FLAGPOLES, CONDOS, TURF & MORE

An Overview of 2013 State Law Changes
for Texas Property Owners Associations
~ including Condominium and Subdivision Associations ~

by

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2013 POA Legislative Update: Condos & Owners Associations

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TERMINOLOGY DISCLOSURE

This article purposefully uses "subdivision" to describe a common-interest mandatory-membership development that is not condominium in ownership. For our purposes, that distinction seems useful, even if artificial. Accordingly, this article divides the universe of POAs into "condominium associations" and "subdivision associations" - terminology we're borrowing from our Austin colleague Gregory S. Cagle. Please refer to Chapter E of this Article for more about terminology.

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DISCLAIMER

WHAT IT IS

- Overview of 2013 law changes that are specific or highly pertinent to POAs
- Materials to help lawyers help their POA clients respond to certain of the 2013 law changes
- Some practical tips for implementing the new laws
- Issue spotting and discussion of unclear or thorny aspects of new laws

WHAT IT'S NOT

- Not a review of the 2011 POA Reform Laws
- Not everything you need to know about anything

WRITTEN MATERIALS DISCLAIMER

This article was prepare for use with a one-hour studio-produced webcast, which tends to be less formal than a live CLE course. Instead of writing a traditional CLE article, we compiled "handouts" to illustrate certain aspects of what we're discussing in front of a studio camera. The handouts are prepared for that use only. Because the State Bar posts our handouts on its On-Line Library as if they were a traditional CLE article, we recommend that you view the webcast on the State Bar's On-Line Classroom to get the context for the written materials.

GENERAL DISCLAIMERS

Volunteers. We don't get paid for preparing or presenting webcasts and articles for the State Bar. Your registration fees go to the State Bar of Texas, not into our vacation accounts.

Do-It-Yourself. Do not - repeat - DO NOT rely on this webcast or the accompanying materials to resolve legal questions. They are no substitute for reading and analyzing the new laws. Our materials don't provide what's needed for the proper legal analysis of any issue or situation, just a starting place. Read the law, please.

Target. Our target audience is a Texas real estate attorney who sometimes has clients or matters involving POAs. We assume our audience is generally familiar with Chapters 81, 82, 202, and 209 of the Property Code, and the terminology of the POA practice.

Differences of Opinion. We practice independently and think independently. We do not agree between ourselves on everything pertaining to the POA Laws. Although we share the podium, you must not ascribe the statement or writing of one speaker to the others. To each his or her own!

Impression Over Precision. We didn't design our presentation to withstand "legal scrutiny." Our primary goal is to inform Texas lawyers about the existence of the law changes. In connection with our arm-waving, we use a presentation style that is informal, practical, conversational, and even a bit irreverent.

Not Know-It-Alls. We're not responsible for the wording of the new laws. Like you, we're trying to figure them out - what they mean and how they work (or don't work) with each other and with the existing laws. As situations and issues arise in the months and years to come, we will continue to learn new things about the 2013 law changes.

BLOOD OATH

Being lawyers, we can't help but worry that someone may take something in our webcast materials out of context and try to shove our printed words down our proverbial throats. So, we have taken a blood oath that we each will take credit for being the sole author of the words being shoved down the other's throat, to enable the other when challenged to say "That? I didn't write that. Not my idea. That belongs to my co author."

July 2013
Roy D. Hailey and Sharon Reuler

FACULTY PROFILES

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TOGETHER AGAIN. This program marks the seventh time Sharon and Roy have co-created a presentation for continuing legal education. They previously teamed for the following CLE activities: After the 2011 Texas Legislative Session, they co-presented three studio-produced webcasts for the State Bar of Texas - a 90-minute Overview of the 2011 Texas POA Reform Laws, a 2-hour focus on Records, Meetings & Elections as Select Issues from the 2011 POA Reform Laws, and a 90-minute focus on Developer~Declarant Perspectives on the 2011 POA Reform Laws. They co-authored "The Texas POA Primer ~ Tips for Working with Condo & Homeowner Associations" for the State Bar's 2010 Advanced Real Estate Law Course, for which they won the Jerry Charles Saegert award for "Best CLE Paper" presented at the course. After the 2009 Texas legislative session, they co-presented a Legislative Update on the POA Laws as a studio-produced webcast for the State Bar of Texas. Their first joint CLE venture was in 2002, when they co-authored "Statutory Evolution of Condominiums and Property Owners Associations in Texas," for UT's Mortgage Lending Institute.

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SHARON REULER is a Dallas-based attorney with a statewide practice representing real estate developers in the creation, marketing, and operation of planned communities and condominiums. Sharon is one of the most-published attorneys in Texas on the topic of common interest developments, having contributed to state and national continuing legal education programs since 1994. In 1994 and 1995 she published two seminal articles for the State Bar on the then-new Texas Uniform Condominium Act. She has garnered a number of awards under the auspices of the State Bar's Continuing Legal Education Program - the Weatherbie Workhorse Award, Best Speaker and Best Article Awards, and the Standing Ovation Award.

Sharon has been involved with legislation pertaining to common interest communities since 1981 - always in a volunteer capacity. Sharon was the 1990-1993 spokesperson for the Texas Uniform Condominium Act, which became law in 1993. In the early 2000s, she was spokesperson for an ill-fated initiative known as the Texas Uniform Planned Community Act, sponsored by the now-defunct Texas College of Real Estate Attorneys. In the mid-2000s, she contributed to the Drafting Committee of the National Conference of Commissioners on Uniform State Laws in updating the Common Interest Ownership Act. During the Texas Sessions of 2005, 2007, 2009, 2011, and 2013, Sharon periodically reported on the status of "POA Bills" by email broadcasts to clients and colleagues.

Sharon is a member of a number of organizations, including the American College of Real Estate Lawyers and The College of the State Bar of Texas. Sharon has three degrees from The University of Texas (yes, The one in Austin), the last being her law degree earned in 1987 at the ripe age of 40.

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ROY D. HAILEY is a principal with the law firm of BUTLER|HAILEY and focuses his practice on the representation of property owners associations and the preparation of project documents for real estate developers. He and his firm represent over 600 POAs. Roy earned his law degree from the South Texas College of Law in 1981 after receiving an undergraduate degree from the University of Texas at Austin. He is board certified in commercial and residential real estate law by the Texas Board of Legal Specialization. Roy is a member of the Houston Bar Association and a fellow of the Houston Bar Foundation. He is also a member of the State Bar of Texas and is a member of its Real Estate Section.

Roy has spoken at numerous CLE seminars on behalf of the State Bar of Texas, the Houston Bar Association and various Texas law schools regarding property owners' associations. The Texas Bar CLE has twice presented Mr. Hailey the prestigious Jerry Charles Saegert Award for "Best CLE Paper" - for the articles he presented at the Advanced Real Estate Law Courses in 2002 and 2010.

Roy's volunteer involvement with the legislative process began in 1990 as a member of the ad hoc drafting committee of lawyers that worked on the proposed Texas Uniform Condominium Act, which became law in 1993. He was a member of the Community Associations Institutes' Texas Legislative Action Committee from 1999-2009, in which capacity he was involved with drafting and testifying on POA bills. In 2002 he was one of 4 POA lawyers appointed to Senator John Lindsay's 9-person Interim Task Force to look for solutions to the intractable issues that divided POAs and aggrieved homeowners. As a charter director of Texas Community Association Advocates (formed in 2010), Roy was involved with drafting and testifying on POA bills during the 2011 and 2013 Sessions.

ROADMAP
TO
WEBCAST PRESENTATION OF JULY 16, 2013
~ 2013 POA Legislative Update: Condos & Owners Associations ~

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Q&A

Anticipating questions about the meaning or implementation of the new laws, we cannot guarantee replies to all questions, even if we think we have the answers, which we don't. We have questions, too! Time-permitting at the end of our webcast, we will try to respond to questions received by email from viewers during the webcast on July 16, 2013. We may give priority to requests for clarification of what we said. We may decline to respond to fact-specific questions, esoteric questions, questions that require more analysis than time permits, questions we don't understand, and questions for which we don't have answers. *(We have our pride, you know.)* As time permits, we will try to respond to questions submitted on subsequent replays, with the same qualifications. Please accept our advance apologies if you don't hear from us. Volunteerism has its limits.

CHAPTER A

OVERVIEW & ANALYSIS
OF
2013 POA-SIGNIFICANT LAWS
BY
SHARON REULER

WINDSHIELD TOUR OF POA-SIGNIFICANT TEXAS LAW CHANGES OF 2013

	Prop. Type	Topic of Law Change, Bill Number, Effective Date, and Affected Code
ASSESSMENT COLLECTION - FORECLOSURE		
	Condos	Post-Foreclosure Right of Redemption. [§5 of HB 2075 (EFF. 9/1/13) amends §82.113(g) of Prop. Code ~ TUCA]
	Subdivisions	➤ Expedited Foreclosure Mediation. [§2 of HB 2978 (EFF. 6/14/13) adds §154.028 to Civ. Prac. & Rem. Code] ➤ Expedited Foreclosure Forms. [§3 of HB 2978 (EFF. 6/14/13) adds §22.018 to Govt. Code] ➤ Expedited Foreclosure Citation. [§1 of HB 2978 (EFF. 6/14/13) adds §17.031 to Civ. Prac. & Rem. Code]
ASSESSMENT COLLECTION - UTILITY SHUT-OFF		
	Condos, mostly	➤ Master-Metered Not-Submetered Electric or Gas. [HB 1772 (EFF. 1/1/14) amends Util. Code and Ch. 92 of Prop. Code] ➤ Master-Metered & Submetered Electric.[HB 1086 (EFF. 9/1/13) expands §92.008 of Prop. Code]
DEVELOPMENT		
	Condos	Definition of "Declaration" corrected. [§2 of HB 2075 (EFF. 9/1/13) amends §82.003(a)(11) of Prop. Code - TUCA]
	Subdivisions	"Development Period" is defined for all of Chapter 209. [HB 503 (EFF. 9/1/13) amends §209.002 Prop. Code]
GOVERNANCE		
	Condos	Changes to Chapter 82 of Property Code - Texas Uniform Condominium Act (TUCA): ➤ Assigning Lien Rights as Collateral for a Loan to POA. [§3 of HB 2075 (EFF. 9/1/13) amending §82.102] ➤ Determining Who Pays Insurance Deductible & Repair Expenses. [§4 of HB 2075 (EFF. 9/1/13) amending §82.111] ➤ Decision to Not Rebuild after Damage or Loss. [§4 of HB 2075 (EFF. 9/1/13) amending §82.111] ➤ Confirming Due Process Before Fining in Pre-TUCA Condos. [§3 of HB 2075 (EFF. 9/1/13) amending §82.102(a)(12)] ➤ Defining "Dedicatory Instrument" for TUCA. [§2 of HB 2075 (EFF. 9/1/13) amending §82.003(a)] ➤ "Retroactive Provisions" Expanded. [§1 of HB 2075 (EFF. 9/1/13 amending §82.002(c)]
	Subdivisions	➤ Appointment of Directors. [HB 3176 (EFF. 6/14/13) amends §209.00593(a) of Prop. Code] ➤ Contracting with Directors. [HB 503 (EFF. 9/1/13) adds §209.0052 to Prop. Code]
	Timeshares	➤ Timeshare Associations are NOT POAs. [§5 of SB 1372 (EFF. 9/1/13) adds §221.004 to Prop. Code] ➤ Timeshare Governance. [§2 of SB 1372 (EFF. 9/1/13) adds §§221.081 et. seq. to Prop. Code]
LAND USE		
	Condos & Subdivisions	➤ Front Yard Flags & Flagpoles. [HB 680 (EFF. 6/14/13) amends §202.011/012 of Prop. Code Chapter 202] ➤ Xeriscaping & Turf. [SB 198 (EFF. 9/1/13), amends §202.007 Prop. Code Chapter 202]
	Subdivisions	Use of adjacent vacant lot. [HB 35 (EFF. 6/14/13), adds §209.015 to Prop. Code Chapter 209]
MANAGEMENT CERTIFICATES		
	Condos	New indexing rules for County Clerks, and POAs must record new Certs for re-indexing purposes between 9/1/13 and 1/1/14. [§6 of HB 2075 (EFF. 9/1/13) amending §82.116 Prop. Code - TUCA]
	Subdivisions	New indexing rules for County Clerks, and POAs expected to assist re-indexing by filing Certs between 9/1/13 and 1/1/14. [HB 3800 (EFF. 9/1/13) amending §209.004 of Prop. Code Chapter 209]
SALES		
	Timeshares	Exempt from Some Contract Disclosures. [§4 of SB 1372 (EFF. 9/1/13), amending §221.003 of Prop. Code]
ODDS & ENDS		
	Condos & Subdivisions	Renumbers Flag Display section of Chapter 202 [§22.001(40) of SB 1093 (EFF. 9/1/13)]
	Subdivisions	Repeals 5 duplicate sections of Chapter 209 [§§17.003 & 17.004 of SB 1093 (EFF. 9/1/13)]
	Bracketed	Las Colinas exempt from Chapter 209 Prop. Code. [HB 1824 (EFF. 9/1/13) amending Chapter 215 Prop. Code]
	Bracketed	Llano County covered by Chapter 211 Prop. Code. [SB 1853 (EFF. 9/1/13) amending Chapter 211 Prop. Code]

THUMBNAIL ANALYSES OF POA-SIGNIFICANT TEXAS LAW CHANGES OF 2013

ASSESSMENT COLLECTION - FORECLOSURE

FOR CONDOS, ONLY:

➤➤ **Post-Foreclosure Right of Redemption.** Beginning 9/1/13, an owner's post-foreclosure right of redemption applies no matter who purchases the unit at the POA's foreclosure sale and the right of redemption is extended to owners of non-residential units ("commercial condos"). It's still limited to 90 days. **ALERT.** Oddly, a deed "with no warranty" *must* be used ~ no option for a special warranty or quit claim deed. [§5 of HB 2075 (eff. 9/1/13) amends Sec. 82.113(g) of Prop. Code ~ TUCA]

Backstory. For 20 years, condo owners have had the right to "redeem" their units from the foreclosing POA under three conditions: (1) the unit was used for residential purposes, (2) the POA purchased the unit at its foreclosure sale, and (3) the owner redeemed within 90 days. When subdivision owners got the same right in 2002, they were given 180 days in which to redeem, and they could redeem from any purchaser, not only the POA. This law somewhat closes the gap between condo and subdivision foreclosures.

FOR SUBDIVISIONS, ONLY:

➤➤ **Expedited Foreclosure Mediation.** Under limited circumstances [not detailed here], a court may order the parties to mediate an expedited foreclosure. [§2 of HB 2978 (eff. 6/14/13) adds Sec. 154.028 to Civ. Prac. & Rem. Code]

Backstory. SB1202/HB3691 was filed for a Dallas judge who champions mediation and wanted express authority to order mediation in an expedited proceeding. What started as a two-sentence law-change became a two-page law - giving judges the requested authority, but subject to a number of significant conditions [not detailed here]. (Also, the bill filed as HB 3691 became law as HB 2978).

➤➤ **Expedited Foreclosure Forms**. By March 1, 2014, the Texas Supreme Court must promulgate 3 forms for use in expedited foreclosure proceedings. [§3 of HB 2978 (eff. 6/14/13) adds Sec. 22.018 to Govt. Code]

➤➤ **Expedited Foreclosure Citation.** Beginning 6/14/13, service of citation in an expedited foreclosure may be done according to Rule 106, no longer limited to court-issued certified mail under Rule 736. [§1 of HB 2978 (eff. 6/14/13) adds Sec. 17.031 to Civ. Prac. & Rem. Code]

Backstory. Expedited judicial proceedings for foreclosures under private powers of sale became mandatory for non-condo POAs in 2011. (They also apply to home equity, reverse mortgage, and property tax liens.) Judges who dislike facilitating home foreclosures have been known to nit-pick forms prepared by lawyers and deny applications on technicalities. The new laws seek to counter some of these tactics.

ASSESSMENT COLLECTION - UTILITY SHUT-OFF

FOR PROPERTIES WITH MASTER-METERED UTILITIES TO DWELLINGS:

➤➤ **Shutting-off Master-Metered Electric or Gas Service That Isn't Submetered to a Dwelling.** HB 1772 (eff. 1/1/14) is limited to nonsubmetered master-metered gas and electric service.

