



# No Monkey Business

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## The Board and State Law

*Texas Housing Association  
2016 Annual Conference*

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New Boston Property Management  
Bowie County Housing Authority*

# Topics to Cover

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- Texas Local Government Code (LCG392)
- Texas Open Meeting Act Requirements (LG551)
- Texas Public Information Act Requirements (LG552)
- Appointments & Removals of Commissioners
- Cooperation
- Jurisdiction
- Conflicts of Interest
- Q&A with HUD

# Local Gov't Code 392

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- Texas law establishing Public Housing Authorities
  - Powers
  - Limitations
  - Authority as a Local Government
  - Public entity
    - *Open Meetings Act LCG551*
    - *Public Information Act LCG552*

# Local Government

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- Texas Local Government Code 392, “Housing Authority Law”, establishes housing authorities in the State of Texas as a Local Government.
- "Authority" or "housing authority" means a public corporation created under this chapter. 392.002(1)

# Local Government

## Open Meetings Act

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### **Texas Open Meetings Act; Government Code 551**

- Because a Texas housing authority is a local government, the governing board is required to operate IAW the Texas Open Meetings Act.
- Training is required under state law for all commissioners once in their lifetime. If received from participation on another governmental body, the original certificate will transfer.
- This applies to “Each elected or appointed public official who is a member of a governmental body...” 551.005(a)
- Within 90 days of taking office. 551.005(a)

# Local Government

## Public Information Act

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### **Texas Public Information Act; Government Code 552**

- Because a Texas housing authority is a local government, the governing board is required to operate IAW the Texas Public Information Act.
- Training is required under state law for all commissioners once in their lifetime. If received from participation on another governmental body, the original certificate will transfer.
- This applies to “an elected or appointed public official who is: (1) a member of a multimember governing body” 552.012(a)(1)
- Within 90 days of taking office. 552.012(b)



# Who legally can appoint Commissioners?

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## **For Municipal PHAs (established by city resolution) 392.031**

- 392.031 states the “presiding officer” (mayor) appoints each commissioner
- (a) “The presiding officer of the governing body of a municipality shall appoint five, seven, nine, or 11 persons to serve as commissioners of the authority.”
- Some mayors have the council to appoint/affirm or delegates to the City Manager to appoint.
- Ultimate responsibility falls on the mayor



# Who legally can appoint Commissioners?

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## Restrictions & Instructions

- (b) A commissioner may not be an officer or employee of the municipality. A commissioner may be:
  - (1) a tenant of a public project over which the housing authority has jurisdiction; or
  - (2) a person who is a recipient of housing assistance administered through the authority's housing choice voucher program.
- (c) A certificate of the appointment of a commissioner shall be filed with the clerk of the municipality. The certificate is conclusive evidence of the proper appointment of the commissioner.



# Who legally can appoint Commissioners?

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**For County PHAs (established by County Commissioner's Court resolution)**  
**392.032**

- 392.032 states the County Commissioners' Court appoints each commissioner
- (a) "The commissioners court shall appoint five persons to serve as commissioners of the authority."



# Who legally can appoint Commissioners?

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## Restrictions & Instructions

- (b) A commissioner of the authority may not be an officer or employee of the county.
- (c) A certificate of the appointment of a commissioner shall be filed with the county clerk. The certificate is conclusive evidence of the proper appointment of the commissioner.



# Who legally can appoint Commissioners?

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## **For Regional PHAs (established by Regional resolution) 392.033**

- 392.033 states the Commissioners' Court from each county represented appoints one or more seat/s to the Board – 392.033
- (a) “The commissioners court of each county in a regional housing authority shall appoint a person to serve as a commissioner of the authority. Subsequently, the commissioners court of each county shall appoint successors to the commissioner of the authority appointed by that commissioners court.”
- Go to LGC392.033 for more instructions on Regional PHAs.



# Who legally can appoint Commissioners?

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## Restrictions & Instructions

- (a) An appointed commissioner of the authority may not be an officer or employee of the county.
- (e) A certificate of the appointment of a commissioner appointed by a commissioners court shall be filed with the county clerk. The certificate is conclusive evidence of the proper appointment of the commissioner.



# Who legally can appoint Commissioners?

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## **Tenant Commissioners 392.0331**

- Applies to all (1) a municipality; or (2) a county that has a county housing authority or is a member of regional housing authority and the total number of units in the authority is more than 750. (Texas law)
- However, federal law trumps state (more restrictive)
  - “Until passage of the 1998 QHWRA, in Texas, only PHAs with public housing units were required to have resident commissioners on the Board. Now all PHAs including those that administer only the Section 8 Voucher Program, must have on their governing board at least one individual who is assisted by the PHA.”
  - Federal statute: Any PHA with fewer than 300 public housing units (which includes HCV-only agencies) would be exempt if the agency could not find anyone interested in serving. State law trumps that with a 150 unit threshold.



