

**STATUTORY EVOLUTION OF
CONDOMINIUMS AND
PROPERTY OWNERS ASSOCIATIONS
IN TEXAS**

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A Primer for Representing Condominium and Property Owners Associations, 1998 State Bar of Texas Advanced Real Estate Drafting Course, Co-Authored with Rosemary B. Jackson

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Drafting Documents Associated with Judicial Foreclosures, Assessment Lien Foreclosures and Mechanics Lien Foreclosures, 7th Annual Advanced Real Estate Drafting Course, sponsored by the State Bar of Texas and the Houston Bar Associations, February, 1996

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New HOA Laws, 9th Annual Texas Land Title Institute, sponsored by Texas Land Title Institute, December, 1999

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Statutory Evolution Property Owners Associations In Texas: Including An Overview of What They Are and Their Statutory Powers and Limitations, 18th Annual Real Estate Law Conference, sponsored by South Texas College of Law, May 2002.

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I. INTRODUCTION

When we (the authors) began our legal careers in the 1980s, real property rights were creatures of contract and covenant. We had worked on Blackacre, exchanged peppercorns, and were properly respectful of the ancient and immutable real property laws that had been passed down, from generation to generation, and entrusted to our care as contemporary real estate attorneys. Private property rights meant something. Sure, there were some important public interests that limited, modified, superceded, or nullified those private rights of contract and covenant, but even with those compelling public interests, the property owner was left with a whole lot of sticks in his bundle over which to exercise dominion and control. We saw no need for government intervention in private property matters. In spite of these initial convictions, our outlook has been systematically torqued to a different plateau.

A. **THREE STAGES OF OUR EVOLUTION.** Since the late 1980s, we have participated on the legislative committees of organizations of which we are members. With the hindsight of 13 years of POA legislation experience, we recognize that we are in an era of rapidly evolving statutes affecting condominiums and planned communities. During that 13-year period, our perspectives about POA legislation have also evolved through what we now recognize as three stages.

Stage One - Denial. Initially, we saw our duty - as real property lawyers - to preserve, protect, and defend the venerable legal system that had well served western civilization for centuries. We supported the rights of private property owners to decide their own fates by amending their restrictions and using the political processes of their private owners associations. Accordingly, we opposed legislative efforts to regulate private deed restricted planned communities, which are not creatures of statute, like condominiums. During stage one, we thought it was easier to kill bills than to pass them, and we thought we could outlast a bill's proponents, who (we dreamed) would weary of the march to the capital every two years.

Stage Two - Appeasement. The illusions of Stage One became self-evident. The POA bills kept coming - more each session. The issues were increasingly emotional and "personal." The legislators were increasingly receptive to constituent cries for legislative fixes to alleged abuses by HOA boards, HOA managers, and HOA attorneys. During Stage Two, we hoped to preserve the basic premise of private property rights by working for passage of a few carefully drafted bills that would selectively appease the proponents of state regulation of planned communities. We discovered the difficulty of appeasing disparate heart-felt grass roots efforts that are afforded as much dignity in the legislative process as bills carried by professional lobbyists after having been honed by organizational committees. Stage Two ended with a spate

of single-purpose statutes that borrow definitions from other statutes having different purposes and are not designed to work together.

Stage Three - Evaluation. Finding ourselves fighting a grass fire in a high wind, it was time for a reality check. From the Stage Three vantage point, we see the POA laws of Texas falling into 3 groups:

- (1) The 2 condominium-only statutes . . . well, for condominiums created after 1994 there is only one statute - TUCA, which is carefully crafted, flexible, comprehensive, and based on uniform statute that has been adopted by many other states. TUCA has been working well for 8 years without cries for reform.
- (2) The ~~POA-only~~ statutes that apply only to planned communities and HOAs are an amalgam of single-purpose Band-Aid ~~piecemeal~~ bills that are not designed to work together ~~and have unintended consequences~~, and include state-wide statutes and those bracketed for particular developments or counties.
- (3) The third category is POA statutes that are intended to apply to both condominiums and planned communities, such as Section 202 of the Property Code, and those that *may* apply to both although seemingly intended for only one, such as Section 207 of the Property Code.

As practitioners in this area, we are continually second-guessing whether we have identified every statute applicable to a certain issue or locale. We confer with each other about the many possible meanings of ambiguous provisions, and the problems of implementing provisions that are not designed to work together. We anticipate that the 2003 session will bring more of the same to be patched into the crazy quilt of ~~POA~~ HOA laws. Being familiar with the paths taken by other states, we sense that we are at a crossroads.

B. TWO APPROACHES. Texas legislation for common interest communities is generally divisible by subject matter, having flowed down two main tributaries, one for condominiums, the other for planned communities, with an occasional cross-over creek. Also, there are two broad approaches to statutory development in Texas - Band-Aid ~~piecemeal~~ and comprehensive. By way of analogy to the medical world, the Band-Aid approach to POA legislation is the like the disease and curative model in medicine. Identify a problem, and fix it. See a "boo boo," apply a bandage. The comprehensive approach compares to the holistic, preventative, health maintenance medical model. Prevention rather than cure. Texas POA legislation has been developed in a Band-Aid ~~piecemeal~~ manner. Texas condominium legislation has, from its inception, been comprehensive in nature.

What seems so necessary today may not even be desirable tomorrow.

1. Band-Aids & Patches~~Piecemeal~~. Statutes can evolve as a piecemeal patchwork quilt in which legislation is adopted session by session in response to specific issues.

Because each statute stands on its own, the process for linking statutes is catch as catch can. In some cases, bills refer to previously adopted statutes for definitions or for procedures, but without a consistent comprehensive framework for fitting the disparate bills together. Written in response to a particular situation or constituent's complaint, some statutes have consequences that were not anticipated or intended by the drafter, such as requiring a resale certificate when a platted vacant lot is sold to a homebuilder, or subjecting condominium resales to 2 different resale certificate statutes.