Electric Shut-Off. Adds Subchapter E (Sec. 17.201 et. seq.), titled "Protection Against Utility Service Disconnection," to Chapter 17 of Utilities Code. [§2 of HB 1772 (eff. 1/1/14)]

Gas Shut-Off. Adds Subchapter H (Sec. 104.351 et. seq.), titled "Protection Against Utility Service Disconnection," to Chapter 104 of Utilities Code. [§3 of HB 1772 (eff. 1/1/14)]

Both Electric & Gas Shut-Offs. Adds Sec. 92.302, titled "Notice of Utility Disconnection of Nonsubmetered Master Metered Multifamily Property to Municipalities, Owners, and Tenants," to Chapter 92 of Prop. Code. [§1 of HB 1772 (eff. 1/1/14)] *Note: Chapter 92 has limited applicability to POAs.*

This Post-Session Report is volunteered by Texas attorney Sharon Reuler to provide general information to select audiences about certain laws passed by the Texas legislation in the 83rd Regular Session (2013). It focuses on Sharon's notion of POA-specific and POA-relevant bills and does not purport to cover all bills that may have an impact on POAs. All comments, opinions, typos, and plain ol' mistakes are Sharon's and do not represent any organization of which she is a member, or any client that she represents. Sharon speaks for herself only. She may be reached at Sharon Reuler, P.C., 5400 LBJ Frwy, Suite 1200, Dallas, TX 75240. Tel: 972-720-9727, Email: sreuler@txlandlaw.com, website http://www.txlandlaw.com

➤➤ **Shutting-off Master-Metered Electric Service That Is Prorated, Allocated, or Submetered to a Dwelling.** HB 1086 (eff. 9/1/13) substantially enlarges Section 92.008, titled "Interruption of Utilities," to Chapter 92 of Prop. Code. *Note: Chapter 92 has limited applicability to POAs.*

Backstory. Shutting off a utility for nonpayment of rent or assessments is a popular (and effective) remedy in master-metered properties (typically older multi-family buildings). Utility shut-off laws in the Utilities and Water Codes apply to condominiums with master metered and submetered utilities to the units. The utility shut-off laws in Chapter 92 of the Property Code may be limited to landlord/tenant relationships - such as renter-occupied units acquired by the POA at foreclosure. The two utility shut-off bills (HBs 1086 & 1772) add significant consumer protections to the existing law of electric and gas shut-offs to dwellings. ***ALERT.*** *Both bills, with different requirements, seem to apply to electricity that is master-metered and then pro-rated or allocated to the individual units on a basis other than submetering. Please study the laws to know which applies to your situation. The consumer protections are not detailed in this heads-up-only notice of the law changes.*

DEVELOPMENT

FOR CONDOS, ONLY.

➤➤ **Definition of "Declaration" corrected to eliminate the word "recorded"**, which created a nonsensical and expensive requirement for the pre-construction marketing of units. [§2 of HB 2075 (eff. 9/1/13) amends Sec. 82.003(a)(11) of Prop. Code - TUCA]

Backstory. Condo developers often have a pre-sale program to market units before and during construction. In order to have an enforceable pre-sale contract, the Declarant must give the buyer a Condominium Information Statement. No biggie. But . . . the condo docs must be given with the CIS. Again, no biggie. Nationwide, during construction of the condominium, the customary practice ~ since "forever" ~ is to distribute proposed or draft condo docs . That practice hit a snafu in Texas because of a boo-boo‡ in TUCA's original 1993 definition of "Declaration," which includes an unnecessary reference to the declaration as a "recorded" instrument. Developers don't record condo declarations until construction is substantially complete so the declaration can be recorded with "as built" plats and plans of the units and common elements ~ except in Texas. Before 9/1/13, a Texas developer who wanted iron-clad purchase contracts before and during construction of the project was forced to record the declaration prematurely, with plats and plans of non-existent or "phantom" units and buildings, so a "recorded" declaration could be included with the Condominium Information Statement distributed during the pre-sale program. It created some weird outcomes of condos that weren't built the way they were "declared" pre-construction. Re-recording a declaration with as-built plats and plans is a costly exercise because condo surveys don't come cheap. Thanks to Winstead's Bob Burton, the Texas Association of Builders, and Texas Community Association Advocates, that charade ends on September 1, 2013. ‡ The 1993 mistake was made by us in Texas, and is not inherent in the model Uniform Act.

FOR SUBDIVISIONS, ONLY.

➤➤ **"Development Period"** added to Definitions Section of Chapter 209 - Sec. 209.002. [HB 503 (eff. 9/1/13) amends Chapter 209 of Prop. Code by adding Subsection (4-a) to Sec. 209.002]

> "Development period" means a period stated in a declaration during which a declarant reserves:
> (A) a right to facilitate the development, construction, and marketing of the subdivision; and
> (B) a right to direct the size, shape, and composition of the subdivision.

Backstory. The problem with "Development Period" as used in Chapter 209 is not the definition itself, but the contexts in which it's used (or misused) for purposes of POA governance. Intended to protect developer-appointed boards, it's used in ways that mistakenly apply, also, to homeowner-elected boards. When? What? Consider that the "Development Period" reserved in a declaration may last for years - even decades - longer than the period during which the developer controls the POA by appointing its officers and directors. A number of homeowner elected boards may serve between the end of the "Declarant Control Period" and the end of the "Development Period" - as those terms are defined in the subdivision's declaration. Why should homeowner-elected boards get to hide behind a carve-out created specifically (and rightfully) for developers? That's unfair to homeowners who were promised transparency and accountability by the 2011 POA Reform Laws. My fear is that a future legislature - although well intentioned - will make matters worse for developers when it gets around to "fixing" the unintended consequence of the developer's carve-out. Too few people grasp the difference between "development rights" and "governance control rights" - which are carefully bifurcated in some POA documents, but which are now thoroughly muddled in Chapter 209.

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GOVERNANCE

FOR CONDOS, ONLY.

➤➤ **Assigning Lien Rights as Collateral for a Loan to the POA.** Beginning 9/1/13, in connection with approving a loan to the POA, the condo board may assign the POA's assessment income and lien rights as security for the loan ~ without a vote of the owners ~ unless a dedicatory instrument (not just the declaration) requires membership approval as a condition for assigning income and lien rights. If membership approval is required by the condo docs, the new law provides some facilitating procedures for taking the vote. If the condo docs are silent about the assignment of income and lien (as many are), the board may use this new statutory authority to approve collateralizing a loan without a membership vote. ***Alert.*** The requirement of membership approval for assigning income and lien rights may be found in *any* dedicatory instrument ~ not limited to the declaration. [§3 of HB 2075 (eff. 9/1/13) replacing Subsection 82.102(a)(17) of Prop. Code ~ TUCA with new Subsections (f) & (g) of Sec. 82.102, which are expressly applicable to Pre-TUCA Condos by amendment of Sec. 82.002(c)]

Backstory. Many POAs will want to borrow money at certain times in their lives - such as to deal with a disaster, to fund a big renovation, or to pay a judgment. Borrowing allows the POA to make a lump sum payment while assessing the owners over time ~ so the owners aren't hit with a huge increase or special assessment when they can least afford it. Some banks consider the POA's income stream from assessments (coupled with lien rights) to be adequate security. The typical condo owns no real property that can be used as collateral for a loan because the common elements are owned collectively by the unit owners. Prior to 9/1/13, TUCA authorized a condo board (on its own) to assign income and lien rights only if the declaration didn't prohibit such assignment and clearly gave the board the requisite authority. If the declaration was silent about assignment - as many are - the board's hands were tied.

➤➤ **Determining Who Pays Insurance Deductible & Repair Expense** after Damage or Loss ~ Owner or POA (aka "pin the tail on the owner.") The law changes that go into effect on 9/1/13 address this decision in three different contexts - providing three different authorizations and "tests."

First, the resolution approach. The board determines what is a "commercially reasonable" deductible for the POA's insurance policy. When an owner makes a claim on the POA's policy, here's how the deductible portion is handled per this law change - new Subsection (k). First, look to the POA's "dedicatory instruments" (newly defined in TUCA) for instructions. If the condo docs are silent (as many are), the board may adopt a resolution with instructions for payment of deductibles (such as owner pays 100%, POA pays zero). The POA records the resolution, which becomes the authoritative dedicatory instrument for future claims. If the condo docs are silent and if the board doesn't adopt and record a resolution, then - by default - the deductible portion of a claim is handled as a common expense of the POA, to which all owners contribute. (The default is what TUCA intended when enacted in 1993.) [§4 of HB 2075 (eff. 9/1/13) adding Subsection (k) to Sec. 82.111 of Prop. Code ~ TUCA]

Second, the assessment approach. No matter what the POA docs say or don't say (with or without a board resolution), this law change - new Subsection (l) - authorizes the POA to directly assess the unit and its owner for the deductible and for expenses that exceed the insurance proceeds if damage to a unit or common element "is due wholly or partly to an act or omission" of the owner or his guest. So, even if the owner's role is only 15% of the cause of damage, the owner could be assessed for 100% of the expenses. Consider that the model Uniform Act allows such direct assessment only if the damage is caused by the owner or guest's "willful misconduct or gross negligence." *(Aside, the model Uniform Act addresses this issue under the "Assessment" section, rather than under the "Insurance" section.)* [§4 of HB 2075 (eff. 9/1/13) adding Subsection (l) to Sec. 82.111 of Prop. Code ~ TUCA]

Third, the pretend-it's-an-uninsured-loss approach. Again, no matter what the POA docs say or don't say (with or without a board resolution), this law change - new Subsection (j) - lays down a standard for insured losses for which the cost of repair is less than the POA's deductible. For example, the POA's policy has a $10K deductible, and only $9K of damages are sustained by the unit and appurtenant common elements. Who pays the $9K for repairs? New law says "the party who would be responsible for the repair in the absence of insurance." [§4 of HB 2075 (eff. 9/1/13) adding Subsection (j) to Sec. 82.111 of Prop. Code ~ TUCA]

Backstory. Since 1994, TUCA has required units to be insured by the POA as a common expense if the units are stacked one-on-top-of-the other, the theory being that in event of loss it will be too difficult to allocate responsibilities between units and common elements. The POA's duty to insure units is unchanged. Because the POA insures the unit (interior construction, built-in appliances, etc.), unit owners have little incentive to obtain duplicate coverage. And, if they do, their individual policies are subordinate to the POA's policy - by statute. Every policy has a deductible - the amount that must

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be paid out of pocket by the insured before the insurance company will write a check. Although owners may be able to get individual policies with small deductibles, POAs are often forced by the marketplace or budget constraints to carry large deductibles (such as $5K to $20K). Large deductibles mean lower premiums, which translate into lower assessments for the community of owners. Some POAs resist covering the deductible or uninsured portion of a claim when an owner suffers or causes an insured loss. The 2013 law change institutionalizes the widespread practice of shifting liability for deductibles and the cost of repairs from the POA to the owner. For more perspective on who should be stuck with the deductible, please refer to the 2008 comments by the National Law Commissioners on the Insurance section of the Uniform Common Interest Ownership Act - the successor to the model Uniform Condominium Act.

➤➤ **Decision to Not Rebuild after Damage or Loss.** Prior to 9/1/13, a decision by the POA to not rebuild a portion of a condominium that was damaged or destroyed required the consent of the owner of each unit that would not be rebuilt among the 80% of owners needed to approve the decision. Beginning 9/1/13, it still takes 80% of the owners to approve a decision to not rebuild. However, owners of the damaged units are not required to join in the consent. The other changes to Subsection (i) are not analyzed here. [§4 of HB 2075 (eff. 9/1/13) amending Subsection (i) of Sec. 82.111 of Prop. Code ~ TUCA]

➤➤ **Confirming Due Process Before Fining in Pre-TUCA Condos.** Beginning 9/1/13, there will be less doubt about whether TUCA's due-process-before-fining provision [Secs. 82.102(d)&(e)] applies to "Pre-TUCA" condos. Section 82.002(c) of TUCA identifies the "Retroactive Sections" of TUCA that apply to condominiums created before 1994. The due-process-before-fining provision was not - and is still not - listed in §82.002(c) among the Retroactive Provisions. However, a 2013 law change to a Retroactive Provision adds a reference to the due-process-before-fining provision, thus incorporating it by reference. Although it has long been conventional wisdom to treat the due-process-before-fining provision as a Retroactive Provision, it's now more securely bootstrapped for pre-TUCA condos. *Hint Hint. Maybe next Session Subsections (d) & (e) of 82.102 will be added to 82.002(c).* [§3 of HB 2075 (eff. 9/1/13) amending Sec. 82.102(a)(12) of Prop. Code ~ TUCA]

➤➤ **Defining "Dedicatory Instrument" for TUCA**. Because some of the 2013 changes to TUCA use the term "dedicatory instruments" to refer to the body of condominium documents, that term is added to TUCA's definitions. Be aware that Texas has several statutory definitions of "dedicatory instrument" - in different laws - each definition being slightly different. [§2 of HB 2075 (eff. 9/1/13) adds Subsection (11-a) to Sec. 82.003(a) of Prop. Code ~ TUCA]

➤➤ **"Retroactive Provisions" Expanded.** Section 82.002(c) of TUCA identifies the "Retroactive Sections" of TUCA that apply to condominiums created before 1994. The new "borrowing powers" to assign assessment income and lien rights are added to the Retroactive Sections, and thus are available to all condominium is Texas, no matter when created [§1 of HB 2075 (eff. 9/1/13) amending Sec. 82.002(c) of Prop. Code ~ TUCA]

<u>FOR SUBDIVISIONS, ONLY</u>.

➤➤ **Appointment of Directors.** Beginning 6/14/13, the board may appoint a person to fill a vacancy on the board regardless of the reason for the vacancy. The appointee serves until the position's term expires, at which time the seat must be filled by election. [HB 3176 (eff. 6/14/13) amends Sec. 209.00593(a) of Prop. Code]

<u>Backstory</u>. One of the 2011 POA Reform Laws for subdivisions addressed POA boards that use powers of appointment to self-perpetuate without holding board elections. Boards were allowed to make appointments only if a vacancy were created by a director's resignation, death, or disability. Situations arose that required more flexibility, such as a vacancy that arises because no one runs to fill the seat. (Interestingly, some people accept appointments to the board, but won't stand for election.)

➤➤ **Contracting with Directors.** Beginning 9/1/13, the board of a POA may contract with its directors for goods or services if certain conditions are met. The conditions don't apply during the "development period." [HB 503 (eff. 9/1/13) adds Sec. 209.0052 to Prop. Code] Chapter 209's new conditions apply whether or not the POA is incorporated. (Incorporated POAs have additional requirements.) Don't yet know if use of "enforceable" has significance.

<u>Types of Transactions</u> - "enforceable" contracts between the POA and <u>any</u> of these:
(1) a current director
(2) a person related to a current director by consanguinity or affinity within three degrees
(3) a company in which a current director has a 51% share of the profits
(4) a company in which a director's third degree relative has a 51% share of the profits

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Conditions to Contracting - all of the following conditions apply (except during the development period):
(1) board has at least 2 other bids from disinterested bidders if reasonably available in that market
(2) the interested director doesn't have access to the other bids and doesn't participate in discussion or voting
(3) the board knows about the relationship between the interested director and the bidder
(4) the contract is approved by a majority of the disinterested directors
(5) a resolution certifying that the conditions are fulfilled is approved by a majority of disinterested directors

*Backstory. Interesting switcheroo. What started as a one-sentence bill prohibiting all contracts between a POA and its directors morphed into a law that empowers POAs to contract with its directors and their kin folk, even if the POA docs prohibit such contracts. Bill doesn't address contracts with homeowners or POA officers and committee chairs who aren't directors. Incorporated POAs are still subject to Texas Business Organizations Code §22.230 ("Contracts or Transactions Involving Interested Directors, Officers and Members") which does cover POA contracts with homeowners and POA officers, as well as directors. **ALERT**. The "development period" carve-out should be (but isn't) limited to the declarant-appointed board. As written, the carve-out also applies to contracts negotiated by the homeowner-elected board if the developer reserves certain development rights.*

FOR TIMESHARES, ONLY.

➤➤ **Timeshare Associations are NOT POAs** within the context of the Property Code. Hurrah! This ends my ambivalence about whether timeshare associations are POAs for purposes of legislative reporting. [§5 of SB 1372 (eff. 9/1/13) adds Sec. 221.004 to Prop. Code ~ Texas Timeshare Act]

➤➤ **Timeshare Governance.** Beginning 9/1/13, timeshare associations in Texas are governed by the new Subchapter I of the Texas Timeshare Act, which borrows bits and pieces of the 2011 POA Reform Laws, and borrows TUCA's concept of "period of declarant control." Limits and defines significant development rights. [§2 of SB 1372 (eff. 9/1/13) adds Secs. 221.081 et. seq. to Prop. Code ~ Texas Timeshare Act]

Backstory. Timeshare bills usually fly under the radar because few of us work with timeshares. Accordingly, this is not a substantive analysis of SB 1372, a 15-page bill that deals only with timeshares. If you work with timeshares, study this significant law change. The primary purpose of SB 1372 is to create a new body of law for timeshare governance. However it also addresses timeshare sales and development.