# Who legally can appoint Commissioners?

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## **Tenant Commissioners 392.0331**

- (b-1) The presiding officer of the governing body of a municipality that has a municipal housing authority in which the total number of units is 150 or fewer is not required to appoint a tenant to the position of commissioner as otherwise required by Subsection (b) if the presiding officer has provided timely notice of a vacancy in the position to all eligible tenants and is unable to fill the position with an eligible tenant before the 60th day after the date the position becomes vacant.
- Section 8 participants can be appointed to the board as tenant commissioner.

# Terms of Office

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## **Terms of Appointments 392.034**

- (a) Two of the original commissioners of a county housing authority shall be designated to serve one-year terms from the date of their appointment, and three shall be designated to serve two-year terms. Subsequent commissioners are appointed for two-year terms.
- All appointments (except for new PHA board) is a 2-year term. No limit on number of terms.

# Compensation

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## **Compensation 392.035**

- No compensation of any kind
- No HCV Section 8 contract with PHA where served
  - HCV contracts with other PHAs are ok
- No family member having contracts

# Qualifications






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- A commissioner may not be an officer or employee of the supervising jurisdiction.
- For a county housing authority, a commissioner must reside in the area over which the entity has jurisdiction. (Texas Constitution)
- No stipulation for a municipal PHA.

# Qualifications

## Possible Conflicts of Interest






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- A new commissioner cannot have been a contractor with the agency within the past year. 
- A former commissioner cannot be a contractor with the agency for one year after his/her resignation. 
- What about the Mayor's wife? 
- Employee of another PHA? 
- Relative of a staff member? 

# Qualifications

## Possible Conflicts of Interest

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- County employee at a municipal PHA? 
- School Board member?  Abstain from any dealings with school. (PILOT)
- Tenant of your PHA? 
- Tenant of another PHA? 
- Relative of the ED? 



# Who legally can Remove Commissioners?

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## **Regular Commissioners** (not the Tenant Commissioner position) **392.041**

- (a) The mayor may remove a commissioner of a municipal housing authority for inefficiency, neglect of duty, or misconduct in office.
- (b) The commissioners court may remove a commissioner of a county housing authority for inefficiency, neglect of duty, or misconduct in office.
- For grievance and appeals, see details at LGC 392.041



# Who legally can Remove Commissioners?


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## Tenant Commissioners 392.0331

- (h) If a commissioner appointed under this section as a tenant of a public housing project [(h-1) as a recipient of housing assistance administered through the authority's housing choice voucher program] ceases to reside in a housing unit operated by the public housing authority [ceases to receive that assistance] during the commissioner's term, a majority of the other commissioners shall decide whether to request that a new commissioner be appointed.
- [(i) If a commissioner appointed under this section fails to attend three consecutive regularly called meetings of the housing authority commissioners during the commissioner's term] A majority of the commissioners may decide to allow the commissioner to serve the remaining portion of the commissioner's term.
- Only the mayor/court can appoint.

# Appeals for Removals

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- Commissioners are given the right to appeal any removal from the Board of Commissioners **392.041**
  - (e) Before a commissioner may be removed, the commissioner must be given:
    - (1) a copy of the charges before the 10th day before the date of a hearing on the charges; and
    - (2) an opportunity to be heard in person or by counsel at the hearing.
  - (f),(g),(h) a record of the proceedings with the charges and findings shall be filed in the office of the clerk of that jurisdiction
  - For more details on appeals and grievance hearings, see LGC 392.041



# Commissioner Behavior

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**What if a Commissioner gets belligerent and does not work as a Team?**

- No stipulation.
- Chair could discuss with the mayor but it falls on the mayor's decision.

Teamwork on the Board is the key to a healthy PHA

- Public Liabilities Insurance does not support a Lone Ranger



# Mayor's input to the Board

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- The mayor or county commissioners' court have no actual input into the Board meetings or decisions.
- Their responsibility to the PHA, IAW LGC392, is to appoint the positions of commissioners.
- The Board of Commissioners is autonomous from the City/County UNLESS the PHA Bylaws state the PHA is a department or subsidiary of the City. Autonomous PHAs have their own finances, write their own checks, have their own financial audit, etc and does not depend on the City/County to manage their finances.
- Review your Bylaws.

# Cooperation with HUD

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- If the PHA has issues/problems that would affect their REAC score, ie: Troubled, Substandard, etc, a HUD representative may contact the Mayor/Judge to act on the PHAs behalf.
  - Basically for the mayor/court to replace the Board
  - The mayor/court cannot “fire” your Executive Director. That position is hired by the Board of Commissioners and the Board is the one to make decisions on the ED.
  - HUD does not remove commissioners nor the ED. There is a “chain on command” called state law that HUD won’t violate.