2. **Comprehensive.** The other broad method for statutory development is adoption of comprehensive statutes such as those promulgated by the National Conference of Commissioners on Uniform State Laws. Texas adopted the Uniform Condominium Act in 1994, but has never considered the Uniform Planned Community Act (for planned communities only) or the Uniform Common Interest Ownership Act (for condominiums and planned communities). (Aside: In 1999 a bill titled the "Planned Community Act" was filed by Senator John Carona as S.B. 699. Although broader than the current POA legislation, the bill was not sufficiently comprehensive to qualify as a "Uniform" act.)

C. **WHY THIS ARTICLE NOW?** The time has come for the Texas real estate bar to take an interest in what is happening to *our* Property Code. If dirt lawyers are not the guardians and protectors of the Property Code, who is? We recognize that there does not seem to be a legislative culture among the Texas real estate bar, possibly because we practice in an area that springs from private contract and covenant, rather than statute. *Our* Property Code is changing whether or not the real estate bar participates in the process.

Our legislative passivism is evident in the highest ranks of the State Bar's Real Estate, Probate & Trust Law Section, which divides into two councils, one for the real estate side, the other for probate. In recent years, the probate bar has been very active in shaping the laws that affect their practice areas. Not so for the real estate side of the Section. This passivism is also evident in the Texas College of Real Estate Attorneys, which was created in the early 1980s to lobby for and against real estate legislation. In recent years the all-volunteer College has done a great job of identifying real estate legislation as it passes through the Capital, and reporting to our bar on the aftermath of each session. However, the College is not interjecting itself into the legislative fray.

[needs another paragraph - ask them to help - a call to arms]

The stakes are too high for government to be a spectator sport. - Barbara Jordan

II. TERMINOLOGY.

The POA field is fraught with imprecise and confusing terminology at every level. The typical POA director refers to the CC&Rs or condominium declaration as the "bylaws," even though a different document is clearly labeled "Bylaws." Any 3 Texans will have 5 definitions of "townhome," and all of them will be right . . . or wrong. The terms we use in this article, and

the terms used in Texas statutes, are also capable of multiple meanings. So, we start with definitions.

A. DEFINITIONS FOR ARTICLE. Hard choices were made about what to call things.

1. **Common Interest Community** or "**CIC**" is a term coined by the National Conference of Commissioners on Uniform State Laws to refer to every type of property with a mandatory obligation for assessments, including condominiums, townhome regimes, planned communities, and master planned developments. It does not apply to neighborhoods or subdivisions with voluntary associations.

2. **Condominium** is a type of real property ownership defined by and created according to Chapters 81 and 82 of the Property Code, and which combines fee simple ownership of a unit with tenancy in common ownership of common elements. The term does not refer to a type of structure. A condominium association is a type of POA.

3. **HOA**, the acronym for homeowners association, is used in this article to refer to the association of owners in a planned community. An HOA is a type of POA.

4. **Planned Community** is used in this article to refer to CICs that are not condominium in ownership - the planned unit developments, townhome regimes, and single family subdivisions with mandatory assessments and associations. The owners in a planned community comprise the HOA.

5. **Property Owners Association** or "**POA**" is used in this article to refer to any mandatory membership association of real property owners, including condominium associations and HOAs. This usage is consistent with the term's definition in Chapter 202 of the Property Code.

~~6. **Property Owners Association** or "**POA**" has more than one definition in the Texas statutes and in common parlance. In its ordinary meaning, POA refers any association of property owners — whether voluntary or mandatory and regardless of the type of property ownership — condominium, planned community, or completely fee simple. The first and most durable (to date) statutory definition is in Chapter 202 of the Property Code, which defines a POA much like the uniform acts define a CIC, as expressly applicable to condominiums as well as to planned communities of attached or detached single family homes with mandatory owners associations. In the Houston area, POA is acquiring a narrower meaning that excludes condominiums because of Chapter 204 of the Property Code, which is a widely used POA statute that expressly does not apply to condominiums. In this article, we try to use "POA" as it is defined in Chapter 202, which includes the subcategory of condominium associations.~~

7. **TUCA** (pronounced "too-kah") is the acronym and nickname for the (Texas) Uniform Condominium Act, Chapter 82 of the Property Code, although "Texas" is not part of the act's formal name.

B. DEFINITIONS IN STATUTES. According to the Texas Code Construction Act (Chapter 311 Government Code), words and phrases are given their ordinary meanings unless they have been given a particular meaning by legislative definition. Unfortunately, the patchwork approach to POA lawmaking is producing some legislative definitions that are awkward and contrived. Also, we have different definitions for the same terms within the same part (Title 11) of the Property Code, and statutes are borrowing definitions from each other without as much attention to the "fit" as we would like to see. Appendix C of this article shows how 3 types of definitions are used in the POA statutes. That material plus the following 2 questions should give you a taste of the stew we are making at the back of the Property Code.

1. What is a "Dedicatory Instrument"? One of our favorite examples of an awkward definition is "dedicatory instrument," which is defined in 2 statutes (Chs. 202 + 209), and the definitions are referenced in 4 other statutes (Chs. 204, 206, 207 + 208). The common meaning of "dedication" is the appropriation of property for a particular purpose or a donation of land for public use. A real estate attorney might understand a "dedicatory instrument" to be a plat, an easement, or restrictive covenants - a writing that creates or establishes the fundamental property use.

In 1987, Chapter 202 created a statutory definition of "dedicatory instrument" that equates it to "each governing instrument" of a condominium or planned community. POA attorneys generally understood "governing instruments" to include bylaws, articles of incorporation, community rules, and similar documents which would not otherwise be considered "dedicatory" in nature. Between 1987 and 1999, Texas POAs gladly accepted the benefits of Chapter 202's mandate to *liberally* construe the terms of their governing documents. When Chapter 202 was amended in 1999 to require the public recording of all "dedicatory instruments," Texas POAs had to be convinced of the necessity to record documents that had not previously been recorded in the county records, such as bylaw amendments, pet rules, and architectural guidelines.

In 2001, Chapter 209 needed a definition for the governing documents of a planned community. Instead of seizing the opportunity to improve the statutory terminology by defining "governing instruments" or "project documents," Chapter 209 uses "dedicatory instrument" - giving it a new definition that serves the purposes of Chapter 209, which (unlike Chapter 202) does not apply to condominiums. Texas now has 2 statutory definitions of "dedicatory instrument," neither of which conforms to the common usage of "dedicatory" instrument.