LAND USE

FOR CONDOS & SUBDIVISIONS - Amendments to Chapter 202 of the Property Code apply to condos as well as to subdivisions because of Chapter 202's definition of "POA." However, in the realm of land use, Chapter 202's applications to condos are generally limited to condo developments of detached single family houses, halves of duplexes, or townhouses for which building exteriors and yards are owned and maintained by the unit owner. In other words, not your "typical" apartment-style condo.

➤➤ **Flags & Front Yard Flagpoles.** Beginning 6/14/13, POAs can regulate but can't prevent an owner from flying a permitted flag from a 20-ft tall front yard flagpole or from a flagstaff mounted to the house - the choice of which (front yard or house) is up to the owner - subject (however) to some significant controls by the POA. [HB 680 (eff. 6/14/13) amends Sec. 202.012 of Prop. Code Chapter 202. Although HB 680 references Sec. 202.011, that Section has been renumbered to 202.012 by SB 1093] The following comments are about what's "new" in the law ~ not an analysis of the complete Flag Display section that became law in 2011:

- A house-mounted flagpole may not be on a portion of the dwelling maintained by the POA.

- To qualify for a front yard flagpole under the Statute, the lot must have a front building setback of at least 15 feet. *Comment.* A 15-foot building or setback line is not the same as having a lawn area that is 15 feet deep. Setbacks and boundaries often can't be visually determined - plats and surveys must be consulted. A home with a 15-foot building setback may have a lawn area that is only 8 feet deep because the rest is taken up with a sidewalk, or offstreet parking, or part of a private street.

- Because State law ordinarily trumps local ordinances and private restrictions, HB 680 expressly subordinates this State law to "applicable zoning ordinances, easements, and setbacks of record." A flagpole - like everything else on a lot - is subject to those superior interests. For example, a tree in an easement area is subject to being removed if necessary to service the easement. Just a reminder that flagpoles get the same treatment. If more can be read into the "subject to" clause (as some contend), I'm all ears.

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Backstory. A 2011 POA Reform Law prevents POAs from prohibiting the display of certain flags on home lots, while giving POAs the right to approve several aspects of flags and flagpoles, including the location of flagpoles. Some POAs used their "location" power to restrict flagpoles to back yards (which dumfounded the 2013 lawmakers hearing the bill). HB 680 was filed to clarify that flags can be flown from flagpoles in front yards. The building line setback was added to address urban townhomes with front yards the size of postage stamps - and was negotiated from 20 feet to 15 feet.

➤➤ **Xeriscaping & Turf.** Beginning 9/1/13, "drought-resistant landscaping" is added to the list of a homeowner's property rights, subject to POA approval. Also, the decade-old law protection of water-conserving turf was clarified to be applicable to "natural turf" ~ astroturf doesn't get the protection. In the spirit of yin-yang, the new law empowers the POA to review a xeriscaping application with an eye to ensuring "maximum aesthetic compatibility" with other landscaping in the subdivision, but . . . only to the extent practicable, and provided the determination of aesthetic incompatibility is not unreasonably determined. Oh my, what a lot of subjective criteria. [SB 198 (eff. 9/1/13), amends Sec. 202.007 Prop. Code Chapter 202]

Backstory. Since 2003 (HB 645, 78R Session), Texas law has protected the use of "water-conserving turf" on private yards in subdivisions controlled by POAs. In 2013, HB727/SB198 was filed to further protect "drought resistant landscaping and water conserving turf." A Houston area homeowner hired someone to tweak the bill to protect his expensive synthetic lawn from his POA's disapproval. A turf war ensued - natural turf versus artificial turf. When the dust settled, the new law specifies "natural" turf, with the intent of confirming that fake grass doesn't qualify as xeriscaping in the POA context.

Comment. "Drought resistant" is not defined in this bill, and does not appear to be a term that is defined elsewhere in Texas statutes. Hence, it has its ordinary meaning. In landscaping circles, "drought resistant" is sometimes distinguished from "drought tolerant," and sometimes used interchangeably. We live in evolving arid times.

FOR SUBDIVISIONS, ONLY - Land use amendments to Chapter 209 of the Property Code affect subdivisions only because Chapter 209 does not apply to condominiums.

➤➤ **Use of Adjacent Lots.** Beginning 6/14/13, a person who owns two adjacent lots - one with a residence, and one without - may use the adjacent vacant lot for certain purposes, subject to some POA oversight, and also subject to certain conditions when one or both of the lots are sold. [HB 35 (eff. 6/14/13), adds Sec. 209.015 to Prop. Code Chapter 209] Here are some of the key features of the new law:

- "Adjacent lot" is defined by law to include [paraphrasing] (1) if the house is on an interior lot, the adjacent vacant lot fronting on the same street, or (2) if the house is on a corner not, the adjacent vacant lot on the side or rear lot line [which could be another corner lot], but not (3) the adjacent vacant lot behind an interior lot with a house, unless permitted by a dedicatory instrument. *(Why the distinction for rear adjacency?)*

- The adjacent vacant lot may be used for permitted "residential purposes", which is defined by law to mean "the location . . . of any building, structure, or other improvement customarily appurtenant to a residence . . . and includes . . . a garage, sidewalk, driveway, parking area, children's swing or playscape, fence, septic system, swimming pool, utility line, water well, and - if specifically permitted by the POA docs - parking or storage of a recreational vehicle." *(What if the POA docs prohibit septic systems and water wells on any lot? Does "customarily appurtenant" mean "customary" for that subdivision, or "customary" for residential properties in general?)*

- Owner must get the POA's prior approval for the "residential purpose" on the vacant "adjacent lot", and the POA's approval must be based on "criteria prescribed by the dedicatory instruments specific to the use of a lot for "residential purposes." *(Does a blanket prohibition against improvements without ACC approval qualify as "criteria specific to the residential purpose"?)*

- When the owner is ready to sell, he must sell the two lots together unless the adjacent lot is restored to its original status as a vacant building site, or is sold for construction of a new residence. *(What happens if a lender forecloses on the lot with the house, but not on the adjacent lot, thus dividing the ownership?)*

Backstory. From testimony given during the 2011 Session (when this bill was first filed), we learned that this law arose from the perception of unfair treatment in rural Comal County when a POA allegedly refused one owner's application for a water well on his adjacent lot, having allowed them on the adjoining lots of other owners. The constituent who testified with great passion at the 2011 hearing, was invited to testify at the 2013 hearing, but said almost nothing ~ he had worked things out with his POA. So, why did the bill move forward with no evidence of a problem and only nominal testimony? Rep. Menéndez of San Antonio cared about his bill, and there was no organized opposition.

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MANAGEMENT CERTIFICATES

Beginning 9/1/13, when a management certificate is filed with a County Clerk, the County Clerk must index the certificate as a certain type of document. All 256 County Clerks in Texas must use the same words - either "Condominium Association Management Certificate" or "Property Owners Association Management Certificate" - depending on which Chapter of the Property Code applies to the property - Chapter 82 or Chapter 209. Normally, an indexing requirement would be in Local Govt. Code §193.003 (titled "Index to Real Property Records"), rather than in the Property Code. Oh well. There is no similar requirement *(yet!)* for standardizing the public index categorization of the other POA documents - only for the management certificate. *(Whoa! Isn't a condo association a "property owners association"? Yes - under Chapter 202. No - under Chapter 209. You betcha it's confusing - for us and for the County Clerks.)*

FOR CONDOS, ONLY [§6 of HB 2075 (EFF. 9/1/13) amending §82.116 Prop. Code - TUCA]

What Hasn't Changed - the Management Certificate itself - as required by §82.116 of Prop. Code - TUCA. For 20 years, every condo POA in Texas (old and new, big and small, residential and commercial, volunteer-run and professionally managed) has been required to maintain a disclosure in the County Records - telling the public how to identify the property and how to contact the POA. The contents of the disclosure are dictated by §82.116, which has not been amended since it was enacted in 1993. Nothing about the certificate itself was changed in 2013. It still must be signed and acknowledged by a POA officer (not by the manager, as permitted for subdivisions).

What Has Changed - the words used by the County Clerk to index a Management Certificate that is submitted for recording. Beginning 9/1/13, every County Clerk in Texas must index newly filed instruments under the category or "type" of "Condominium Association Management Certificate."

What's Required for Condo POAs. A condo POA must record a new management certificate during the four month window of 9/1/13 - 1/1/14. Why? So the County Clerk can re-index it under the new classification scheme.

- The new duty applies only to a POA that recorded a management certificate before 9/1/13. The new law doesn't speak to a POA that should have recorded a certificate before 9/1/13, but didn't. However, those POAs are required by the 1993 law to record certificates.
- Because the contents of the certificate haven't changed, there may be no harm in re-recording the old certificate (if you have it), even though the law specifies "new."
- The subsection requiring action by the POA during the last four months of 2013 expires on 1/1/15. Will it disappear from the Prop. Code in 2015?

FOR SUBDIVISIONS, ONLY [HB 3800 (eff. 9/1/13) amending §209.004 of Chapter 209 of Prop. Code]

What Hasn't Changed - the Management Certificate itself - as required by §209.004 of Chapter 209 of the Property Code. For 12 years, every residential subdivision POA in Texas (old and new, big and small, volunteer-run and professionally managed) has been required to maintain a disclosure in the County Records - telling the public how to identify the property and how to contact the POA. The contents of the disclosure are dictated by §209.004. Nothing about the certificate itself was changed in 2013. It still may be executed by either a POA officer or the POA's managing agent.

What Has Changed - the words used by the County Clerk to index a Management Certificate that is submitted for recording. Beginning 9/1/13, every County Clerk in Texas must index newly filed instruments under the category or "type" of "Property Owners Association Management Certificate."

What's Required for Subdivision POAs. The "transition" section of HB 3800 directs every POA that's subject to Chapter 209 to record its management certificate during the four month window of 9/1/13 - 1/1/14. Why? So the County Clerk can re-index it under the new classification scheme. The contents of the certificate haven't changed and the bill's transition section doesn't specify a "new" certificate (as for condos). So, it's okay to re-record the old certificate (if you have it).

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SALES

FOR TIMESHARES, ONLY.

➤➤ Exempt from Some Contract Disclosures. Beginning 9/1/13, the sale of timeshares is exempt from the following parts of the Property Code relating to residential contracts of sale and resales: [§4 of SB 1372 (eff. 9/1/13), amending Sec. 221.003 of Prop. Code]

Sec. 5.008 ~ Seller's Disclosure of Property Condition
Sec. 5.012 ~ Notice of Obligations Related to Membership in Property Owners Association
Chapter 207 ~ Disclosure of Information by Property Owners Associations

ODDS & ENDS - CORRECTION OF DUPLICATE SECTIONS & SECTION NUMBERS

SB 1093 (eff. 9/1/13) is a 226-page omnibus corrections bill that makes nonsubstantive changes to many codes. This reports only the changes pertaining to the statewide POA Statutes - Chapters 202 and 209 of the Property Code. In this report I did not include corrections to the provisions bracketed for Las Colinas Association.

FOR CONDOS & SUBDIVISIONS:

SECTION RENUMBERED BY §22.001(40) of SB 1093 (eff 9/1/13):	FROM:	TO:
Flag Display - as added by Chapter 1028 (HB 2779) of 82nd Legis. (2011)	202.011*	202.012

* Sec. 202.011 continues to be used for Regulation of Certain Roofing Material

FOR SUBDIVISIONS, ONLY: In the 2011 Session, a number of POA Reform Laws were birthed as twins ~ the identical or similar text was in two different bills that both became law ~ resulting in statutory messiness and confusion. SB 1093 chose between the twins - repealing one of each pair. Here are the results:

REPEALED BY §17.003 of SB 1093	THE SURVIVING TWIN SECTION
209.0058 - Ballots - as added by Chapter 1217 (SB 472) of 82nd Legis. (2011)	209.0058 - Ballots - as added by Chapter 1026 (HB 2761) of 82nd Legis. (2011)
209.0059 - Right to Vote - as added by Chapter 1217 (SB 472) of 82nd Legis. (2011)	209.0059 - Right to Vote - as added by Chapter 1026 (HB 2761) of 82nd Legis. (2011)
209.00592 - Board Membership - as added by Chapter 1217 (SB 472) of 82nd Legis. (2011)	209.00591 - Board Membership - as added by Chapter 1026 (HB 2761) of 82nd Legis. (2011)
209.00593 - Voting; Quorum - as added by Chapter 1217 (SB 472) of 82nd Legis. (2011)	209.00592 - Voting; Quorum - as added by Chapter 1026 (HB 2761) of 82nd Legis. (2011)

REPEALED BY §17.004 of SB 1093	THE SURVIVING TWIN SECTION
209.0062 - Alternative Payment Schedule for Certain Assessments - as added by Chapter 1142 (HB 1821) of 82nd Legis. (2011)	209.0062 - Alternative Payment Schedule for Certain Assessments - as added by Chapter 1282 (HB 1228) of 82nd Legis. (2011)

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ODDS & ENDS - "BRACKETED" LAWS (not applicable statewide)

FOR LAS COLINAS IN IRVING, TEXAS

In 2011, the large-scale master-planned mixed-use community of Las Colinas protected itself from parts of the 2011 POA Reform Laws by pushing through a new chapter of the Property Code devoted to Las Colinas - Chapter 215 - which exempted Las Colinas from parts of Chapter 209. This year's bill exempts Las Colinas from ALL of Chapter 209 and - in its place - adds governance provisions to Chapter 215 that are similar to those in Chapter 209. [HB 1824 (eff. 9/1/13) amending Chapter 215 Prop. Code]

FOR LLANO COUNTY (IN CENTRAL TEXAS, ON THE WEST SIDE OF LAKE BUCHANAN)

Chapter 211 of the Property Code provides procedures for two-thirds of the owners in a subdivision to amend their restrictions when restrictions require unanimous consent or lack an amendment provision. However, Chapter 211 is not applicable statewide. It is available only to specified geographic areas for which the law is "bracketed." Senate Bill 1853 extends the range of Chapter 211 to include Llano County (home of Llanite and Cooper's BBQ). [§§1 & 2 of SB 1853 (eff. 9/1/13) amending Chapter 211 Prop. Code]

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CHAPTER B

OVERVIEW & ANALYSIS
OF
2013 POA-SIGNIFICANT LAWS
BY
ROY D. HAILEY

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TELEPHONE 713/780-4135, FAX 713/780-4549

MEMORANDUM

To: Our Clients and Friends

From: The Attorneys at Butler | Hailey

Date: June 25, 2013

Re: Overview of POA Specific 2013 Texas Legislation

As many of you are aware, the Texas Legislature completed its 2013 Session (83rd) on May 27, 2013 and Governor Perry had until June 16, 2013 to sign or veto the bills the 83rd Legislature passed. That date has come and gone and we now know what bills have become law. The purpose of this memorandum is to highlight the new laws specific to property owners' associations (POAs). In comparison to the sweeping POA reforms from the 2011 Texas Legislature (82nd), the 83rd Session was relatively calm. Nonetheless, in what appears to be a continuing trend for Texas POAs, the 83rd Texas Legislature still found time to keep POAs in its crosshairs. There were approximately 55 bills filed this Session that would have affected POAs in some way. Of those, only 7 were passed that were POA specific.

There was one POA non-specific law from this Session that we bring to your attention, which bill is not discussed in the attached "Overview of POA Specific 2013 Texas Legislation", since it is not POA specific. That bill is HB 2978, discussed below.

By way of background, the 82nd Legislature (by virtue of Sec. 209.0092 of the Texas Property Code) required Texas POA non-judicial foreclosures (except condominiums) to be placed under rules promulgated by the Texas Supreme Court. In turn, the Supreme Court amended Rules 735 and 736 of the Texas Rules of Civil Procedure to be applicable to POAs. These detailed rules require an expedited judicial hearing and allow for service by certified mail from the court. These rules apply to other mortgage lenders (not just POAs), including home equity and reverse mortgage lenders. This Session there was a push by these lenders to make a change to the law that would allow service under Rule 106 of the Texas Rules of Civil Procedure (the personal and substituted service rule) because some judges were refusing to grant an order approving the application if the certified mail was returned undeliverable. HB 2978 was introduced, which ultimately passed and accomplished three major changes in the law. First, service in an expedited foreclosure action under Rule 736 may now also be accomplished under Rule 106 (not only by certified mail from the court). Second, the Supreme Court is to promulgate forms for an application for expedited foreclosure proceedings, a supporting affidavit and any court required citation. Finally, the most significant part of HB 2978 for POAs is that court ordered mediation is now specifically allowed in an expedited judicial foreclosure action. Important provisions of this part of the new law include:

a. Following the filing of a response to an application for an expedited foreclosure, a court may (in its discretion) conduct a hearing to determine whether to order mediation. A court may not order mediation without a hearing, which can be

conducted by telephone. And, a hearing cannot be held if no response has been filed.

b. A mediator's fees are to be divided equally between the parties.

c. If a respondent fails to attend the mediation hearing after notice, the court may (i) not order mediation, and (ii) shall grant or deny the petitioner's motion for default.

