Real Estate Law / Year Started: 1983)

(Area ID: RP – Property Owners Association Law / Year Started: 2017)

A. DEFINITIONS.

1. **Real Estate Law.** Real estate law is the rendering of advice and services concerning the laws applicable to land and the improvements and appurtenances (including air and subsurface estates) to land. It also includes the acquisition, transfer, development, financing and use of land; and includes without limitation, knowledge of the legal restrictions and constraints imposed privately and by local, state and federal governments upon land and the improvements to land.
2. **Specialization Subcategories.** Certification is available for 4 subcategories of real estate law defined below:
 - a. **Residential Real Estate Law.** Legal practice including advice and services in connection with the acquisition, ownership, leasing, financing, use, transfer and disposition of residential real property.
 - b. **Commercial Real Estate Law.** Legal practice involving advice and services in connection with the acquisition, ownership, leasing, financing, use, transfer and disposition of real property other than residential, farm, ranch, or oil, gas and mineral property.
 - c. **Farm and Ranch Real Estate Law.** Legal practice involving advice and services in connection with the acquisition, ownership, financing, use, transfer and disposition of farm and ranch property, including a basic knowledge of mineral rights.
 - d. **Property Owners Association Law.** Real property law practice involving advice and services in connection with common-interest developments, their mandatory-membership associations of real property owners, and the individual owners of real property in common-interest developments. **A common-interest development** is a real estate development with restrictive covenants that tie ownership of a unit or lot to membership in a property owners association to which the owners are obligated to pay assessments. Common-interest developments, such as condominiums and subdivisions, may have residential, nonresidential, or mixed uses. The property owners association typically maintains common

property, provides services, and enforces restrictions burdening the common-interest development.

B. SUBSTANTIAL INVOLVEMENT. Applicant must show substantial involvement and special competence in the specialization subcategory for which applying by providing such information as may be required by TBLS. Applicant may seek certification in one or more specialization subcategories of Texas real estate law.

1. **Certification.**

a. **Percentage of Involvement Requirement.**

(1) Applicant must have devoted a minimum of 30% of his or her total time practicing Texas real estate law during each year of the 3 years immediately preceding application as defined in Section VIII, A, 1 of the Specific Area Requirements for Real Estate Law.

(2) In addition to devoting the minimum percentage of total time to Texas real estate law as indicated in Section VIII, B, 1, a (1) above, applicant must have devoted the required percentage of practice to each specialization subcategory of Texas real estate law in which certification is being sought.

a. **Residential Real Estate Law.** Twenty percent (20%) of applicant's total time must have been devoted to the practice of Texas residential real estate law during each year of the 3 years immediately preceding application as defined in Section VIII, A, 2(a) of the Specific Area Requirements for Real Estate Law.

b. **Commercial Real Estate Law.** Twenty percent (20%) of applicant's total time must have been devoted to the practice of Texas commercial real estate law during each year of the 3 years immediately preceding application as defined in Section VIII, A, 2(b) of the Specific Area Requirements for Real Estate Law.

c. **Farm and Ranch Real Estate Law.** Ten percent (10%) of applicant's total time must have been devoted to the practice of Texas farm and ranch real estate law during each year of the 3 years immediately preceding application as defined in Section VIII, A, 2(c) of the Specific Area Requirements for Real Estate Law.

d. **Property Owners Association Law.** Twenty (20%) of applicant's total time must have been devoted to the practice of Texas property owners association law during each year of the 3 years immediately preceding application as defined in Section VIII, A, 2(d) of the Specific Area Requirements for Real Estate Law.

b. **Task Requirements.** Applicant must provide information as required by TBLS concerning specific tasks he or she has performed in each specialization subcategory in which certification is being sought. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.

(1) All applicants must submit a resume or job summary reflecting activities in real estate law for at least 5 years immediately preceding application.

(2) All applicants must list the number of matters handled in the categories listed below within the 3 years immediately preceding application for each specialization subcategory of Texas real estate law in which certification is being sought:

(a) Purchase and Sale,

- (b) Loan Transactions/Financing,
 - (c) Equity Financing,
 - (d) Government Agency Financing,
 - (e) Construction and Development,
 - (f) Easements, including Utility Easements,
 - (g) Title Searches and Examinations,
 - (h) Title Insurance,
 - (i) Condemnation Matters,
 - (j) Leases,
 - (k) Landlord/Tenant Problems,
 - (l) Foreclosures and Other Remedial Actions by Creditors,
 - (m) Taxation Aspects of Real Estate Transactions,
 - (n) Environmental and Land Use Matters,
 - (o) Oil and Gas, and Other Mineral Matters,
 - (p) Zoning, Restrictions, and Land Use Planning,
 - (q) Subdivisions and Condominiums,
 - (r) State and Federal Land Regulations,
 - (s) Legislation,
 - (t) Property Owners Associations, or
 - (u) Other Real Estate Law Matters or Transactions.
- (3) **Applicants in Residential, Commercial, or Farm and Ranch Real Estate Law.** An applicant for certification in these specialization subcategories of Texas real estate law must also provide a detailed explanation that would clearly demonstrate substantial involvement within the 3 years immediately preceding application for each specialization subcategory of Texas real estate law in which certification is being sought.
- (4) (a) **Applicants in Property Owners Association Law.** Applicant must demonstrate a substantial breadth of experience in the practice of Property Owners Association Law. Typical activities in this specialty area include: (i) serving as counsel to property owners associations, their officers and directors, their members, and their managers on matters pertaining to the common-interest development and its governing association; (ii) drafting, amending, and interpreting documents that create and govern the development and its association; (iii) representing parties in assessment collection actions, enforcement of statutes and governing documents, and other litigation and dispute resolution relating to the common-interest development and its association; and (iv) serving as counsel to real estate developers in the creation of common-interest developments and property owners associations.