2. What is a "Subdivision"? A subdivision is the division of a tract of land into smaller parcels using ordinary and legally recognized methods for surveying and platting land and publicly recording the results. (Black's Law Dictionary 7th Edition). Although "subdivision" is not a defined term in the Government Code which addresses the platting of subdivisions, it is defined in 3 POA statutes (Chs. 201, 207 + 209), and one of the definitions is incorporated by reference in 2 other POA statutes (Chs. 204 + 205). None of the 3 definitions expressly excludes condominiums, which raises a question of whether a condominium qualifies as a subdivision under those statutes. The applicability provision of Chapter 204 suggests that "subdivision" does

apply to condominiums - *"This chapter applies only to a residential real estate subdivision, excluding a condominium development governed by Title 7, Property Code . . . "*

To create condominium ownership, one subdivides real property, surveys and plats the subdivisions (called "units"), and records the plats and plans, usually with the declaration of condominium. Under the Texas Uniform Condominium Act, a traditional platted single family subdivision is capable of being condominium in ownership if the common area (the swimming pool lot) were owned in undivided interests by all the lot owners. Are all condominiums "subdivisions"? Are the terms mutually exclusive? Could some condominiums be "subdivisions"? The authors do not have the answers.

Consider, for example, Chapter 207, which creates a resale certificate requirement for "a subdivision with a property owners' association that is entitled to levy regular or special assessments." Chapter 207 defines "property owners' association" by reference to Chapter 202, which expressly applies to condominiums. The applicability provision of Chapter 207 does not exclude condominiums from coverage, and its definition of "subdivision" could be construed to include condominiums. Does Chapter 207 apply to condominiums? If it does, Texas condominiums are subject to two different statutes requiring resale certificates, which seems an illogical result.

3. What is a "Property Owners Association"? Property Owners Association or "POA" has more than one definition in the Texas statutes and in common parlance. In its ordinary meaning, POA refers to any association of property owners - whether voluntary or mandatory and regardless of the type of property ownership - condominium, planned community, or completely fee simple. It is defined in 3 POA statutes (Chs. 202, 204 + 209), and one of the definitions is incorporated by reference in 3 other POA statutes (Chs. 205, 207 + 208). The first and most durable (to date) statutory definition is in Chapter 202 of the Property Code, which defines a POA much like the uniform acts define a CIC, as expressly applicable to condominiums as well as to planned communities of attached or detached single family homes with mandatory owners associations. In the Houston area, "POA" is acquiring a narrower meaning that excludes condominiums because of Chapter 204 of the Property Code, which is a widely used POA statute that expressly does not apply to condominiums. The newer Chapter 209 may have the same effect statewide. Although Chapter 204's definition of "property owners association" is silent about condominiums, Chapter 209 does not apply to condominiums.

III. CURRENT CLIMATE FOR COMMON INTEREST COMMUNITIES.

A. THE ENVIRONMENT. Our lawmakers do not sit in an ivory tower behind cloistered walls of academe. They are our neighbors and colleagues. They serve constituents who are always invited to bring their problems and perspectives to the lawmaking process. They are courted by lobbyists for a myriad of sometimes competing special interests. Because our lawmakers are in the world and of the world, we reflect on the current environment that shapes the legislative processes for common interest communities.

1. **Old School v. New School.** Attitudes about POAs are beginning to change, not just in Texas but across the country. The change is becoming evident in public opinion, the media, new POA pro-consumer statutes in states like Arizona and California, and increasingly at the courthouse where judges and juries are becoming critical of POA boards.

The "**old school**" view is that individual homeowners *voluntarily* relinquish their individual liberties when they *choose* to own property in a common interest community. POA leaders see their primary responsibilities as covenant enforcement and assessment collection, for which they hire the assistance of managers and attorneys. Having been warned to be consistent and uniform in enforcing the rules, POA leaders fear making exceptions for individual circumstances. Owners who violate rules or fail to pay assessments deserve to have the proverbial book thrown at them. From a critic's perspective, old school POAs are about Rules! Rules! Rules!, fines, warnings, control, and punishment. The governing documents for old school POAs give the boards an arsenal of weapons to use against owners who cross the line, and precious few rights and protections for individual homeowners.

The "**new school**" view is that the POAs should be kinder gentler communities that respond to the unique circumstances of individuals on a case-by-case basis, and that are open to inspection, observation, and participation by members. POAs exist to serve their members. This perspective emerges from the progressive new Chapter 6 - Common-Interest Communities, Third Restatement of the Law of Property, Servitudes, published in 2000 by the American Law Institute, which contains nuggets like "the duty of the CIC to treat its members fairly" (§6.13). In July 2002, one of the Restatement advisors, Atlanta attorney Wayne S. Hyatt, brought the message to Texas in his presentation at the State Bar's Advanced Real Estate Law Course. "Create *community* in POAs," he told us. The messengers have arrived. Are we listening?

2. **POA Baby Boom.** Texas is experiencing a period of rapid creation of condominiums and planned communities for a number of reasons. For starters, the homebuying public wants "community" - neighborhood identity, recreation amenities, and even architectural control. Local governments in growth areas are also in the market for HOAs which, they happily discovered, are vehicles for privatizing public duties. Let the HOA maintain the right of way and the drainage easement. Land use planners are now using the condominium form of ownership to avoid platting problems for projects that otherwise might not have had a mandatory POA. When these factors are coupled with low mortgage rates and long term projections for significant population growth in the urban sectors of the state, a baby boom in POAs is underway.

3. **Internetworking.** The use of the internet by grassroots political action groups is awesome and helps level the playing fields of volunteers and professionals. Like minded people from the Red River to the Rio Grande and across the country share information and provide each other with moral support. The ability of anyone to divide and conquer gets progressively weaker.