With regard to the POA specific new laws, we prepared the attached Overview in a reader-friendly format to facilitate your review in which you will note we have:

- categorized the new laws by subject matter;
- listed the bill numbers and sections of the Texas Property Code amended or added;
- included whether the new laws apply to single family POAs, condominium POAs or both;
- included the effective date of the new law;
- summarized the effect of the new laws; and
- stated action items.

We caution you that the Overview only summarizes the new POA laws and, you will in all probability, need our guidance in further explaining and implementing some of the new laws. Once you have had an opportunity to review the Overview, please contact us to let us know if you need help with interpreting any of the new laws or assistance with drafting a new management certificate or any rules.

As always, thank you for choosing Butler | Hailey as the law firm of choice to represent your POA!

OVERVIEW OF POA SPECIFIC 2013 TEXAS LEGISLATION

Prepared By:

▪ POA = Property Owners Association ▪ C = Condos ▪ SF = Single Family (all POAs that are not condos)
▪ TUCA = Texas Uniform Condominium Act (Chapt. 82, Texas Property Code)

	SUBJECT	TEX. PROP. CODE (BILL NO.)	PROP. TYPE	EFF. DATE
1.0	**LAND USE**			
1.1	**Xeriscape Landscaping**	§202.007(a)(4), (d)(8), (d-1) (SB 198)	SF & C	9/1/13

Description: A POA may not include or enforce a provision in a dedicatory instrument that prohibits or restricts an owner from using drought-resistant landscaping or water-conserving natural turf (collectively "xeriscape"), except as permitted by this new law.

Specifics:

- A POA may require an owner to submit a detailed description or a plan for the installation of the water-resistant landscaping or water-conserving natural turf to ensure "to the extent practicable, maximum aesthetic compatibility with other landscaping in the subdivision."
- HOWEVER, a POA may not unreasonably deny or withhold approval or unreasonably determine the proposed installation is aesthetically incompatible with the other landscaping in the subdivision.

Action Item: Review existing POA dedicatory instruments and POA's geographics (e.g. location of condo units, size of lots, setbacks, etc.) to determine need for rules. Unless a POA has rules that govern xeriscape, the POA may not be able to restrict xeriscape. In most cases, rules are recommended that (at a minimum) require prior submission and approval.

	SUBJECT	TEX. PROP. CODE (BILL NO.)	PROP. TYPE	EFF. DATE
1.2	**Flagpoles**	§202.001(5), 202.011(b)&(c) (HB 680)	SF & C	6/17/13

Description: A POA may not include or enforce a provision in a dedicatory instrument that prohibits or restricts an owner from installing a flagpole in the owner's front yard to display flags of the United States, Texas or a branch of the military, except as permitted.

Specifics:

- Defines "front yard" as "a yard within a lot having a front building setback line with a setback of not less than 15 feet extending the full width of the lot between the front lot line and the front building setback line."
- If an owner does not have a front yard (as defined), the owner may attach the flagpole to the front of the owner's residential structure (if that portion of the residential structure is not maintained by the POA).

Action Item: Review existing POA dedicatory instruments and POA's geographics (e.g. location of condo units, size of lots, setbacks, etc.) to determine need for flagpole rules. Unless POA has rules that comply with the new law, POA may not be able to dictate the location of flagpoles, because prior approval is not specifically mentioned (as in SB 198 and HB 35). In most cases, flagpole rules (or possible amendments to same) are recommended.

	SUBJECT	TEX. PROP. CODE (BILL NO.)	PROP. TYPE	EFF. DATE
1.3	**Adjacent Lots**	§209.015 (HB 35)	SF	6/17/13

Description: A POA may not adopt or enforce a provision in a dedicatory instrument that prohibits or restricts an owner of a lot upon which a residence is located from using an adjacent lot for "residential purposes", except as permitted.

Specifics:

- An "adjacent lot" is defined a contiguous lot that (i) fronts on the same street, or (ii) is located either to the side or back of a corner lot.
- "Residential purposes" is defined as the location on the lot of any building, structure, or other improvement customarily appurtenant to a residence (versus a business use) and includes a garage, sidewalk, driveway, parking area, children's swing or playscape, fence, septic system, swimming pool, utility line and water wall and if otherwise specifically permitted by the dedicatory instrument the parking or storing of a recreational vehicle.
- Prior approval of the POA or its ACC (as applicable) is required.
- For subsequent sales, the lots must be sold together or the adjacent lot returned to its original condition.

Action Item: Review existing POA dedicatory instruments and POA's geographics (e.g. location of condo units, size of lots, setbacks, etc.) to determine need for rules.

2.0 POA GOVERNANCE

2.1	**Contracts with Board Members**	§209.002(4-a) & §209.0052 (HB 503)	SF	9/1/13

Description: A POA board may not enter into a contract with a board member, relative of a board member or an entity in which the board member or relative owns more than 51%, except under certain circumstances.

Specifics:

- Not applicable during the development period, as defined, which is a "period stated in a declaration during which a declarant reserves: (a) a right to facilitate the development, construction, and marketing of the subdivision; and (b) a right to direct the size, shape, and composition of the subdivision."
- Applies to contracts with:
  - Board members;
  - persons related within the 3rd degree by consanguinity or affinity to the board member;
  - a company in which a current board member has a financial interest in at least 51% of profits, or;
  - a company in which a person related to a current board member within the 3rd degree by consanguinity or affinity has a financial interest in at least 51% of profits.
- A POA may enter into an enforceable contract with one of these parties ONLY IF:
  - one of these parties bids on the contract, AND the POA has received at least 2 other bids from persons not associated with one of the parties (if reasonably available in the community);
  - the board member is not:
    - given access to the other bids,
    - does not participate in any board discussions regarding the contract, and
    - does not vote on the award of the contract;
  - the material facts regarding the relationship or interest are disclosed to or known by the board and the board, in good faith with ordinary care, authorizes the contract by an affirmative vote of a majority of the board members who do not have an interest governed by this subsection, and
  - the board certifies that the other requirements of this subsection have been satisfied by a resolution approved by the affirmative vote of a majority of the board members who do not have an interest governed by this subsection.

Action Item: Ensure all board members are aware of this new procedure, prior to entertaining any bids on POA work from an interested board member, board member's relative or an entity in which the board member or relative owns more than 51% of the entity that is bidding.

2.2	**BOARD VACANCIES**	§209.00593(a) (HB 3176)	SF	6/17/13

Description: A POA board may appoint a person to fill a vacant position on the board for any reason.

Specifics:

- Previously a vacant board member position on a board could only be filled by the board if it was caused by resignation, death or disability.
- Now, a board can appoint to a board member vacancy for any reason for the remainder of the unexpired term.
- HOWEVER, if a board member's term has expired that board member must be elected (not appointed).

Action Item: In cases of a vacancy on the board, understand who may be appointed and under what circumstances.

3.0 MANAGEMENT CERTIFICATES

3.1	Single Family POAs	§209.004(a-1) (HB 3800)	SF	9/1/13

Description: All county clerks must record and index POA management certificates in the county's real property records as "Property Owners' Association Management Certificates".

Specifics: New management certificates must be filed on or after 9/1/13 and no later than 1/1/14.

Action Item: Ensure a new management certificate is prepared and filed on or after 9/1/13 and on or before 1/1/14.

3.2	Condominium POAs	§82.116(a-1)&(a-2) (HB 2075)	C	9/1/13

Description: All county clerks must record and index POA management certificates in the county's real property records as "Condominium Association Management Certificates".

Specifics: New management certificates must be filed on or after 9/1/13 and no later than 1/1/14.

Action Item: Ensure a new management certificate is prepared and filed on or after 9/1/13 and on or before 1/1/14.

4.0 OTHER CONDOMINIUM POA SPECIFIC NEW LAWS

4.1	Fining	§82.102(a)(12) (HB2075)	C	9/1/13

Description: Notice and opportunity to be heard prior to fining must be in compliance with Section 82.102(d).

Specifics: Section 82.102(d) requires (i) the notice to: describe the violation; state the amount of the fine; advise the owner has 30 days to request a hearing before the board to contest the fine, and (ii) an owner be given a reasonable time to cure the violation to avoid the fine, unless the owner has been given notice to cure a similar violation in the preceding 12 months.

Action Item: Review notices to owners regarding fines to ensure compliance.

4.2	Ability to Borrow Money	§82.102(f)&(g) (HB 2075)	C	9/1/13

Description: Provides a statutory procedure for condominium POAs to borrow money and secure same with its right to future income (assessment).

Specifics:

- Previously, the right to assign a condominium POA's lien rights and right to future income (assessments) was required to be in the declaration.
- Now, that right is provided by Section 82.102(g) of TUCA.
- If the association's dedicatory instrument requires as vote of members, that process must be followed, however, the Board may determine how the vote is to be taken, either:
  - by written consent, or
  - electronically, by absentee ballot or in person or by proxy at a meeting.
- If the vote required by the declaration is higher than 67% of all voting interests, the threshold will be 67%, if lower, then the lower percentage.

Action Item: Prior to borrowing money, review dedicatory instruments to ensure compliance.

4.3	**Insurance**	§82.111(c), (i)-(m) (HB2075)	C	9/1/13

Description: Improves upon the insurance provisions in TUCA.

Specifics:

- Boards may determine "commercially reasonable" deductibles.
- Previously, the owners of every unit and limited common element that were damaged or destroyed (in addition to 80% of every owner) had to agree not to rebuild.
- Now, only the 80% must agree.
- Voting not to rebuild may be accomplished electronically or by written ballot (if no meeting called), or in person or by proxy if a meeting is called.
- Costs of repair or replacement in excess of insurance proceeds is a common expense.
- If the cost to repair is less than the deductible, the party who would be responsible for the repair (absent insurance) will be responsible for the repair.
- If costs to repair exceed the amount of insurance coverage:
  - the allocation of the expense in the dedicatory instrument will control;
  - if silent = by board resolution (which resolution is a dedicatory instrument that must be recorded in the county's real property records);
  - otherwise = costs will be a common expense.
- If damages are due wholly or partly to the act or omission of an owner or the owner's guest or invitee, the association can assess the expense in excess of insurance proceeds against the owner's unit.

Action Item: Review dedicatory instruments to ensure compliance and make determination if any amendments are necessary to bring same into compliance.

4.4	**Right of Redemption**	§82.113(g) (HB2075)	C	9/1/13

Description: The right of redemption in a condominium POA foreclosure is extended to foreclosures where the unit is purchased by a 3rd party.

Specifics:

- Previously, an owner had a 90 day right of redemption after a condominium POA foreclosure, ONLY if the condominium POA purchased the property.
- Now, the right of redemption applies regardless of who purchases the unit.

Action Item: Be aware of expanded right of redemption.

CHAPTER C

SELECTED SECTIONS OF PROPERTY CODE
SHOWING 2013 CHANGES AS "REDLINES"

CHAPTER 82
Sections 82.002, 82.003, 82.102, 82.111, 82.113, 82.116

CHAPTER 202
Sections 202.001, 202.007, 202.012

CHAPTER 209
Sections 209.002, 209.004, 209.0052 [NEW], 209.00593, 209.015 [NEW]

TEXAS PROPERTY CODE

TITLE 7
CONDOMINIUMS

SELECTED SECTIONS OF CHAPTER 82

UNIFORM CONDOMINIUM ACT

[With changes from 83rd Legislature - 2013]

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Prepared for:

FLAGPOLES, CONDOS, TURF & MORE
AN OVERVIEW OF 2013 LEGISLATIVE CHANGES FOR TEXAS PROPERTY OWNERS ASSOCIATIONS
~ INCLUDING CONDOMINIUM AND SUBDIVISION ASSOCIATIONS ~

Presented July 16, 2013
State Bar of Texas Webcast

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PROPERTY CODE

TITLE 7. CONDOMINIUMS

SELECTED SECTIONS OF CHAPTER 82. UNIFORM CONDOMINIUM ACT

[With changes from 83rd Legislature – 2013]

Sec. 82.002. APPLICABILITY. (a) This chapter applies to all commercial, industrial, residential, and other types of condominiums in this state for which the declaration is recorded on or after January 1, 1994. A condominium for which the declaration was recorded before January 1, 1994, may be governed exclusively under this chapter if either:

(1) the owners of units vote to amend the declaration, in accordance with the amendment process authorized by the declaration, to have this chapter apply and that amendment is filed for record in the condominium records in each county in which the condominium is located; or

(2) a declaration or amendment of declaration was recorded before January 1, 1994, and the declaration or amendment states that this chapter will apply in its entirety on January 1, 1994.

(b) An amendment to a declaration under Subsection (a)(1) that implements a vote of the unit owners to be governed by this chapter may not affect the rights of a declarant or impose duties on a declarant that are greater than or in addition to the declarant's duties immediately before the date of the vote or amendment.

(c) This section and the following sections apply to a condominium in this state for which the declaration was recorded before January 1, 1994: Sections 82.005, 82.006, 82.007, 82.053, 82.054, 82.102(a)(1)-(7), (a) (12) – (21), (f), and (g) [~~and (12)-(22)~~], 82.108, 82.111, 82.113, 82.114, 82.116, 82.118, 82.157, and 82.161. The definitions prescribed by Section 82.003 apply to a condominium in this state for which the declaration was recorded before January 1, 1994, to the extent the definitions do not conflict with the declaration. The sections listed in this subsection apply only with respect to events and circumstances occurring on or after January 1, 1994, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of a condominium for which the declaration was recorded before January 1, 1994.

(d) Chapter 81 does not apply to a condominium for which the declaration was recorded on or after January 1, 1994, and does not invalidate any amendment to the declaration, bylaws, or plats and plans of any condominium for which the declaration was recorded before January 1, 1994, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by Chapter 81. If the amendment grants to a person a right, power, or privilege permitted by this chapter, all correlative obligations, liabilities, and restrictions prescribed by this chapter also apply to that person.

Sec. 82.003. DEFINITIONS. (a) In this chapter:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person is a general partner, officer, director, or employer of the declarant; directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than 20 percent of the voting interests in the declarant; determines in any manner the election of a majority of the directors of the declarant; or has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant is a general partner, officer, director, or employer of the person; directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests in the person; determines in any manner the election of a majority of the directors of the person; or has contributed more than 20 percent of the capital of the person.

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(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Association" means the unit owners' association organized under Section 82.101.

(4) "Board" means the board of directors or the body, regardless of name, designated to act on behalf of the association.

(5) "Common elements" means all portions of a condominium other than the units and includes both general and limited common elements.

(6) "Common expense liability" means the liability for common expenses allocated to each unit.

(7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(8) "Condominium" means a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners.

(9) "Conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(10) "Declarant" means a person, or group of persons acting in concert, who:

(A) as part of a common promotional plan, offers to dispose of the person's interest in a unit not previously disposed of; or

(B) reserves or succeeds to any special declarant right.

(11) "Declaration" means an [~~a recorded~~] instrument, however denominated, that creates a condominium, and any [~~recorded~~] amendment to that instrument.

(11-a) "Dedicatory instrument" means each document governing the establishment, maintenance, or operation of a condominium regime. The term includes a declaration or similar instrument subjecting real property to:

(A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a unit owners' association;

(B) properly adopted rules and regulations of the unit owners' association; or

(C) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

(12) "Development rights" means a right or combination of rights reserved by a declarant in the declaration to:

(A) add real property to a condominium;

(B) create units, common elements, or limited common elements within a condominium;

(C) subdivide units or convert units into common elements; or

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(D) withdraw real property from a condominium.

(13) "Disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit but does not include the transfer or release of a security interest.

(14) "General common elements" means common elements that are not limited common elements.

(15) "Identifying number" means a symbol or address that identifies only one unit in a condominium.

(16) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.

(17) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of Section 82.052 for the exclusive use of one or more but less than all of the units.