To demonstrate substantial breadth of experience, applicant must provide a written description of at least 20 substantive tasks or services performed by applicant in at least three of the categories listed below during each year of the 3 years immediately preceding application. The written description for each of the 60 or more substantive tasks or services must identify (i) the task category from the list below, (ii) when performed, and (iii) the type of client represented by applicant, such as owners, developers, lenders, property owners associations, association

officers and directors, association managers, or political subdivisions.

1. Documents. Draft, review, interpret, or amend development and governing documents pertaining to common interest developments and property owners associations.
2. Assessments. Issues pertaining to assessments, such as lien priorities, demands, payment plans, foreclosure, and redemption.
3. Rules. Issues pertaining to enforcement of rules and restrictions.
4. Contracts. Negotiating, enforcing, and terminating contracts to which property owners associations are party.
5. Entity. The creation, merger, or termination of property owners associations, and transfer of control from developer to owners.
6. Governance. Issues related to meetings, records, and elections of property owners associations.
7. Compliance. Compliance with applicable laws and governing documents.
8. Litigation. Serving as legal counsel or expert witness on issues of Property Owners Association Law (i) in a forum of alternate dispute resolution, such as mediation or arbitration, (ii) at a trial or on appeal, or (iii) in an administrative hearing.
9. Lending. Financing development or construction of the common interest development, mortgage financing on individual units or lots, borrowing by a property owners association.
10. Insurance. Dealing with insurance and bonds pertaining to a common interest development or property owners association.
11. Legislation. Drafting and negotiating proposed legislation specific to common interest developments and property owners association.
12. Education. Providing graduate school, law school, or continuing legal education in the field of Property Owners Association Law.
13. Any other substantive task or service that does not fit in any of the categories described above.

(b) **Certification in Property Owners Association Law Without Examination.** An applicant for certification in this specialization subcategory of property owners association law who meets the following requirements may be eligible for certification without examination:

1. has been licensed for 10 years,
2. is currently certified by TBLS in residential real estate law or commercial real estate law,
3. meets the minimum percent of practice for the specialization subcategory for each of the three years

- immediately preceding application as set forth in Section VIII, B, 1, a, (2)d.
 - 4. satisfies the task requirements for the specialization subcategory during the three years immediately preceding application as set forth in Section VIII, B, 1, b, (1)(2) and (4)(a), and
 - 5. applies for certification no later than 3 years after the effective date of this specialization subcategory.
- 2. **Recertification.**
 - a. Applicant must have devoted a minimum of 30% of his or her time practicing Texas real estate law during each year of the 5-year period of certification as defined in Section VIII, A, 1 of the Specific Area Requirements for Real Estate Law except as provided for in Part I—General Requirements, Section VI, C, 1(b).
 - b. Applicant may seek recertification in one or more specialization subcategories of Texas real estate law. In addition to devoting the minimum percentage of total time to Texas real estate law as indicated in Section VIII, B, 2, a above, applicant must have devoted the required percentage of practice to each specialization subcategory in which recertification is being sought.
 - (1) **Residential Real Estate Law.** Twenty percent (20%) of applicant’s total time must have been devoted to the practice of Texas residential real estate law during each year of the 5 year period of certification as defined in Section VIII, A, 2(a) of the Specific Area Requirements for Real Estate Law.
 - (2) **Commercial Real Estate Law.** Twenty percent (20%) of applicant’s total time must have been devoted to the practice of Texas commercial real estate law during each year of the 5 year period of certification as defined in Section VIII, A, 2(b) of the Specific Area Requirements for Real Estate Law.
 - (3) **Farm and Ranch Real Estate Law.** Ten percent (10%) of applicant’s total time must have been devoted to the practice of Texas farm and ranch real estate law during each year of the 5 year period of certification as defined in Section VIII, A, 2(c) of the Specific Area Requirements for Real Estate Law.
 - (4) **Property Owners Association Law.** Twenty percent (20%) of applicant’s total time must have been devoted to the practice of Texas property owners association law during each year of the 5-year period of certification as defined in Section VIII, A, 2(d) of the Specific Area Requirements for Real Estate Law.

C. **REFERENCE REQUIREMENTS.** Applicant must submit a minimum of 5 names and addresses of persons to be contacted as references to attest to his or her competence in the specialization subcategory of real estate law in which applicant is seeking certification or recertification. These persons must be substantially involved in the specialization subcategory of real estate law, and be familiar with applicant’s practice in the specialization subcategory of real estate law.

- 1. **Certification.** Applicant must submit names of persons with whom he or she has had dealings involving matters in the specialization subcategory of real estate law within the 3 years immediately preceding application.
- 2. **Recertification.** Applicant must submit names of persons with whom he or she has had dealings involving matters in the specialization subcategory of real estate law since certification or the most recent recertification.
- 3. **Reference Types.** Applicant must submit the names of 5 Texas attorneys who are

substantially involved in the specialization subcategory of real estate law in which applicant is seeking certification or recertification.