4. **Headlines.** Since the late 1990s, residents of the Houston area have been exposed to a steady stream of newspaper, radio, and television reporting about the negative aspects of POAs. Those of us who live else cannot appreciate the effect that constant critical

POA media attention has on the minds and hearts of lawmakers, as well as the general public. On the other hand, Houstonians may fail to understand why the rest of us are not as sensitive to the POA issues that are popular news items in that market. The nation did get a taste of the Houston media perspective on April 19, 2002, when ABC's 20-20 program aired a segment on the negative aspects of HOAs.

5. Graving Documents. Although the times are changing, many old established POAs cannot change with the times because they are saddled with governing documents written in the 1960s and 1970s. Those documents often are difficult to amend, lack requirements of notice and due process, and contain budget caps that cause the POA to exist at a subsistence level. These "first generation" POA documents spawned several of the POA "relief" statutes - giving the POAs statutory powers that are absent or inadequate in their governing documents. As the large number of established POAs with vintage documents (particularly prevalent in the Houston area) continue to hit brick walls with their outmoded texts, the POAs may be expected to look to the statehouse for statutory relief.

6. Silent Majority. There are lots of statistics (not recited here) showing that the overwhelming majority of POA members like living and owning homes in condominiums or planned communities. Content people tend to be quiet and oblivious to the political maelstrom that swirls around them. Because the silent majority is not heard in Austin, the vocal minority - some of whom have legitimate complaints - may be wrongly perceived as representing the entirety of POA members.

B. TEXAS LEGISLATURE. Texas is wonderfully unusual in more ways than we can count. One of its unique features is that the legislative branch typically meets for only 5 months every other year. Although Texans joke about feeling safe when our legislature is not in session, it is unusual for such a huge, important, growing state to not have the continuity of full time legislative resources.

1. The Interim Reports. In the 22 years between 1979 and 2001, there have been 12 regular sessions, 3 of which appointed interim committees to study POA issues.

a. 1980 Interim Report. After the 1979 legislative session, the Business and Industry Committee of the House of Representatives appointed a 7-person subcommittee to study condominium housing laws. According to the 1980 Interim Report to the 67th Texas Legislature,

The committee was directed to evaluate existing statutes and regulations pertaining to condominium housing, comparing these provisions with laws in other states, and determining the possible need for statutory revision. The committee was further charged to consider the need for building standards for condominium housing and other related matters.

Based on its research and hearings, the Business and Industry Committee recommend new condominium housing legislation. The chair of the subcommittee, Representative Robert Bush

of Sherman, became the author of the Uniform Condominium Act, which was first filed in the 1981 legislative session. The rest, as they say, is history.

b. 1998 Interim Report. Following the 1997 legislative session, the Senate State Affairs Committee appointed a 5-person Interim Committee *"to study the legal powers, duties, and structure of homeowners associations in Texas, including lien and foreclosure abilities."* The 1998 Interim Report to the 76th Texas Legislature reached 7 conclusions and made 7 recommendations. Consistent with Band-Aid ~~piecemeal~~ lawmaking, the 1998 Report generally responds to complaints it received on a complaint-by-complaint basis. This is broke, here's a fix. It is worth noting that 2 members of the Interim Committee that issued the 1998 Report serve on the Senate Intergovernmental Relations that is preparing the 2002 Report - Senators Cain and Whitmire.

There is, however, one potentially bright spot in the 1998 Report - Recommendation Number Five, that warrants mention. On its face, Recommendation Number Five is inspired: *"For future subdivisions, adopt the Uniform Planned Community Act, with modifications."* Although we want to believe the Report was referring to the comprehensive model act promulgated by the National Law Commissioners, we suspect the Report refers to Senator Carona's draft bill, filed as S.B. 699 in the 1999 legislative session, which was briefly titled the Uniform Planned Community Act. When Senator Carona learned that the proposed bill was not sufficiently like a model Uniform act to wear that title, he removed "Uniform" from the name of the bill.

c. 2002 Interim Report. After the 2001 legislative session, the Senate Intergovernmental Relations Committee appointed a ??-person Interim Subcommittee on Property Owners Associations, chaired by Houston Senator Jon Lindsay. In a memorandum from Senator Lindsay addressed to "Interested Parties" Senator Lindsay states that: "The subcommittee is instructed to study the appropriateness of foreclosure and other powers granted to property owners associations to enforce covenants. With this purpose in mind, the subcommittee will soon hold a hearing in Houston to hear testimony ..."

The first(?? Roy - was this the FIRST) hearing was held on January 16, 2002, at the University of Houston. The hearing room was filled to capacity, as was the anteroom, with the crowd overflowing into the building's lobby. The testimony, as is typical of these hearings, was emotional. After ?? hours of taking testimony, the hearing was adjourned with promises of future hearings.

After the hearing, Senator Lindsey asked Houston attorney Michael Gainer, who had testified at the hearing, to form an Attorney Task Force composed of pro-HOA attorneys and pro-homeowner attorneys. The Task Force was asked to look at the many issues that had been raised at the hearing to see if any common ground could be found as a basis for proposed legislation in 2003. The Task Force consists of 9 Houston lawyers. The 4 pro-HOA lawyers are Mr. Gainer, Susie Rice, Roy Hailey, and Bob Alexander. The 4 pro-homeowner lawyers are David Kahne (Geneva Brooks' attorney), Marianne Rosen (Wenonah Blevins' attorney), Wendy

Laubach, and David Furlow. The ninth attorney - the neutral - is Cathy Sisk of the Harris County Attorney's Office.

Senator Lindsay and his legislative assistant, Rob Edwards, expected the Task Force to provide a joint report upon which the Interim Report could be based. No such luck. Despite numerous meetings, there was little consensus between the 2 sides of the Task Force. Even when they agreed, they could not agree on how to describe the point of agreement.

When the Interim Subcommittee held its second (or third?) hearing in Austin on May 28, 2002, the hearing started with the report of the Attorney Task Force. Because of the lack of consensus, each side and the neutral gave separate reports. Although the Subcommittee announced that it wanted to hear only solutions, not problems, at this hearing, there were many aggrieved homeowners who had traveled from Houston to be heard. Although scheduled for 3 hours, the hearing ran on for 5 hours. The Task Force is not expected to meet again.