(18) "Plan" means a dimensional drawing that is recordable in the real property records or the condominium plat records and that horizontally and vertically identifies or describes units and common elements that are contained in buildings.

(19) "Plat" means a survey recordable in the real property records or the condominium plat records and containing the information required by Section 82.059. As used in this chapter, "plat" does not have the same meaning as "plat" in Chapter 212 or 232, Local Government Code, or other statutes dealing with municipal or county regulation of property development.

(20) "Purchaser" means a person, other than a declarant, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than a leasehold interest or as security for an obligation.

(21) "Residential purposes" means recreational or dwelling purposes, or both.

(22) "Special declarant rights" means rights reserved for the benefit of a declarant to:

(A) complete improvements indicated on plats and plans filed with the declaration;

(B) exercise any development right;

(C) make the condominium part of a larger condominium or a planned community;

(D) maintain sales, management, and leasing offices, signs advertising the condominium, and models;

(E) use easements through the common elements for the purpose of making improvements within the condominium or within real property that may be added to the condominium; or

(F) appoint or remove any officer or board member of the association during any period of declarant control.

(23) "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described by the declaration.

(24) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

(b) Unless otherwise provided by the declaration or bylaws, a term defined by Subsection (a) has the same meaning if used in a declaration or bylaws.

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Sec. 82.102. POWERS OF UNIT OWNERS' ASSOCIATION. (a) Unless otherwise provided by the declaration, the association, acting through its board, may:

(1) adopt and amend bylaws;

(2) adopt and amend budgets for revenues, expenditures, and reserves, and collect assessments for common expenses from unit owners;

(3) hire and terminate managing agents and other employees, agents, and independent contractors;

(4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;

(5) make contracts and incur liabilities relating to the operation of the condominium;

(6) regulate the use, maintenance, repair, replacement, modification, and appearance of the condominium;

(7) adopt and amend rules regulating the use, occupancy, leasing or sale, maintenance, repair, modification, and appearance of units and common elements, to the extent the regulated actions affect common elements or other units;

(8) cause additional improvements to be made as a part of the common elements;

(9) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except common elements of the condominium;

(10) grant easements, leases, licenses, and concessions through or over the common elements;

(11) impose and receive payments, fees, or charges for the use, rental, or operation of the common elements and for services provided to unit owners;

(12) impose interest and late charges for late payments of assessments, returned check charges, and, if notice and an opportunity to be heard are given in accordance with Subsection (d), reasonable fines for violations of the declaration, bylaws, and rules of the association;

(13) adopt and amend rules regulating the collection of delinquent assessments and the application of payments;

(14) adopt and amend rules regulating the termination of utility service to a unit, the owner of which is delinquent in the payment of an assessment that is used, in whole or in part, to pay the cost of that utility;

(15) impose reasonable charges for preparing, recording, or copying declaration amendments, resale certificates, or statements of unpaid assessments;

(16) enter a unit for bona fide emergency purposes when conditions present an imminent risk of harm or damage to the common elements, another unit, or the occupants;

(17) [~~assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration so provides;~~]

[~~(18)~~] suspend the voting privileges of or the use of certain general common elements by an owner delinquent for more than 30 days in the payment of assessments;

(18) [(19)] purchase insurance and fidelity bonds it considers appropriate or necessary;

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(19) [~~(20)~~] exercise any other powers conferred by the declaration or bylaws;

(20) [~~(21)~~] exercise any other powers that may be exercised in this state by a corporation of the same type as the association; and

(21) [~~(22)~~] exercise any other powers necessary and proper for the government and operation of the association.

(b) The declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(c) To be enforceable, a bylaw or rule of the association must not be arbitrary or capricious.

(d) Before an association may charge the unit owner for property damage for which the unit owner is liable or levy a fine for violation of the declaration, bylaws, or rules, the association shall give to the unit owner a written notice that:

(1) describes the violation or property damage and states the amount of the proposed fine or damage charge;

(2) states that not later than the 30th day after the date of the notice, the unit owner may request a hearing before the board to contest the fine or damage charge; and

(3) allows the unit owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the unit owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 months.

(e) The association may give a copy of the notice required by Subsection (d) to an occupant of the unit. The association must give notice of a levied fine or damage charge to the unit owner not later than the 30th day after the date of levy.

(f) Except as provided by Subsection (g), the association by resolution of the board of directors may:

(1) borrow money; and

(2) assign as collateral for the loan authorized by the resolution:

(A) the association's right to future income, including the right to receive assessments; and

(B) the association's lien rights.

(g) If a dedicatory instrument requires a vote of members of the association to borrow money or assign the association's right to future income or the association's lien rights, the loan or assignment must be approved as provided by the dedicatory instrument. The board may determine whether a vote for that purpose may be cast electronically, by absentee ballot, in person or by proxy at a meeting called for that purpose, or by written consent. If a lower approval threshold is not provided by the dedicatory instrument, approval requires the consent of owners holding 67 percent of all voting interests.

Sec. 82.111. INSURANCE. (a) Beginning not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) property insurance on the insurable common elements insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage, in a total amount of at least 80 percent of the replacement cost or actual cash value of the insured property as of the effective date and at each renewal date of the policy; and

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(2) commercial general liability insurance, including medical payments insurance, in an amount determined by the board but not less than any amount specified by the declaration covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) If a building contains units having horizontal boundaries described in the declaration, the insurance maintained under Subsection (a)(1), to the extent reasonably available, must include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described by Subsections (a) and (b) is not reasonably available, the association shall cause notice of that fact to be delivered or mailed to all unit owners and lienholders. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance the board considers appropriate to protect the condominium, the association, or the unit owners. Insurance policies maintained under Subsection (a) may provide for commercially reasonable deductibles as the board determines appropriate or necessary. This section does not affect the right of a holder of a mortgage on a unit to require a unit owner to acquire insurance in addition to that provided by the association.

(d) Insurance policies carried under Subsection (a) must provide that:

(1) each unit owner is an insured person under the policy with respect to liability arising out of the person's ownership of an undivided interest in the common elements or membership in the association;

(2) the insurer waives its right to subrogation under the policy against a unit owner;

(3) no action or omission of a unit owner, unless within the scope of the unit owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(4) if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy provides primary insurance.

(e) A claim for any loss covered by the policy under Subsection (a)(1) must be submitted by and adjusted with the association. The insurance proceeds for that loss shall be payable to an insurance trustee designated by the association for that purpose, if the designation of an insurance trustee is considered by the board to be necessary or desirable, or otherwise to the association, and not to any unit owner or lienholder.

(f) The insurance trustee or the association shall hold insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to Subsection (i), the proceeds paid under a policy must be disbursed first for the repair or restoration of the damaged common elements and units, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

(g) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(h) The insurer issuing the policy may not cancel or refuse to renew it less than 30 days after written notice of the proposed cancellation or nonrenewal has been mailed to the association.

(i) Except as provided by this section, any [~~Any~~] portion of the condominium for which insurance is required that is damaged or destroyed shall be promptly repaired or replaced by the association unless the condominium is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance, or at least 80 percent of the unit owners [~~, including each owner of a unit or assigned limited common element that will not be rebuilt or repaired,~~] vote to not rebuild. Each owner of a unit may vote, regardless of whether the owner's unit or limited common element has been damaged or destroyed. A vote may be cast electronically or by written ballot if a meeting is not held for that purpose or in person or by proxy at a meeting called for that purpose. A vote to not rebuild does not increase an insurer's liability to loss payment obligation under a policy, and the vote does not cause a presumption of total loss. Except as provided by this

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section, the [The] cost of repair or replacement in excess of the insurance proceeds [and reserves] is a common expense, and the board may levy an assessment to pay the expenses in accordance with each owner's common expense liability. If the entire condominium is not repaired or replaced, any insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, the insurance proceeds attributable to units and limited common elements that are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were assigned, or to their mortgagees, as their interests may appear, and the remainder of the proceeds shall be distributed to all the unit owners in accordance with each owner's undivided interest in the common elements unless otherwise provided in the declaration [as their interests may appear]. If the unit owners vote to not rebuild any unit, that unit's allocated interests shall be automatically reallocated on the vote as if the unit had been condemned, and the association shall prepare, execute, and record an amendment to the declaration reflecting the reallocation. Section 82.068 governs the distribution of insurance proceeds if the condominium is terminated.

(j) If the cost to repair damage to a unit or common element covered by the association's insurance is less than the amount of the applicable insurance deductible, the party who would be responsible for the repair in the absence of insurance shall pay the cost for the repair of the unit or common element.

(k) If the association's insurance provides coverage for the loss and the cost to repair the damage to a unit or common element is more than the amount of the applicable insurance deductible, the dedicatory instruments determine payment for the cost of the association's deductible and costs incurred before insurance proceeds are available. If the dedicatory instruments are silent, the board of directors of the association by resolution shall determine the payment of those costs, or if the board does not approve a resolution, the costs are a common expense. A resolution under this subsection is considered a dedicatory instrument and must be recorded in each location in which the declaration is recorded.

(l) If damage to a unit or the common elements is due wholly or partly to an act or omission of any unit owner or a guest or invitee of the unit owner, the association may assess the deductible expense and any other expense in excess of insurance proceeds against the owner and the owner's unit.

(m) The provisions of this section may be varied or waived if all the units in a condominium are restricted to nonresidential use.

Sec. 82.113. ASSOCIATION'S LIEN FOR ASSESSMENTS. (a) An assessment levied by the association against a unit or unit owner is a personal obligation of the unit owner and is secured by a continuing lien on the unit and on rents and insurance proceeds received by the unit owner and relating to the owner's unit. In this section, "assessments" means regular and special assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due to the association by the unit owner or levied against the unit by the association, all of which are enforceable as assessments under this section unless the declaration provides otherwise.

(b) The association's lien for assessments has priority over any other lien except:

(1) a lien for real property taxes and other governmental assessments or charges against the unit unless otherwise provided by Section 32.05, Tax Code;

(2) a lien or encumbrance recorded before the declaration is recorded;

(3) a first vendor's lien or first deed of trust lien recorded before the date on which the assessment sought to be enforced becomes delinquent under the declaration, bylaws, or rules; and

(4) unless the declaration provides otherwise, a lien for construction of improvements to the unit or an assignment of the right to insurance proceeds on the unit if the lien or assignment is recorded or duly perfected before the date on which the assessment sought to be enforced becomes delinquent under the declaration, bylaws, or rules.

(c) The association's lien for assessments is created by recordation of the declaration, which constitutes record notice and perfection of the lien. Unless the declaration provides otherwise, no other recordation of a lien or notice of lien is required.

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(d) By acquiring a unit, a unit owner grants to the association a power of sale in connection with the association's lien. By written resolution, a board may appoint, from time to time, an officer, agent, trustee, or attorney of the association to exercise the power of sale on behalf of the association. Except as provided by the declaration, an association shall exercise its power of sale pursuant to Section 51.002.

(e) The association has the right to foreclose its lien judicially or by nonjudicial foreclosure pursuant to the power of sale created by this chapter or the declaration, except that the association may not foreclose a lien for assessments consisting solely of fines. Costs of foreclosure may be added to the amount owed by the unit owner to the association. A unit owner may not petition a court to set aside a sale solely because the purchase price at the foreclosure sale was insufficient to fully satisfy the owner's debt.

(f) The association may bid for and purchase the unit at foreclosure sale as a common expense. The association may own, lease, encumber, exchange, sell, or convey a unit.

(g) The owner of a unit [~~used for residential purposes and~~] purchased [~~by an association~~] at a foreclosure sale of the association's lien for assessments may redeem the unit not later than the 90th day after the date of the foreclosure sale. If the association is the purchaser [~~To redeem the unit~~], the owner must pay to the association to redeem the unit all amounts due the association at the time of the foreclosure sale, interest from the date of foreclosure sale to the date of redemption at the rate provided by the declaration for delinquent assessments, reasonable attorney's fees and costs incurred by the association in foreclosing the lien, any assessment levied against the unit by the association after the foreclosure sale, and any reasonable cost incurred by the association as owner of the unit, including costs of maintenance and leasing. If a party other than the association is the purchaser, the redeeming owner must pay to the purchaser of the unit at the foreclosure sale an amount equal to the amount bid at the sale, interest on the bid amount computed from the date of the foreclosure sale to the date of redemption at the rate of six percent, any assessment paid by the purchaser after the date of foreclosure, and any reasonable costs incurred by the purchaser as the owner of the unit, including costs of maintenance and leasing. The redeeming owner must also pay to the association all assessments that are due as of the date of the redemption and reasonable attorney's fees and costs incurred by the association in foreclosing the lien. On redemption, the purchaser of the unit at the foreclosure sale [~~association~~] shall execute a deed with no warranty to the redeeming unit owner. The exercise of the right of redemption is not effective against a subsequent purchaser or lender for value without notice of the redemption after the redemption period expires unless the redeeming unit owner records the deed from the purchaser of the unit at the foreclosure sale [~~association~~] or an affidavit stating that the owner has exercised the right of redemption. A unit that has been redeemed remains subject to all liens and encumbrances on the unit before foreclosure. All rents and other income collected from the unit by the purchaser of the unit at the foreclosure sale [~~association~~] from the date of foreclosure sale to the date of redemption belong to the purchaser of the unit at the foreclosure sale [~~association~~], but the rents and income shall be credited against the redemption amount. The purchaser of [~~An association purchasing~~] a unit at a sale foreclosing an association's assessment [~~its~~] lien may not transfer ownership of the unit during the redemption period to a person other than a redeeming owner.

(h) If a unit owner defaults in the owner's monetary obligations to the association, the association may notify other lien holders of the default and the association's intent to foreclose its lien. The association shall notify any holder of a recorded lien or duly perfected mechanic's lien against a unit who has given the association a written request for notification of the unit owner's monetary default or the association's intent to foreclose its lien.

(i) This section does not prohibit the association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien.

(j) At any time before a nonjudicial foreclosure sale, a unit owner may avoid foreclosure by paying all amounts due the association.

(k) If, on January 1, 1994, a unit is the homestead of the unit owner and is subject to a declaration that does not contain a valid assessment lien against the unit, the lien provided by this section does not attach against the unit until the unit ceases to be the homestead of the person owning it on January 1, 1994.

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(l) Foreclosure of a tax lien attaching against a unit under Chapter 32, Tax Code, does not discharge the association's lien for assessments under this section or under a declaration for amounts becoming due to the association after the date of foreclosure of the tax lien.

(m) If a unit owner is delinquent in payment of assessments to an association, at the request of the association a holder of a recorded lien against the unit may provide the association with information about the unit owner's debt secured by the holder's lien against the unit and other relevant information. At the request of a lien holder, the association may furnish the lien holder with information about the condominium and the unit owner's obligations to the association.

Sec. 82.116. MANAGEMENT CERTIFICATE. (a) An association shall record in each county in which any portion of the condominium is located a certificate, signed and acknowledged by an officer of the association, stating:

(1) the name of the condominium;

(2) the name of the association;

(3) the location of the condominium;

(4) the recording data for the declaration;

(5) the mailing address of the association, or the name and mailing address of the person or entity managing the association; and

(6) other information the association considers appropriate.

(a-1) The county clerk of each county in which a management certificate is filed as required by this section shall record the management certificate in the real property records of the county and index the document as a "Condominium Association Management Certificate."

(a-2) To ensure that all management certificates are recorded and indexed as provided by Subsection (a-1), each condominium unit owners' association that recorded a management certificate under this section before September 1, 2013, shall record a new management certificate on or before January 1, 2014. This subsection expires January 1, 2015.

(b) The association shall record a management certificate not later than the 30th day after the date the association has notice of a change in any information in a recorded certificate required by Subdivisions (a)(1)-(5).

(c) The association and its officers, directors, employees, and agents are not subject to liability to any person for delay or failure to record a management certificate, unless the delay or failure is wilful or caused by gross negligence.

[Changes - eff 9/1/13 – HB 2075, 83rd Legislature]

End of Selected Sections of Chapter 82

TEXAS PROPERTY CODE

TITLE 11
RESTRICTIVE COVENANTS

SELECTED SECTIONS OF CHAPTER 202

CONSTRUCTION AND ENFORCEMENT OF RESTRICTIVE COVENANTS

[With changes from 83rd Legislature - 2013]

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Prepared for:

FLAGPOLES, CONDOS, TURF & MORE
AN OVERVIEW OF 2013 LEGISLATIVE CHANGES FOR TEXAS PROPERTY OWNERS ASSOCIATIONS
~ INCLUDING CONDOMINIUM AND SUBDIVISION ASSOCIATIONS ~

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PROPERTY CODE

TITLE 11. RESTRICTIVE COVENANTS

SELECTED SECTIONS OF
CHAPTER 202. CONSTRUCTION AND ENFORCEMENT OF RESTRICTIVE COVENANTS

[With changes from 83rd Legislature – 2013]

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Sec. 202.001. DEFINITIONS. In this chapter:

(1) "Dedicatory instrument" means each document governing the establishment, maintenance, or operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to:

(A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association;

(B) properly adopted rules and regulations of the property owners' association; or

(C) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

(2) "Property owners' association" means an incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by the dedicatory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the residential subdivision, planned unit development, condominium or townhouse regime, or similar planned development.