# Cooperation with HUD

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- HUD wants all PHAs to operate in a decent, safe and healthy manner at all times. They will “pull other strings” in getting this accomplished.
- They can issue a default of the ACC (Annual Contributions Contract with HUD)
- They can remove the PHA from the Board’s control and place in other management’s
- They can restrict funding to the Agency
- They can debar commissioners for illegal acts



# Cooperation with HUD

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- HUD works with the Appointer to get things done. If there is no cooperation, HUD acts otherwise. Can involve:
  - Law Enforcement
  - Attorney General's office
  - District Attorney
- Messing with federal funds is a criminal act
- And it all falls back to FINANCES.

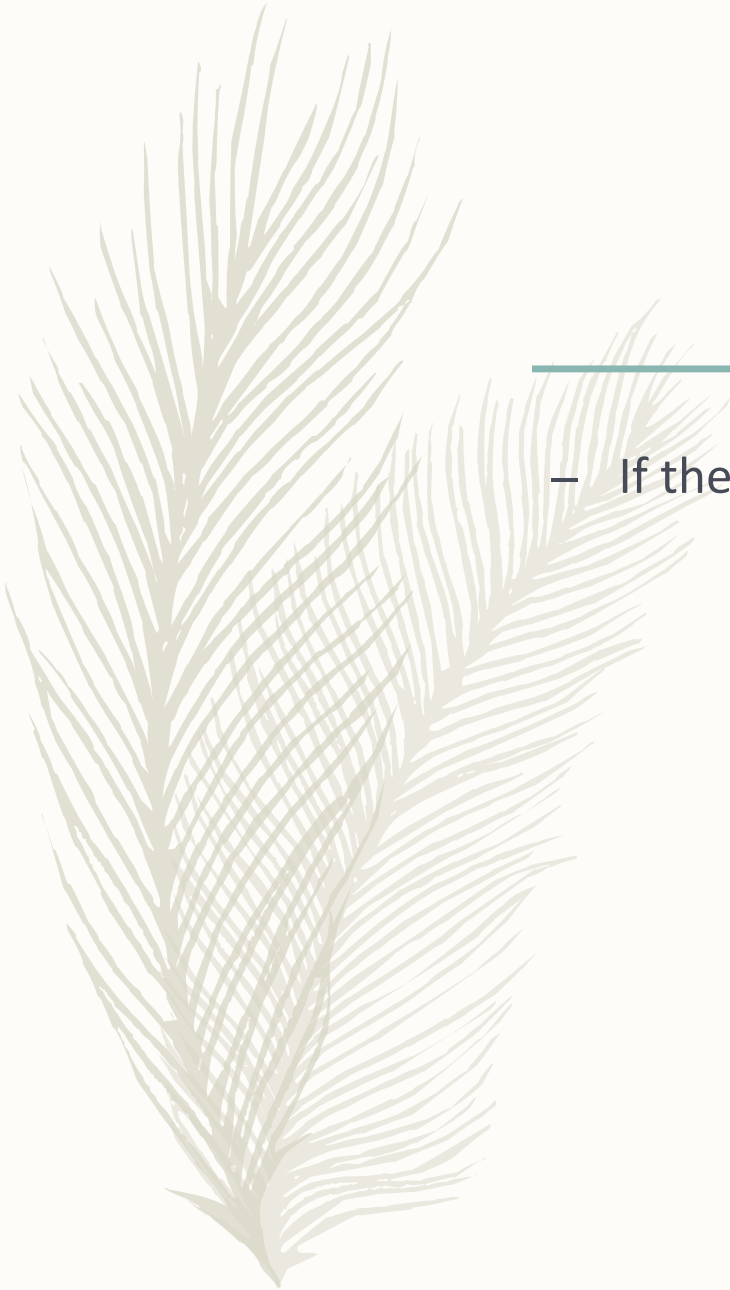


# Cooperation with HUD

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- If the mayor/court does not cooperate, HUD takes other effective measures.

Time for Discussion



# Staff

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- Staff, other than the ED, are left to the ED.
  - Hiring, firing, discipline
  - They actually work for the ED to help carry out the job assigned to the ED
- EDs working with other PHAs
  - EDs can work for multiple PHAs in various ways—ED, staff or contract
    - Board should aware

# Jurisdiction

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The area of operation of a municipal housing authority is the municipality for which the authority is created and the area that is within five miles of the territorial boundaries of the municipality and is not within the territorial boundaries of another municipality. **392.014**

The area of operation of a county housing authority is the county in which the authority is created excluding the parts of the county that are within the territorial boundaries of a municipality. **392.015**



# Jurisdiction

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- What if a PHA is operating in your jurisdiction?
- For example: A city limits has expanded into the county.
- Must have an MOU (Memorandum of Understanding)



# Conflicts of Interest

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Conflicts of Interest arise from time to time in all PHAs. Be constantly aware of these situations.

- Cannot have a contract with anyone who influences policy.
- Cannot employ family members of the Board or ED
  - Mom & pop Agencies are OK if approved by Board
- Contact with family members may be waived by HUD.
  - Must be a good reason such as no other contractors near



# Conflicts of Interest

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- If it doesn't smell good, it probably isn't good.
- Discussion about possible conflicts of interest.



# Q & A

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