The Interim Report being drafted by Rob Edwards is expected in November 2002. Given the complaint-based testimony and the absence of a visionary with a comprehensive approach for dealing with the issues, we expect the Report to recommend additional patches to the quilt of HOA laws.

2. Which Committee? Over the last 20 years, most POA legislation has been heard by the "business" oriented committees of the House and Senate, usually Business and Industry or State Affairs. Now that the Senate Intergovernmental Relations Committee has taken charge of POA legislation, we wonder what effect, if any, its "governmental" orientation to lawmaking will have on the bills that it receives. It bears watching, we think.

3. POA Lobby. For better or worse, our legislative processes are governed largely by special interests. Industry groups hire professional lobbyists to protect the industry from adverse legislation and promote laws that are favorable to the industry. The organized real estate interests constitute an informal group known as the Real Estate Lobby. Lobbyists for trade organizations such as the Texas Association of Realtors, Texas Apartment Association, Texas Land Title Association, Texas Mortgage Bankers Association, and Texas Association of Builders, meet periodically to share ideas and information on issues of common concern. More often than not, their individual interests are collectively aligned. By keeping each other advised of their individual legislative agendas, the industry organizations are able to work out differences so as not to be adversarial to one another during the session.

Although the Real Estate Lobby has a moniker, it does not speak as one voice. Each of its constituents speaks for itself. The problem from the POA perspective is that no one speaks for the POA industry, which has no representative in the established Real Estate Lobby. Of course, the Real Estate Lobby examines POA legislation to see how it affects its constituent organizations. When each organization is satisfied that it is not adversely affected by a particular bill, it loses interest in the legislation. The other industries have no reason to evaluate proposed legislation from the perspective of POA directors, or managers, or attorneys, or homeowners. That is not their constituency.

At this time, there does not appear to be an effective lobbyist for a balanced POA perspective - one that is respected by both POAs and consumers. Most POAs and grass roots organizations cannot afford to hire a lobbyist. Although a POA or grass roots organization might send its members or leaders to Austin to testify at a hearing, the typical POA and volunteer organization has neither the resources nor the talent to maintain a presence in Austin for the day to day work of lobbying and drafting legislation. Volunteers do give valuable time, effort, and energy to the legislative processes. However, there is a limit to the effectiveness of a volunteer in the face of salaried legislative staffs and contract lobbyists.

IV. PEOPLE WHO SHAPE POA LAWS.

You know how we moan "There ought to be a law!" whenever things do not go the way we think they should? Well, that is the genesis of most laws, whether created by courts or legislatures. Someone who perceives a wrong asks a judge and jury or a lawmaker to "fix it." Sometimes the problem is widespread and the fix is high minded - in the public interest. More often, an individual with a grievance pertaining to one property obtains a solution or revenge - as the case may be - that affects property rights in the entire State of Texas. The legislative processes are triggered by individual personalities and problems.

The roles of individuals and small organizations is particularly prominent in the POA arena because of the dearth of paid professional lobbyists and the absence of prominent industry or professional organizations that have sufficient clout at the Capital to orchestrate the drafting and lobbying of POA legislation. At the risk of alienating our friends, colleagues, and organizations, we are putting names on the "POA lobby" and some of those who have shaped POA legislation.

A. CONDO CREDITS. Since TUCA was enacted in 1993, there has not been a lot of legislative activity on the condominium side of the POA field. (*Give thanks!*) These people played their roles between 1963 and 1993, and are listed in approximate chronological order.

1. The Arizona Developer Who Started It. In 1962, before Texas had any condominium legislation, an Arizona developer wanted to convert a Houston highrise apartment building to condominium ownership. To finance the conversion, his lender required an enabling statute. The developer's timing was perfect. In 1962, the Federal Housing Administration had just published the Model Act for the Creation of Apartment Ownership, based on Puerto Rico's 1958 statute. Using the FHA Model Act as a base, the developer got an enabling statute through the 1963 Texas legislature. (Beginner's luck!) Because no one in Texas knew what a condominium looked like in 1963, the developer wrote a bill that specifically described the type of structure he was converting - a high rise apartment building with janitor lodgings, garbage incinerators, elevators, basements, flat roofs, central heat and air, sanitary services, balconies, and terraces. You can almost draw his building from the text of the Condominium Act.

2. Sondock Amendment. In 1984, Ruby Sondock became identified with the first amendment to the 1963-vintage Condominium Act. A very sophisticated condominium owner, Ruby Sondock was a state district judge in Houston who served on the State Supreme

Court for a while as a gubernatorial appointee. She knew her way around the courthouse and the statehouse. She sued her condominium association over a decision with which she disagreed. (Tired of replacing the continually rusting carports along the Gulf coast, the condominium association voted to permanently remove the carports.) Judge Sondock lost at the trial level. She appealed. She lost the appeal. And the supremes refused to grant writ. Shut out of the courthouse, she turned to the statehouse. She effected an amendment of the condominium statute to save other owners from what she perceived as a wrong.

The Sondock Amendment seemed innocuous to the lawmakers and lobbyists who waved as it flew through the 1983 legislative session. Keep in mind that the bill was written in response to Judge Sondock's particular situation. Whether intentionally or inadvertently, it changed the private restrictions of some condominiums in Texas. If previously you could amend your condominium declaration by written ballot or petition, the Sondock Amendment requires that the vote be taken at a meeting. If previously you could amend your condominium declaration with 51 or 60 percent of the ownership interests, the Sondock Amendment requires you to obtain at least 67 percent approval. Regardless of what the declaration says, the Sondock Amendment requires the unanimous consent of all affected owners and their mortgagees for certain issues.

History belongs to the winner.