(3) "Petition" means one or more instruments, however designated or entitled, by which one or more actions relating to restrictive covenants are sought to be accomplished.

(4) "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

(5) "Front yard" means a yard within a lot having a front building setback line with a setback of not less than 15 feet extending the full width of the lot between the front lot line and the front building setback line.

[Changes - eff 9/1/13 – HB 680, 83rd Legislature]

Sec. 202.007. CERTAIN RESTRICTIVE COVENANTS PROHIBITED. (a) A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from:

(1) implementing measures promoting solid-waste composting of vegetation, including grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass;

(2) installing rain barrels or a rainwater harvesting system; [~~or~~]

(3) implementing efficient irrigation systems, including underground drip or other drip systems; or

(4) using drought-resistant landscaping or water-conserving natural turf.

(b) A provision that violates Subsection (a) is void.

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(c) A property owners' association may restrict the type of turf used by a property owner in the planting of new turf to encourage or require water-conserving turf.

(d) This section does not:

(1) restrict a property owners' association from regulating the requirements, including size, type, shielding, and materials, for or the location of a composting device if the restriction does not prohibit the economic installation of the device on the property owner's property where there is reasonably sufficient area to install the device;

(2) require a property owners' association to permit a device described by Subdivision (1) to be installed in or on property:

(A) owned by the property owners' association;

(B) owned in common by the members of the property owners' association; or

(C) in an area other than the fenced yard or patio of a property owner;

(3) prohibit a property owners' association from regulating the installation of efficient irrigation systems, including establishing visibility limitations for aesthetic purposes;

(4) prohibit a property owners' association from regulating the installation or use of gravel, rocks, or cacti;

(5) restrict a property owners' association from regulating yard and landscape maintenance if the restrictions or requirements do not restrict or prohibit turf or landscaping design that promotes water conservation;

(6) require a property owners' association to permit a rain barrel or rainwater harvesting system to be installed in or on property if:

(A) the property is:

(i) owned by the property owners' association;

(ii) owned in common by the members of the property owners' association; or

(iii) located between the front of the property owner's home and an adjoining or adjacent street; or

(B) the barrel or system:

(i) is of a color other than a color consistent with the color scheme of the property owner's home; or

(ii) displays any language or other content that is not typically displayed by such a barrel or system as it is manufactured; [~~or~~]

(7) restrict a property owners' association from regulating the size, type, and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located on the side of a house or at any other location that is visible from a street, another lot, or a common area if:

(A) the restriction does not prohibit the economic installation of the device or appurtenance on the property owner's property; and

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(B) there is a reasonably sufficient area on the property owner's property in which to install the device or appurtenance; or

(8) prohibit a property owners' association from requiring an owner to submit a detailed description or a plan for the installation of drought-resistant landscaping or water-conserving natural turf for review and approval by the property owners' association to ensure, to the extent practicable, maximum aesthetic compatibility with other landscaping in the subdivision.

(d-1) A property owners' association may not unreasonably deny or withhold approval of a proposed installation of drought-resistant landscaping or water-conserving natural turf under Subsection (d)(8) or unreasonably determine that the proposed installation is aesthetically incompatible with other landscaping in the subdivision.

(e) This section does not apply to a property owners' association that:

(1) is located in a municipality with a population of more than 175,000 that is located in a county in which another municipality with a population of more than one million is predominantly located; and

(2) manages or regulates a development in which at least 4,000 acres of the property is subject to a covenant, condition, or restriction designating the property for commercial use, multifamily dwellings, or open space.

[Changes - eff 9/1/13 – SB 198, 83rd Legislature]

Sec. 202.012. FLAG DISPLAY.* (a) A property owners' association may not, except as provided in this section, adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from the display of:

(1) the flag of the United States of America;

(2) the flag of the State of Texas; or

(3) an official or replica flag of any branch of the United States armed forces.

(b) A property owners' association may adopt or enforce reasonable dedicatory instrument provisions:

(1) that require:

(A) the flag of the United States be displayed in accordance with 4 U.S.C. Sections 5-10;

(B) the flag of the State of Texas be displayed in accordance with Chapter 3100, Government Code;

(C) a flagpole attached to a dwelling or a freestanding flagpole be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;

(D) the display of a flag, or the location and construction of the supporting flagpole, to comply with applicable zoning ordinances, easements, and setbacks of record; and

(E) a displayed flag and the flagpole on which it is flown be maintained in good condition and that any deteriorated flag or deteriorated or structurally unsafe flagpole be repaired, replaced, or removed;

(2) that regulate the size, number, and location of flagpoles on which flags are displayed, except that the regulation may not prevent the installation or erection of at least one flagpole per property that:

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(A) is not more than 20 feet in height and, subject to applicable zoning ordinances, easements, and setbacks of record, is located in the front yard of the property; or

(B) is attached to any portion of a residential structure owned by the property owner and not maintained by the property owners' association;

(3) that govern the size of a displayed flag;

(4) that regulate the size, location, and intensity of any lights used to illuminate a displayed flag;

(5) that impose reasonable restrictions to abate noise caused by an external halyard of a flagpole; or

(6) that prohibit a property owner from locating a displayed flag or flagpole on property that is:

(A) owned or maintained by the property owners' association; or

(B) owned in common by the members of the association.

(c) A property owner who has a front yard and who otherwise complies with any permitted property owners' association regulations may elect to install a flagpole in accordance with either Subsection (b)(2)(A) or Subsection (b)(2)(B).

[Changes - eff 9/1/13 – HB 680, 83rd Legislature]

End of Selected Sections of Chapter 202

*Note that Sec. 202.011, Flag Display, was renumbered Sec. 202.012 by SB 1093 to be effective 9/1/13.

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TEXAS PROPERTY CODE

TITLE 11
RESTRICTIVE COVENANTS

SELECTED SECTIONS OF CHAPTER 209

TEXAS RESIDENTIAL PROPERTY OWNERS PROTECTION ACT

[With changes from 83rd Legislature - 2013]

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Prepared for:

FLAGPOLES, CONDOS, TURF & MORE
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PROPERTY CODE

TITLE 11. RESTRICTIVE COVENANTS

SELECTED SECTIONS OF CHAPTER 209. TEXAS RESIDENTIAL PROPERTY OWNERS PROTECTION ACT

[With changes from 83rd Legislature – 2013]

Sec. 209.002. DEFINITIONS. In this chapter:

(1) "Assessment" means a regular assessment, special assessment, or other amount a property owner is required to pay a property owners' association under the dedicatory instrument or by law.

(2) "Board" means the governing body of a property owners' association.

(3) "Declaration" means an instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision.

(4) "Dedicatory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or similar instruments subjecting property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, and to all lawful amendments to the covenants, bylaws, rules, or regulations.

(4-a) "Development period" means a period stated in a declaration during which a declarant reserves:

(A) a right to facilitate the development, construction, and marketing of the subdivision; and

(B) a right to direct the size, shape, and composition of the subdivision.

(5) "Lot" means any designated parcel of land located in a residential subdivision, including any improvements on the designated parcel.

(6) "Owner" means a person who holds record title to property in a residential subdivision and includes the personal representative of a person who holds record title to property in a residential subdivision.

(7) "Property owners' association" or "association" means an incorporated or unincorporated association that:

(A) is designated as the representative of the owners of property in a residential subdivision;

(B) has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; and

(C) manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision.

(8) "Regular assessment" means an assessment, a charge, a fee, or dues that each owner of property within a residential subdivision is required to pay to the property owners' association on a regular basis and that is designated for use by the property owners' association for the benefit of the residential subdivision as provided by the restrictions.

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(9) "Residential subdivision" or "subdivision" means a subdivision, planned unit development, townhouse regime, or similar planned development in which all land has been divided into two or more parts and is subject to restrictions that:

(A) limit a majority of the land subject to the dedicatory instruments, excluding streets, common areas, and public areas, to residential use for single-family homes, townhomes, or duplexes only;

(B) are recorded in the real property records of the county in which the residential subdivision is located; and

(C) require membership in a property owners' association that has authority to impose regular or special assessments on the property in the subdivision.

(10) "Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.

(11) "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

(12) "Special assessment" means an assessment, a charge, a fee, or dues, other than a regular assessment, that each owner of property located in a residential subdivision is required to pay to the property owners' association, according to procedures required by the dedicatory instruments, for:

(A) defraying, in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in common areas owned by the property owners' association, including the necessary fixtures and personal property related to the common areas;

(B) maintenance and improvement of common areas owned by the property owners' association; or

(C) other purposes of the property owners' association as stated in its articles of incorporation or the dedicatory instrument for the residential subdivision.

[Changes - eff 9/1/13 – HB 503, 83rd Legislature]

Sec. 209.004. MANAGEMENT CERTIFICATES. (a) A property owners' association shall record in each county in which any portion of the residential subdivision is located a management certificate, signed and acknowledged by an officer or the managing agent of the association, stating:

(1) the name of the subdivision;

(2) the name of the association;

(3) the recording data for the subdivision;

(4) the recording data for the declaration;

(5) the name and mailing address of the association;

(6) the name and mailing address of the person managing the association or the association's designated representative; and

(7) other information the association considers appropriate.

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(a-1) The county clerk of each county in which a management certificate is filed as required by this section shall record the management certificate in the real property records of the county and index the document as a "Property Owners' Association Management Certificate."

(b) The property owners' association shall record an amended management certificate not later than the 30th day after the date the association has notice of a change in any information in the recorded certificate required by Subsection (a).

(c) Except as provided under Subsections (d) and (e), the property owners' association and its officers, directors, employees, and agents are not subject to liability to any person for a delay in recording or failure to record a management certificate, unless the delay or failure is wilful or caused by gross negligence.

(d) If a property owners' association fails to record a management certificate or an amended management certificate under this section, the purchaser, lender, or title insurance company or its agent in a transaction involving property in the property owners' association is not liable to the property owners' association for:

(1) any amount due to the association on the date of a transfer to a bona fide purchaser; and

(2) any debt to or claim of the association that accrued before the date of a transfer to a bona fide purchaser.

(e) A lien of a property owners' association that fails to file a management certificate or an amended management certificate under this section to secure an amount due on the effective date of a transfer to a bona fide purchaser is enforceable only for an amount incurred after the effective date of sale.

(f) For purposes of this section, "bona fide purchaser" means:

(1) a person who pays valuable consideration without notice of outstanding rights of others and acts in good faith; or

(2) a third-party lender who acquires a security interest in the property under a deed of trust.

[Changes - eff 9/1/13 – HB 3800, 83rd Legislature]

Sec. 209.0052. ASSOCIATION CONTRACTS. (a) This section does not apply to a contract entered into by an association during the development period.

(b) An association may enter into an enforceable contract with a current association board member, a person related to a current association board member within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, a company in which a current association board member has a financial interest in at least 51 percent of profits, or a company in which a person related to a current association board member within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a financial interest in at least 51 percent of profits only if the following conditions are satisfied:

(1) the board member, relative, or company bids on the proposed contract and the association has received at least two other bids for the contract from persons not associated with the board member, relative, or company, if reasonably available in the community;

(2) the board member:

(A) is not given access to the other bids;

(B) does not participate in any board discussion regarding the contract; and

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(C) does not vote on the award of the contract;

(3) the material facts regarding the relationship or interest with respect to the proposed contract are disclosed to or known by the association board and the board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection; and

(4) the association board certifies that the other requirements of this subsection have been satisfied by a resolution approved by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection.

[Changes - eff 9/1/13 – HB 503, 83rd Legislature]

Sec. 209.00593. ELECTION OF BOARD MEMBERS. (a) Notwithstanding any provision in a dedicatory instrument, any board member whose term has expired must be elected by owners who are members of the property owners' association. A board member may be appointed by the board [~~only~~] to fill a vacancy on the board [~~caused by a resignation, death, or disability~~]. A board member appointed to fill a vacant position shall serve for the remainder of the unexpired term of the position [~~predecessor board member~~].

(b) The board of a property owners' association may amend the bylaws of the property owners' association to provide for elections to be held as required by Subsection (a).

(c) The appointment of a board member in violation of this section is void.

(d) This section does not apply to the appointment of a board member during a development period. In this subsection, "development period" means a period stated in a declaration during which a declarant reserves:

(1) a right to facilitate the development, construction, and marketing of the subdivision; and

(2) a right to direct the size, shape, and composition of the subdivision.

(e) This section does not apply to a representative board whose members or delegates are elected or appointed by representatives of a property owners' association who are elected by owner members of a property owners' association.

[Changes - eff 9/1/13 – HB 3176, 83rd Legislature]

Sec. 209.015. REGULATION OF LAND USE: RESIDENTIAL PURPOSE. (a) In this section:

(1) "Adjacent lot" means:

(A) a lot that is contiguous to another lot that fronts on the same street;

(B) with respect to a corner lot, a lot that is contiguous to the corner lot by either a side property line or a back property line; or

(C) if permitted by the dedicatory instrument, any lot that is contiguous to another lot at the back property line.

(2) "Residential purpose" with respect to the use of a lot:

(A) means the location on the lot of any building, structure, or other improvement customarily appurtenant to a residence, as opposed to use for a business or commercial purpose; and

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(B) includes the location on the lot of a garage, sidewalk, driveway, parking area, children's swing or playscape, fence, septic system, swimming pool, utility line, or water well and, if otherwise specifically permitted by the dedicatory instrument, the parking or storage of a recreational vehicle.

(b) Except as provided by this section, a property owners' association may not adopt or enforce a provision in a dedicatory instrument that prohibits or restricts the owner of a lot on which a residence is located from using for residential purposes an adjacent lot owned by the property owner.

(c) An owner must obtain the approval of the property owners' association or, if applicable, an architectural committee established by the association or the association's dedicatory instruments, based on criteria prescribed by the dedicatory instruments specific to the use of a lot for residential purposes, including reasonable restrictions regarding size, location, shielding, and aesthetics of the residential purpose, before the owner begins the construction, placement, or erection of a building, structure, or other improvement for the residential purpose on an adjacent lot.

(d) An owner who elects to use an adjacent lot for residential purposes under this section shall, on the sale or transfer of the lot containing the residence:

(1) include the adjacent lot in the sales agreement and transfer the lot to the new owner under the same dedicatory conditions; or

(2) restore the adjacent lot to the original condition before the addition of the improvements allowed under this section to the extent that the lot would again be suitable for the construction of a separate residence as originally platted and provided for in the conveyance to the owner.

(e) An owner may sell the adjacent lot separately only for the purpose of the construction of a new residence that complies with existing requirements in the dedicatory instrument unless the lot has been restored as described by Subsection (d)(2).

(f) A provision in a dedicatory instrument that violates this section is void.

[Changes - eff 9/1/13 – HB 35, 83rd Legislature]

End of Selected Sections of Chapter 209

UNOFFICIAL

CHAPTER D

MANAGEMENT CERTIFICATES
~ FORMS WITH INSTRUCTIONS & STATUTES ~

CONDOMINIUM MANAGEMENT CERTIFICATE

SUBDIVISION MANAGEMENT CERTIFICATE

CONDOMINIUM MANAGEMENT CERTIFICATES

TRUE OR FALSE?

The oddly named "Management Certificate" merely identifies the property and tells the public (especially title companies) how to contact the POA. It does not mean that the condominium has a manager.

The Certificates are mandatory for every condominium in Texas - of every size and age, from volunteer-run to professionally managed.

The Certificates have been required for almost 20 years - since January 1, 1994.

The Certificates must be updated when the information changes.

The Certificate must be signed by an officer of the condominium association.

Every condominium in Texas must record a new Certificate between September 1, 2013, and January 1, 2014.

If you answered "True" to all, you are the Winner. Congratulations!

FORM OF CONDOMINIUM MANAGEMENT CERTIFICATE

that meets the MINIMUM requirements of Tex. Prop. Code Sec. 82.116.