3. **Larry Niemann.** In 1979, Larry Niemann, an Austin attorney and veteran member of the Real Estate Lobby, brought the UCA to the attention of the Texas legislature. Mr. Niemann has a unique passion for and commitment to condominium legislation. Thanks largely to his efforts, in 1979 the Texas House of Representatives asked an Interim Committee on Business and Industry to study condominium legislation. The Committee's Report, issued in 1980, recommended adoption of the UCA. In connection with that Report, Mr. Niemann conducted hearings in major cities and was the spokesperson for the bill that was first introduced to the 1981 legislative session, and refiled in 1983 and 1985. After a bumpy start in 1991, Mr. Niemann helped with the lobbying of TUCA in the 1991 and 1993 legislative sessions. Mr. Niemann's role in the 1997 amendment of TUCA is described below.

4. **TAA.** The Texas Apartment Association was one of the earliest and staunchest supporters of condominium legislation from the late 1970s through the mid 1980s. As a significant player in the lobbying and legislative processes, TAA's early financial support and endorsement of TUCA were instrumental, and probably critical, in the ultimate adoption of that significant statute. The genesis of TAA's involvement with TUCA appears to have been Larry Niemann, the general counsel for TAA. Mr. Niemann motivated the apartment industry to underwrite his involvement with condominium legislation, for which there was no industry support.

5. **Frank St. Claire, Sharon Reuler, and the POA Committee & Sharon Reuler.** In 1989, Dallas attorney Frank St. Claire asked the State Bar's Real Estate Section for permission to organize a committee of Section members who were interested in POA matters. Initially named the Committee on Condominium and Common Interest Ownership, the

committee was renamed in 1998 as the Committee on Property Owners Associations (nicknamed the POA Committee). One of the attorneys at the committee's 1989 organizational meeting in Dallas was Sharon Reuler, who began working on TUCA in 1979 as a Realtor. Having met a statewide group of lawyers interested in condominium legislation, Ms. Reuler invited the POA Committee members in 1990 to form an ad hoc drafting group ~~of attorneys~~ to work on TUCA, which was laying dormant in the legislative trash bin. The drafting attorneys included Roy Hailey, Rick Butler, Mitchell Katine, Marc Markel, Bruce Schimmel, Rosemary Jackson, Richard Bartley, and Lou Burton. The group's efforts resulted in a refreshed bill that was introduced in 1991.

6. CAI & Margey Meyer. CIA, the acronym for the Community Associations Institute, is a national organization for people involved with common interest communities, with chapters in Houston, Dallas, San Antonio, and Austin. When TUCA was revived in 1990, CAI volunteer Margey Meyer, a Houston POA manager, was instrumental in getting Houston Representative Robert Eckels to author the TUCA bill for the 2001 legislative session. CAI's role in the 1997 amendment of TUCA is described below.

B. HOA HONOREES. The people who have shaped and are still shaping HOA legislation are far more interesting and diverse than those who molded the condominium laws. We have listed them below in no particular order, and without their permission.

1. Houston Proud & Susan Hill. During the depressed real estate market of the late 1980s, an organization called "Houston Proud" was formed to improve Houston's image. Houston Proud is considered by some to be the petri dish that spawned the HOA bills of the 1990s. It brought together people who were involved with HOAs in diverse parts of the city, it had an effective grass roots component, and it was a media child. Susan Hill, one of the hundreds who became active in Houston Proud, helped develop and promote Houston Proud's "Neighborhood Program," which instructed neighborhoods on how to maintain and improve their property values by forming active civic clubs. In addition to her work with Houston Proud, Susan Hill is a director and past president of CCUCA and TNT, and has been actively involved in HOA legislation.

2. CCUCA & Michael Gainer. CCUCA is the acronym for the Cypress Creek United Civic Association, a voluntary coalition of more than 100 HOAs in the unincorporated areas of Harris County. Since 1994, CCUCA has had an active legislative action committee. Houston attorney Michael Gainer was the initial chair of the LAC and served in that capacity during most of the 1990s. On behalf of CCUCA, Mr. Gainer drafted Chapter 204 of the Property Code. Because of Mr. Gainer's continuing involvement with legislation and the Houston delegation at the State Capital, in January 2002 Senator Jon Lindsay appointed Mr. Gainer to chair the HOA side of the attorney task force advising the Interim Subcommittee of the Senate Intergovernmental Relations Committee.

3. Property Rights Foundation & Geneva Brooks. The Property Rights Foundation is a Houston-based organization devoted to protecting individual homeowners from abusive practices by HOA boards, managers, and attorneys. The Foundation's motto is "In

Defense of Our Vanishing Property Rights While We Still Have Them." The Foundation was started by Houston resident Geneva Brooks, who was described in her August 2002 obituary as a tireless property rights activist, agitator, and iconoclast. Testifying at almost every legislative hearing regarding HOAs between 1999 and 2002, she piqued legislators' interest in HOA foreclosures with colorful and effective imagery. She also took aim at attorneys who represent HOAs and brought legislative attention to the issue of attorneys fees. Ms. Brooks entered the Texas legal annals as the defendant/appellant in Geneva Brooks d/b/a Committee to Remove the Board, Diane Higgins, Pauline White, Don Yust, Virginia Yust, Aurelio Ojada, Anthony McBride, and Susan Auclair v. Northglen Association, 76 S.W.3d 162 (Tex.App.-Texarkana, 2002).

4. **Wenonah Blevins.** Chapter 209 of the Property Code bears the name of Wenonah Blevins, an 82-year old Houston woman who lost her \$150,000 home in the March 2001 sheriff's sale following her HOA's default judgment for judicial foreclosure of its assessment lien for nonpayment of \$814.50 in delinquent assessments. When the foreclosure sale buyer evicted Mrs. Blevins from her home on April 10, 2001, the national media became interested in the dispossessed widow who lost her \$150,000 home for \$814 of HOA "dues." Houston attorney Marian Rosen filed suit on behalf of Mrs. Blevins, who eventually was restored to her home. The Legislature was in session, with only weeks remaining until sine die. Houston Senator Jon Lindsay quickly filed "emergency" bills (the filing deadline was past) to prevent HOAs from foreclosing in situations similar to Mrs. Blevins. Although the late-filed bills did not succeed, Senator Lindsay did give Mrs. Blevins a statutory footnote under Section 209.001 of the Property Code - "S.B. No. 507, 77th Legislature, Regular Session, 2001, is enacted in honor of Wenonah Blevins and may be unofficially referred to as the Wenonah Blevins Residential Property Owners Protection Act."

5. **"Deferred Billing" & Bill Gammon.** At public hearings held in 2002 by the Interim Subcommittee of the Senate Intergovernmental Relations Committee, homeowners complained about the manner in which HOA attorneys pursued them for recovery of the HOA's large legal fees. The names attached to the objectionable practices were "deferred billing," "contingency billing," and "alternative billing." Much as Wenonah Blevins became the 2001 poster child for the mistreated homeowner, Houston attorney Bill Gammon became the 2001 poster child for HOAs' allegedly extreme ~~excessive and abusive~~ legal practices. Mr. Gammon's "alternative billing arrangements" for his HOA clients are described in detail on his website www.gammonlaw.com., as of September 1, 2002.

6. **Senator John Carona.** As a professional POA manager since 1979, Dallas Senator John Carona is a "natural" for authoring or sponsoring POA legislation. His Dallas-based companies - Principal Management Group and Associa - are among the largest POA management companies in Texas and the nation. He has been a State Senator since 1996, having previously served in the Texas House of Representatives 1990-1996. Senator Carona authored Chapter 209 of the Property Code, which was filed and enacted in 2001 as S.B. 507.

7. **Senator Jon Lindsay & Rob Edwards.** Houston Senator Jon Lindsay served as Harris County Judge (the county's CEO) for 20 years before being elected to the Texas Senate

in 1996. During the 2001 legislature, Senator Lindsay became the champion of the “consumer” side of the HOA bills going through the legislature, which paired him off against Senator John Carona. Following the 2001 session, the Senate’s Intergovernmental Relations Committee, of which Senator Lindsay is vice-chair, appointed an interim subcommittee to study “the appropriateness of foreclosures and other powers granted to property owners associations to enforce covenants.” The subcommittee held hearings in Houston in January 2002, and in Austin in May 2002. Senator Lindsay’s legislative aide, Rob Edwards, is spearheading the interim subcommittee’s HOA investigations and writing the report that is expected in November 2002.

8. CAI, TLAC, Margey Meyer, Larry Niemann & Connie Heyer. ~~CAI, the acronym for the Community Associations Institute, is a national organization for people involved with common interest communities, with chapters in Houston, Dallas, San Antonio, and Austin. CAI’s~~ The Texas Legislative Action Committee, called “Tee-LaeLak” after its acronym, of the Community Associations Institute (CAI) was organized in the early 1990s by Houston POA manager Margey Meyer, who was also active in Houston Proud. During ~~Through~~ her decade of ~~involvement with~~ TLAC leadership, Ms. Meyer has testified at almost every POA-related hearing on behalf of CAI. Ms. Meyer is an officer of Associa, a national POA management company of which Senator John Carona is president and CEO. For the 1999 session, TLAC hired Austin attorney Larry Niemann as its lobbyist. Mr. Niemann and Connie Niemann Heyer, his daughter and colleague, have frequently testified on behalf of CAI and TLAC at legislative hearings. Although CAI’s national charter requires it to speak for individual homeowners as well as HOAs, the pro-consumer forces in Texas try to paint CAI and TLAC as the voices of POA attorneys, POA managers, and POA directors.

9. TNT, Maxine Aaronson & Susan Hill. Texas Neighborhoods Together is an all volunteer statewide organization for non-governmental community-based organizations, including mandatory planned communities and voluntary civic clubs. Before each session, TNT develops a legislative agenda which it promotes with grassroots advocacy campaigns. Two names often linked with TNT at the capital are Dallas attorney Maxine Aaronson and Houston consultant ~~member~~ Susan Hill. A TNT spokesperson during the 1990s, Maxine Aaronson is a leader of the Dallas Homeowners League, founded in 1968. Susan Hill of Houston was president of TNT for the 1999 and 2001 legislative sessions and frequently testified at HOA hearings on behalf of the interests of TNT.

10. Texas Association of Realtors. During the 1999 and 2001 legislative sessions, the Texas Association of Realtors took up the cause of HOA consumers. In 2000, TAR sponsored a series of hearings around the state to elicit grievances against HOA boards and managers. As a result of those hearings, TAR produced a widely circulated list of pro-consumer HOA issues that became part of TAR’s legislative agenda.

V. EVOLUTION OF TEXAS CONDOMINIUM STATUTES.

A. THREE GENERATIONS OF MODEL ACTS. [SR ADD TEXT]

1. First Generation. First generation statutes "enable" condominium ownership, and are characterized by brevity, rigidity, and a distinct lack of consumer protections. The prototype for first generation condominium statutes was the 1962 FHA Model Act for the Creation of Apartment Ownership. By the late 1960s, every state had adopted a condominium enabling statute, many of which were based on the FHA model. By the early 1970s, it was apparent that first generation statutes were inadequate to deal with the variety and complexity of the emerging condominium market. The Texas Condominium Act (initially Article 1301a V.A.C.S., now Chapter 81 Property Code) is a first generation enabling statute. Until the adoption of TUCA in 1994, Texas had the dubious distinction of being one of the few growth states with a nearly pristine first-generation condominium statute. Since its adoption in 1963, the Condominium Act has been once codified (in 1983 as Chapter 81 Property Code), and twice amended (1984 and 1989). Not much activity for a 40-year run.

2. Second Generation. Development of a second generation condominium statute fell to the National Conference of Commissioners on Uniform State Laws (the "**Conference**"). The first version of the Uniform Condominium Act appeared in the Uniform Land Transactions Act ("**ULTA**"). The UCA was separated from ULTA in 1975, and was published in 1977 by the Conference as a free-standing Uniform Condominium Act. The UCA was revised and republished in 1980.

When Texans began working on a second generation statute in 1979, the 1977 version of the UCA was used as the base. In 1991, the Texas drafters incorporated many of the changes made in the 1980 version of the UCA. For the most part, TUCA is based on the 1980 UCA, not the earlier 1977 version.

In 1993, Texas became the twenty-first state to adopt a second generation statute based on the UCA or UCIOA. Some states, such as Florida and California, have developed second generation statutes by continually amending their first generation statutes.