~ See instructions for completing the form on the following page. ~

[A]

THE STATE OF TEXAS §
§
COUNTY OF ___[B]___ §

MANAGEMENT CERTIFICATE

1. The name of the condominium is ______________________________[1]__________________.

2. The name of the association is ______________________________[2]__________________.

3. The location of the condominium is ______________________________[3]__________________.

4. The recording data for the declaration is ___________________________[4]__________________.

5. The mailing address of the association or the name and mailing address of the person or entity managing the association is: ____________________[5]____________________.

6. Other information the association considers appropriate is: __________[6]______________

[D] [NAME OF ASSOCIATION], a Texas condominium association

By:____
[POA Officer's Name], [POA Officer's Title]

THE STATE OF TEXAS §
§
COUNTY OF ___[E]___ §

This instrument was acknowledged before me on this _______ day of _______________ 20___ by [POA Officer's Name], [POA Officer's Title] of [Name of Association], a Texas condominium association, on behalf of said association.

____
Notary Public, The State of Texas

[F]

INSTRUCTIONS FOR COMPLETING A CONDOMINIUM MANAGEMENT CERTIFICATE

[A] Many County Clerks put their recording information at the top of the first page of each document. Those County Clerks typically require a certain amount of space at the top of a document's first page. The space requirement may be different for a document that is electronically filed, versus one that is filed as paper. If you don't know the County's requirements, leave a top margin of one to one-and-a-half inches.

[B] Insert the name of the County in which the Condominium is located. If the Condominium is located in more than one County, prepare a Management Certificate for each County. It need not match the notary's County at the bottom.

[1] The "NAME OF THE CONDOMINIUM" is the name stated in the Declaration, as required by TUCA Sec. 82.055(1). It's the name that will be on the deed to each unit ~ "Unit 123 of ABC Condominium." Typically it's the name in the title of the Declaration, but don't stop with that. Double check the content of the Declaration for a stated name. By statute, the name must include the word "condominium."

CAUTION. Don't use the POA's name as the name of the condominium. The condominium is real property, dirt & mortar, bricks & sticks. The POA is an organization of people. They are related, but not the same.

[2] The "NAME OF THE ASSOCIATION" is the POA's name stated in the Declaration, as required by TUCA Sec. 82.055(1). If the POA has additional names that are different, such as an assumed name, or a corporate name, those names should be stated also. Note that TUCA does not require that "condominium" be part of the POA's name. And the Texas Nonprofit Corporation Law does not require the use of "Inc." in the name. So, please resist the temptation to add those embellishments if they are not already part of the POA's legal name.

[3] The "LOCATION OF THE CONDOMINIUM" is whatever information helps confirm the location identity of the property, such as street address, city, reference to a subdivision plat (if located on a previously platted tract), relationship to an intersection.

[4] The "DECLARATION'S RECORDING DATA" is the data under which the Declaration and each of its amendments are catalogued the County's records. For Declarations, the data typically consists of a consecutive number referred to as a Document No. or Instrument No., and frequently a Volume & Page number. The date of filing or recording may also be used in this field. Recording data for amendments are also required because TUCA defines "Declaration" to include amendments.

[5] Either "ASSOCIATION'S MAILING ADDRESS" or "MANAGER'S NAME & MAILING ADDRESS." If your property has both, use the one for whomever processes requests for resale certificates.

COMMENT. Although it's not required, we recommend adding more contact information - such as a phone number, fax number, email address, or website URL - whatever makes it easier for a title company to reach the POA for closing instructions. If not in Field [5] then as "Other Information" in Field [6].

[6] "OTHER INFORMATION" may be omitted, left blank, or filled with any information the POA thinks would be helpful to title companies or prospective purchasers.

[C] WHO SIGNS? UNLIKE SUBDIVISIONS, FOR CONDOS **ONLY AN OFFICER OF THE ASSOCIATION MAY SIGN**. The officer should sign as an officer, not as a "director". TUCA does not authorize execution by managers, as is permitted for subdivisions.

[D] County Clerks customarily index documents in the name of the entity or individual that signs the document. To ensure that the Management Certificate is indexed in the name of the Association (rather than in the name of the POA officer), use the POA's name at the start of the signature block.

[E] Insert the name of the County in which the Notary signs the document. It need not match the Condo's County.

[F] Some County Clerks put their recording information at the bottom of the last page, or (if filed as paper) on the back of the document. If a document is filed electronically in such a County, the Clerk may require a blank sheet after the end of the document, if there's not enough room on the last page.

THE "LAW" OF CONDOMINIUM MANAGEMENT CERTIFICATES

SECTION 82.116 TEXAS PROPERTY CODE

Sec. 82.116. MANAGEMENT CERTIFICATE. (a) An association shall record in each county in which any portion of the condominium is located a certificate, signed and acknowledged by an officer of the association, stating:

(1) the name of the condominium;

(2) the name of the association;

(3) the location of the condominium;

(4) the recording data for the declaration;

(5) the mailing address of the association, or the name and mailing address of the person or entity managing the association; and

(6) other information the association considers appropriate.

(a-1) The county clerk of each county in which a management certificate is filed as required by this section shall record the management certificate in the real property records of the county and index the document as a "Condominium Association Management Certificate."

(a-2) To ensure that all management certificates are recorded and indexed as provided by Subsection (a-1), each condominium unit owners' association that recorded a management certificate under this section before September 1, 2013, shall record a new management certificate on or before January 1, 2014. This subsection expires January 1, 2015.

(b) The association shall record a management certificate not later than the 30th day after the date the association has notice of a change in any information in a recorded certificate required by Subdivisions (a)(1)-(5).

(c) The association and its officers, directors, employees, and agents are not subject to liability to any person for delay or failure to record a management certificate, unless the delay or failure is wilful or caused by gross negligence.

Notes: Section 82.116 became law eff. Jan. 1, 1994, as part of the original Chapter 82 (TUCA).
Effective 9/1/13, Subsections (a-1) and (a-2) were added by HB 2075.

DEFINED TERMS USED IN SECTION 82.116 TEXAS PROPERTY CODE

Sec. 82.003(a)(3) "**Association**" means the unit owners' association organized under Section 82.101.

Sec. 82.003(a)(8) "**Condominium**" means a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners.

Sec. 82.003(a)(11) "**Declaration**" means an instrument, however denominated, that creates a condominium, and any amendment to that instrument.

SUBDIVISION MANAGEMENT CERTIFICATES

TRUE OR FALSE?

The oddly named "Management Certificate" merely identifies the property and tells the public (especially title companies) how to contact the POA. It does not mean that the subdivision has a manager.

The Certificates are mandatory for every Chapter 209 subdivision in Texas - of every size and age, from volunteer-run to professionally managed.

The Certificates have been required for more than a decade - since January 1, 2002.

The Certificates must be updated when the information changes.

Without the required updated Certificate in the County Records, a POA may lose its lien rights to collect delinquent assessments when a home is sold.

Your State government wants every Chapter 209 subdivision in Texas to help the County Clerks by re-recording its Certificate between September 1, 2013, and January 1, 2014.

If you answered "True" to all, you are the Winner. Congratulations!

Prepared for use in *Flagpoles, Condos, Turf & More, An Overview of 2013 Legislative Changes for Texas Property Owners Associations ~ Including Condominium and Subdivision Associations*, an article by Roy D. Hailey and Sharon Reuler, presented July 16, 2013, at a State Bar of Texas webcast. This material is intended to provide general information about certain law. Not intended to be exhaustive, to replace advice of competent legal counsel, or to address particular situations. Legal knowledge is required for the proper use and interpretation of this material.
i:\papers\Flagpoles Condos Turf & More-2013 POA Laws by Butler-Reuler_v4 rd=7/15/13 pd=7/15/13

FORM OF SUBDIVISION MANAGEMENT CERTIFICATE

that meets the MINIMUM requirements of Tex. Prop. Code Sec. 209.004.

~ See instructions for completing the form on the following page. ~

[A]

THE STATE OF TEXAS §
§
COUNTY OF [B] §

MANAGEMENT CERTIFICATE

1. The name of the subdivision is ______ [1] ______.
2. The name of the association is ______ [2] ______.
3. The recording data for the subdivision is ______ [3] ______.
4. The recording data for the declaration is ______ [4] ______.
5. The name and mailing address of the association is: ______ [5] ______.
6. The name and mailing address of the person managing the association or the association's designated representative is ______ [6] ______.
7. Other information the association considers appropriate is: ______ [7] ______

>>[C] USE ONLY ONE OF THESE TWO TYPES OF SIGNATURE BLOCKS <<

If signed by POA officer

[D] [NAME OF ASSOCIATION], a Texas property owners association

By:______________________________
[POA Officer's Name], [POA Officer's Title]

THE STATE OF TEXAS §
§
COUNTY OF [E] §

This instrument was acknowledged before me on this _______ day of ________________ 20___ by [POA Officer's Name], [POA Officer's Title] of [Name of Association], a Texas property owners association, on behalf of said association.

____
Notary Public, The State of Texas

If singed by POA's managing agent

[D] [NAME OF ASSOCIATION], a Texas property owners association

By: [NAME OF MGMT CO.], a Texas [type of entity], its managing agent

By:______________________________
[Signer's Name], [Signer's Title at Mgmt Co.]

THE STATE OF TEXAS §
§
COUNTY OF [E] §

This instrument was acknowledged before me on this ______ day of _______________ 20___ by [Signer's Name], [Signer's Title at Mgmt Co.], of [Name of Management Company], on behalf of the company in its capacity as managing agent of [Name of Association], a Texas property owners association, on behalf of said association.

____
Notary Public, The State of Texas

[F]

INSTRUCTIONS FOR COMPLETING A SUBDIVISION MANAGEMENT CERTIFICATE

[A] Many County Clerks put their recording information at the top of the first page of each document. Those County Clerks typically require a certain amount of space at the top of a document's first page. The space requirement may be different for a document that is electronically filed, versus one that is filed as paper. If you don't know the County's requirements, leave a top margin of one to one-and-a-half inches.

[B] Insert the name of the County in which the Subdivision is located. If the Subdivision is located in more than one County, prepare a Management Certificate for each County. It need not match the notary's County at the bottom.

[1] The "NAME OF THE SUBDIVISION" is the name on the recorded subdivision plat - the one filed in the County's Map or Plat Records. The name on the recorded subdivision plat may be different from (1) the name by which the subdivision is known, (2) the name on the sign at the subdivision entrance, or (3) the name given to the property by the Declaration. Ideally, all of those names are the same - or substantially similar.

> CAUTION. Don't use the POA's name as the name of the subdivision. The subdivision is real property, dirt & mortar, bricks & sticks. The POA is an organization of people. They are related, but not the same.

[2] The "NAME OF THE ASSOCIATION" is also capable of multiple interpretations. Some POAs have more than one name, such as (1) the POA name stated in the Declaration, (2) the name under which the POA was incorporated or re-incorporated, (3) an assumed name under which the POA conducts its day-to-day business [hopefully filed with the County Clerk and the Secretary of State], and (4) possibly, a commonly used nickname by which "everyone" knows the POA. Ideally, all of those names are the same - or substantially similar.

[3] The "SUBDIVISION'S RECORDING DATA" is the data under which the subdivision plat is stored in the County's records. For plats, the data typically consists of Cabinet & Slide numbers, or Volume & Page numbers, in addition to a consecutive number referred to as a Document No., Instrument No., or File No. For example, Harris County also uses a "Film Code No." The date of filing or recording may also be used in this field. *(Best Practice is to use the data written or stamped on the plat itself, rather than a citation from a secondary source. What looks like a plat's data may be data for tax certificates filed with the plat. Anyone who leads, represents, or manages a POA should have the recorded subdivision plats.)*

[4] The "DECLARATION'S RECORDING DATA" is the data under which the Declaration is catalogued in the County's records. For Declarations, the data typically consists of a consecutive number referred to as a Document No. or Instrument No., and frequently a Volume & Page number. The date of filing or recording may also be used in this field.

[5] "ASSOCIATION'S NAME & MAILING ADDRESS". Fields [2] & [5] both ask for the POA's NAME. The same name should be used in both fields. If the POA has multiple names, put all the names in Field [2] and put the one used for mailing in Field [5]. Also, both Fields [5] and [6] ask for addresses, which may be the same for both fields. Both are required.

[6] "REPRESENTATIVE'S NAMES & MAILING ADDRESS." Insert the name and complete mailing address of whomever processes requests for resale certificates. Fields [5] and [6] are often filled with the same information. However, both fields are required.

> COMMENT. Although it's not required, we recommend adding more contact information - such as a phone number, fax number, email address, or website URL - whatever makes it easier for a title company to reach the POA for closing instructions. If not in Field [6] then as "Other Information" in Field [7].

[7] "OTHER INFORMATION" may be omitted, left blank, or filled with any information the POA thinks would be helpful to title companies or prospective purchasers.

[C] The statute allows only one of two people to sign and acknowledge the Management Certificate - either an OFFICER of the Association (signing as the officer, not as a "director"), or the Association's managing agent (if the Association has one). The form provides examples of both signature blocks ~ use the one that fits your situation. The law does not address other arrangements, such as a manager who works directly for the Association as an employee.

[D] County Clerks customarily index documents in the name of the entity or individual that signs the document. To ensure that the Management Certificate is indexed in the name of the Association (rather than in the name of the Manager or the name of a POA officer), use the POA's name at the start of the signature block.

[E] Insert the name of County in which the Notary signs the document. It need not match the Subdivision's County.

[F] Some County Clerks put their recording information at the bottom of the last page, or (if filed as paper) on the back of the document. If a document is filed electronically in such a County, the Clerk may require a blank sheet after the end of the document, if there's not enough room on the last page.

THE "LAW" OF SUBDIVISION MANAGEMENT CERTIFICATES
SECTION 209.004 TEXAS PROPERTY CODE

Sec. 209.004. <u>MANAGEMENT CERTIFICATES</u>. (a) A property owners' association shall record in each county in which any portion of the residential subdivision is located a management certificate, signed and acknowledged by an officer or the managing agent of the association, stating:

(1) the name of the subdivision;
(2) the name of the association;
(3) the recording data for the subdivision;
(4) the recording data for the declaration;
(5) the name and mailing address of the association;
(6) the name and mailing address of the person managing the association or the association's designated representative; and
(7) other information the association considers appropriate.

(a-1) The county clerk of each county in which a management certificate is filed as required by this section shall record the management certificate in the real property records of the county and index the document as a "Property Owners' Association Management Certificate."

(b) The property owners' association shall record an amended management certificate not later than the 30th day after the date the association has notice of a change in any information in the recorded certificate required by Subsection (a).

(c) Except as provided under Subsections (d) and (e), the property owners' association and its officers, directors, employees, and agents are not subject to liability to any person for a delay in recording or failure to record a management certificate, unless the delay or failure is wilful or caused by gross negligence.

(d) If a property owners' association fails to record a management certificate or an amended management certificate under this section, the purchaser, lender, or title insurance company or its agent in a transaction involving property in the property owners' association is not liable to the property owners' association for:

(1) any amount due to the association on the date of a transfer to a bona fide purchaser; and
(2) any debt to or claim of the association that accrued before the date of a transfer to a bona fide purchaser.

(e) A lien of a property owners' association that fails to file a management certificate or an amended management certificate under this section to secure an amount due on the effective date of a transfer to a bona fide purchaser is enforceable only for an amount incurred after the effective date of sale.

(f) For purposes of this section, "**bona fide purchaser**" means:

(1) a person who pays valuable consideration without notice of outstanding rights of others and acts in good faith; or
(2) a third-party lender who acquires a security interest in the property under a deed of trust.

___

Notes: Section 209.004 became law eff. Jan. 1, 2002, as part of the original Chapter 209 (TROPA).
Effective 9/1/09, Subsections (a) & (c) were amended, and (e) & (f) were added.
Effective 9/1/13, Subsection (a-1) was added by HB 3800, which includes this transition section:

SECTION 2. To ensure that all management certificates are recorded and indexed in accordance with Section 209.004(a-1), Property Code, as added by this Act, on or after September 1, 2013, and not later than January 1, 2014, each property owners ' association that is subject to Section 209.004, Property Code, immediately before September 1, 2013, shall file the association's management certificate under that section, regardless of whether the association filed a management certificate before September 1, 2013. This section does not affect the time in which a property owners' association is required to file the association's management certificate under Section 209.004, Property Code, as amended by this Act, if the association's initial duty to file the management certificate arises on or after September 1, 2013.

THE "LAW" OF SUBDIVISION MANAGEMENT CERTIFICATES
DEFINED TERMS USED IN SECTION 209.004 TEXAS PROPERTY CODE

Sec. 209.002 (3) "**Declaration**" means an instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision.

Sec. 209.002 (7) "**Property owners' association**" or "**association**" means an incorporated or unincorporated association that:

(A) is designated as the representative of the owners of property in a residential subdivision;

(B) has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; and

(C) manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision.

Sec. 209.002 (9) "**Residential subdivision**" or "**subdivision**" means a subdivision, planned unit development, townhouse regime, or similar planned development in which all land has been divided into two or more parts and is subject to restrictions that:

(A) limit a majority of the land subject to the dedicatory instruments, excluding streets, common areas, and public areas, to residential use for single-family homes, townhomes, or duplexes only;

(B) are recorded in the real property records of the county in which the residential subdivision is located; and

(C) require membership in a property owners' association that has authority to impose regular or special assessments on the property in the subdivision.

CHAPTER E

MISCELLANY

POAS, HOAS, CONDOS, SUBDIVISIONS, TOWNHOMES
WHAT'S THE DIFFERENCE?
~ A LESSON IN JARGON ~

This article purposefully uses "subdivision" to describe a common interest development that is not condominium in ownership. In other words, our article divides the universe of POAs into condominium associations and subdivision associations. We borrowed that terminology from our Austin colleague Gregory S. Cagle, who writes about the inconsistencies of Texas terminology in his book *Texas Homeowners Association Law* (2nd edition), available on Amazon.com.

TERMS THAT ARE DEFINED BY TEXAS STATUTE

POA is the acronym for **Property Owners Association**, a term that is defined (somewhat differently) in several chapters of the Texas Property Code. POA generally refers to a mandatory membership association that governs a real estate development that is subject to restrictions and an obligation for assessments. It is properly used for the associations that govern condominiums, subdivisions, and "townhome regimes." Because most of the Property Code Chapters that define the term limit the Chapter's applicability to residential contexts, "HOA" and "POA" are often used interchangeably. Each Chapter's definition of "Property Owners Association" is slightly different from the others. For example, the definition in Chapter 202 expressly includes condominium associations, whereas the definition in Chapter 209 does not.

Condominium is a form of real property ownership, not a type of building. As defined by Chapters 81 & 82 of the Texas Property Code, it combines individual (fee simple) ownership of a unit with collective (tenancy in common) ownership of common elements. The condominium form of ownership may be used for any type of real property use - residential, commercial, industrial, recreational. Also, it may be used for any type of building - detached or free-standing units (such as single-family homes), vertically attached units (such as townhomes and duplexes), horizontally attached units (such a high-rises and garden apartments). Further, it may be applied to ownership of spaces that are not defined by buildings, such as platted lots, boat slips, and parking spaces. Because it's an incredibly flexible form of ownership, many properties that do not "look like" condominiums are nevertheless condominium in ownership. Property Code Chapter 81, the Texas Condominium Act, applies to condominiums created before 1994. Property Code Chapter 82, the Texas Uniform Condominium Act (TUCA), applies to condominiums created after January 1, 1994. Certain significant sections of TUCA also apply to pre-TUCA condos (created before 1994). "Condominium" also refers to the entire project or development that contains condominium units.

Subdivision has a common meaning and a statutory definition for use with the POA Laws. The common meaning is the division of land into smaller parcels using ordinary and legally recognized methods for surveying and platting land and publicly recording the results (Black's 7th Ed.). The statutory definitions used with the POA Laws are found in Chapters 201, 207, and 209 of the Property Code. None of the statutory definitions expressly excludes condominiums, which raises a question of whether a condominium qualifies as a subdivision under those Chapters if not excluded by the Chapter's applicability provision. (Chapter 209's applicability excludes condos.) However, for purposes of this article, we use "subdivision" to the exclusion of condos.

TERMS IN COMMON USAGE THAT DO NOT HAVE SPECIFIC LEGAL MEANINGS

HOA is the acronym for **Homeowners Association** (no matter how spelled or punctuated). HOA often refers generically to the governing body of any type of common interest development, with mandatory membership, that is primarily residential in use. Texas statutes use "Property Owners Association" rather than "Homeowners Association," even when referring to residential-only communities. Because HOA has no precise legal definition, it may also be used in connection with voluntary membership neighborhood associations and mandatory condominium associations. Some people mistakenly insist that HOA is meant to apply only to governing bodies of non-condominium subdivisions.

Townhouse or **Townhome** is a type of building, not a form of ownership. Generally, townhouse refers to row houses or dwellings that are attached side by side. In terms of ownership, a townhouse may be any of these: (1) an apartment in a rental complex with a single owner, (2) a fee-simple attached dwelling in a platted subdivision without restrictions, assessments, or mandatory membership in an association, (3) a "air space" condominium unit, (4) an attached dwelling on a platted lot within a condominium regime, hence also a condominium unit, or (5) an attached dwelling on a platted lot within a subdivision with a POA that is not condominium. Although townhouse is not a form of ownership that is recognized under Texas law, some people mistakenly insist that it is.

INSTRUCTIONS FOR OBTAINING A TEXAS BILL ONLINE

Go to the Texas Legislature website by entering a search term for "Texas Legislature Online" or by using this URL: http://www.capitol.state.tx.us/Home.aspx. Once you're on the website, there are multiple ways of searching for bills - by number, text, author, affected code, and more. These instructions are for two of the frequently used searches.

If you have a bill number, and want to see the bill:

- On the Home screen, on the toolbar at the top that starts with "Home" and ends with "Calendars", select "Legislation".
- On the pull-down menu under Legislation, select "Bill Lookup."
- On the "Bill Lookup" screen, you have three fields to enter:
  - Bill Number: Enter the bill number, such as HB35 or SB 1093. The field is not case sensitive, and you may enter with or without a space before the number.
  - Legislature: DON'T RELY ON THE DEFAULT SETTING, which is likely to be the current or most recent "special" session. You want the "regular" session. Select "83(R)-2013" which stands for "83rd Regular Session".
  - Information Type: Select "Text", although any of the choices takes you to a screen with tabs at the top for all the other choices.
  - Hit "Submit".
- On the "Text" screen, select the "Enrolled Version," for which you are offered three formats - PDF, HTML, and Word.
- By selecting the top tabs of "Actions" or "History" you will have confirmation that it was enacted into law, and its effective date.

If you want to see how a particular Code (or Chapter) was changed in a Session:

- On the Home screen, find "Additional Searches" in the middle column on the page.
- Under "Additional Searches," select "Sections Affected."
- Using the column titled "Search by Code", you have three fields to enter:
  - Sessions: DON'T RELY ON THE DEFAULT SETTING, which is likely to be the current or most recent "special" session. You want the "regular" session. Select "83(R)-2013" which stands for "83rd Regular Session".
  - Code: Select the particular Code that interests you, such as "Property Code".
  - Status: Select "Enrolled(F)" if you are interested only in bills that became law.
  - Under number of records, we find it helpful to select "View up to 1,000 records at once."
  - Hit "Search" ~ the button above the number of records.
- On the "Index to Sections Affected" page, you'll find useful links in the second and fifth columns.
  - The second column links you to the Article or Section before the law change.
  - The fifth column links you to the bill that amends that Article or Section.

Have fun exploring the Legislature's incredible website.

THIRD DEGREE OF CONSANGUINITY & AFFINITY

2013 Law Re: HOA Contracts with "Interested" Directors

SECTION 2 OF HB 503. Chapter 209, Property Code, is amended by adding Section 209.0052 to read as follows:

Sec. 209.0052. ASSOCIATION CONTRACTS. (a) This section does not apply to a contract entered into by an association during the development period.

(b) An association may enter into an enforceable contract with a current association board member, a person related to a current association board member **within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code**, a company in which a current association board member has a financial interest in at least 51 percent of profits, or a company in which a person related to a current association board member **within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code**, has a financial interest in at least 51 percent of profits only if the following conditions are satisfied:

(1) the board member, relative, or company bids on the proposed contract and the association has received at least two other bids for the contract from persons not associated with the board member, relative, or company, if reasonably available in the community;

(2) the board member:
(A) is not given access to the other bids;
(B) does not participate in any board discussion regarding the contract; and
(C) does not vote on the award of the contract;

(3) the material facts regarding the relationship or interest with respect to the proposed contract are disclosed to or known by the association board and the board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection; and

(4) the association board certifies that the other requirements of this subsection have been satisfied by a resolution approved by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection.

CONSANGUINITY & AFFINITY ~ A MATTER OF DEGREES

(related by blood or marriage)

The new Prop. Code Sec. 209.0052 identifies "interested directors" by relationships "within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code." ALERT. Property Code Chapter 209 goes farther than Govt. Code Chapter 573, which limits *affinity* relationships only to the second degree - not to the third degree. The distinction is important because many of the relationship charts on Texas governmental websites go to the third degree of consanguinity, but only to the second degree of affinity.

1st Degree

By consanguinity

- Parents
- Children

By affinity

- Spouses of relatives listed above
- Spouse
- Spouse's parents
- Spouse's children
- Steparents
- Stepchildren

2nd Degree

By consanguinity

- Grandparents
- Grandchildren
- Brothers & sisters

By affinity

- Spouses of relatives listed above
- Spouse's grandparents
- Spouse's grandchildren
- Spouse's brothers & sisters

3rd Degree

By consanguinity

- Great grandparents
- Great grandchildren
- Nieces & nephews
- Aunts & uncles

By affinity

- Spouses of relatives listed above
- Spouse's great grandparents
- Spouse's great grandchildren
- Spouse's nieces & nephews
- Spouse's aunts & uncles

DEGREES OF CONSANGUINITY & AFFINITY

Government Code
TITLE 5. OPEN GOVERNMENT; ETHICS
SUBTITLE B. ETHICS

CHAPTER 573. DEGREES OF RELATIONSHIP; NEPOTISM PROHIBITIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 573.001. DEFINITIONS. In this chapter: (1) "Candidate" has the meaning assigned by Section 251.001, Election Code. (2) "Position" includes an office, clerkship, employment, or duty. (3) "Public official" means: (A) an officer of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state; (B) an officer or member of a board of this state or of a district, county, municipality, school district, or other political subdivision of this state; or (C) a judge of a court created by or under a statute of this state.

Sec. 573.002. DEGREES OF RELATIONSHIP. Except as provided by Section 573.043, this chapter applies to relationships within the third degree by consanguinity or within the second degree by affinity.

SUBCHAPTER B. RELATIONSHIPS BY CONSANGUINITY OR BY AFFINITY

Sec. 573.021. METHOD OF COMPUTING DEGREE OF RELATIONSHIP. The degree of a relationship is computed by the civil law method.

Sec. 573.022. DETERMINATION OF CONSANGUINITY. (a) Two individuals are related to each other by consanguinity if: (1) one is a descendant of the other; or (2) they share a common ancestor.

(b) An adopted child is considered to be a child of the adoptive parent for this purpose.

Sec. 573.023. COMPUTATION OF DEGREE OF CONSANGUINITY. (a) The degree of relationship by consanguinity between an individual and the individual's descendant is determined by the number of generations that separate them. A parent and child are related in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree and so on.

(b) If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding: (1) the number of generations between the individual and the nearest common ancestor of the individual and the individual's relative; and (2) the number of generations between the relative and the nearest common ancestor.

(c) An individual's relatives within the third degree by consanguinity are the individual's: (1) parent or child (relatives in the first degree); (2) brother, sister, grandparent, or grandchild (relatives in the second degree); and (3) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

Sec. 573.024. DETERMINATION OF AFFINITY. (a) Two individuals are related to each other by affinity if: (1) they are married to each other; or (2) the spouse of one of the individuals is related by consanguinity to the other individual.

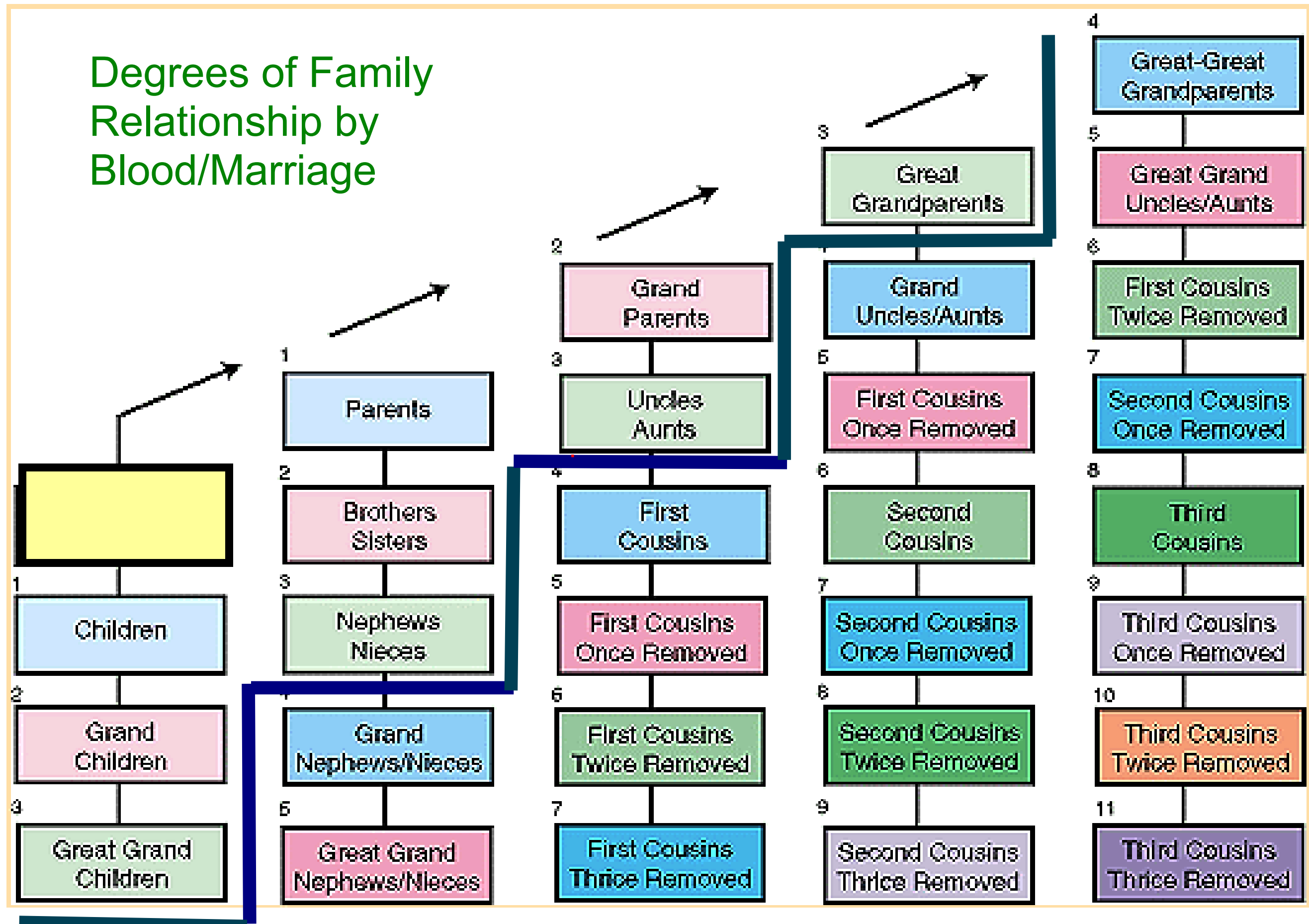
(b) The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

(c) Subsection (b) applies to a member of the board of trustees of or an officer of a school district only until the youngest child of the marriage reaches the age of 21 years.

Sec. 573.025. COMPUTATION OF DEGREE OF AFFINITY. (a) A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity. For example: if two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.

(b) An individual's relatives within the third degree by affinity are: (1) anyone related by consanguinity to the individual's spouse in one of the ways named in Section 573.023(c); and (2) the spouse of anyone related to the individual by consanguinity in one of the ways named in Section 573.023(c).

Consanguinity/Affinity Chart



INSTRUCTION:

For Consanguinity (relationship by blood) calculations:

Place the public officer/employee for whom you need to establish relationships by consanguinity in the blank box. The labeled boxes will then list the relationship by title to the public officer/ employee and the degree of distance from the public officer/employee.

Anyone in a box numbered 1, 2, or 3 is within the third degree of consanguinity. Nevada Ethics in Government Law addresses consanguinity within the third degree by blood, adoption, or marriage.

For Affinity (relationship by marriage) calculations:

Place the spouse of the public officer/employee for whom you need to establish relationships by affinity in the blank box. The labeled boxes will then list the relationship by title to the spouse and the degree of distance from the public officer/employee by affinity.

A husband and wife are related in the first degree by marriage. For other relationships by marriage, the degree of relationship *is the same as the degree of underlying relationship by blood.*