While revising the UCA, the Conference published a similar model statute for planned unit developments, the Uniform Planned Community Act ("**UPCA**") in 1980. In 1981 the Conference published a companion model statute for cooperatives, the Model Real Estate Cooperative Act ("**MRECA**"). By 1982, there were three parallel second generation model statutes, for condominiums, planned unit developments, and cooperatives.

3. Third Generation. In the lingo of the Uniform Acts, "third generation" refers to the movement to make condominiums, planned unit developments, and cooperatives subject to a single statute. Although condominiums and cooperatives are creatures of statute, planned unit developments have not been. And because cooperatives are relatively rare, the essence of the third generation statute is to create statutory authority for planned unit developments - to treat PUDs like condos.

In 1982, the Conference rolled the three model acts (UCA, UPCA, and MRECA) into a single Uniform Common Interest Ownership Act ("**UCIOA**"). By 1993, five states had adopted UCIOA: Alaska, Colorado, Connecticut, Nevada, and West Virginia. Instead of continuing to

revise the three single-ownership acts, the Conference concentrates its efforts on UCIOA. Fortunately, revisions to UCIOA can often be easily adapted to the UCA.

B. THIRTEEN YEAR HISTORY OF TUCA. The model UCA was published by the Uniform Law Commissioners in 1977. By 1979, the UCA was in the hands of Austin real estate lobbyist Larry Niemann, who took the concept to the House Committee on Business & Industry. After the 1979 session, the B&I Committee appointed an interim subcommittee to study condominium housing law, chaired by Representative Robert Bush of Sherman, Texas. The 1980 *Report of the Subcommittee on Condominium Housing Laws* contains the first draft of the proposed Uniform Condominium Act proposed for Texas. Although Mr. Niemann's name does not appear in the Report, he helped conduct the Statewide hearings and was instrumental in creating interest in the proposed legislation.

TUCA was first introduced as a bill in 1981. Between 1981 and 1983, during the heat of a Texas building boom, TUCA was substantially revised to appease the homebuilding and Realtor lobbies. The Realtors scuttled the bill in 1981, but strongly supported it in 1983, when the powerful Houston homebuilders killed it. TUCA was filed, but not promoted, in 1985. It sat out the sessions in 1987 and 1989.

In 1991 a bill was introduced to tack some lengthy UCA-type provisions onto the old Condominium Act. Fearing that such an amendment would undermine future efforts to adopt a modern, comprehensive, uniform act, an ad hoc group of TUCA supporters tried to stop the amendatory bill by filing a quickly updated version of the 1983-vintage TUCA.

The tactic worked. Both bills were sent to a subcommittee of the House Judiciary Committee with the warning that only one would emerge. When the smoke cleared, TUCA stepped forward - intact, but sporting the other bill's number.

TUCA made more progress in 1991 than its proponents had originally expected. It helped that TUCA had "been around" for 10 years, and that the UCA or UCIOA had been adopted by 20 other states. TUCA attracted no organized opposition, possibly due to Texas' dispirited real estate industry. However, because the bill got a late start and was held in subcommittee, the five-month biennial session ended before TUCA could clear the last hurdle to adoption.

To preserve TUCA's coalition of supporters, the bill that ended the 1991 session was re-filed in 1993. The word around the Capital was that, after 13 years, TUCA's time had finally come. The bill started in the House Committee on Business and Industry, and passed to the Senate Committee on Economic Development. Thanks to skillful handling by the bill's chief House sponsor, Rep. Robert Eckels of Houston, TUCA moved through both chambers without difficulty, and was signed by Governor Ann Richards on May 22, 1993, to be effective January 1, 1994.

Sidenote. In 1983, anticipating that TUCA would then become law, the State-sponsored broker/lawyer committee issued a condominium resale contract and certificate based on the then

proposed TUCA. Even though the law did not pass until 1993, Texas real estate brokers have been using the condominium resale certificate since 1983 - a 10-year head start.

C. THE TUCA AMENDMENTS. Since its adoption in 1993, TUCA has weathered 4 legislative sessions with only 2 amendments. Each of the amendments was drafted to appease a constituent with a problem, without regard to how the amendment fit into the large and complex statute. Neither of the amendments came through the ad hoc TUCA drafting committee.

1. 1997 Open Meetings. As enacted in 1993, TUCA had 13 provisions that applied "retroactively" to condominiums created before 1994, although the pre-TUCA condominiums were not otherwise subject to TUCA. The open meetings section of TUCA - Section 82.108 - was not one of the "retroactives." Events in San Antonio caused that to change.

The board of directors of Mockingbird Pond Condominium in San Antonio - a pre-TUCA condominium - was having problems with Colonel Welda Smith, an owner and former director with a ~~penchant~~ reputation for ~~disrupting~~ speaking her mind at board meetings. To conduct its business, the board of directors found it expedient to hold its meetings at times and places that prevented Colonel Smith's attendance. Having learned that TUCA requires open board meetings for condominiums created after 1994, Colonel Smith asked San Antonio Representative Leticia Van de Putte to file a bill extending the open meetings requirement of TUCA to pre-TUCA condominiums like Mockingbird Pond.

Colonel Smith's cause was championed by Larry Niemann and CAI's TLAC, which helped draft and lobby H.B. 1285. As filed, the bill contained a number of peculiar provisions, such as allowing individual homeowners to levy monetary fines against directors who fail ~~requiring directors to pay fines to individual owners for failing to provide meeting information~~ when asked. The bill had almost cleared both houses when it came to the attention of Sharon Reuler and Rosemary Jackson, whose opposition testimony at the last committee hearing on the Senate side resulted in elimination of the most peculiar provisions.

2. 1997 Amendment of Any Document. As H.B. 1285 (Rep. Van de Putte's "Open Meetings" bill) was being read on the floor of the Senate on May 24, 1997, at the end of the session, a number of Senators asked Senator Wentworth, the Senate sponsor of the House bill, to accept floor amendments. Of the 5 substantive floor amendments, one submitted by Houston Senator Rodney Ellis added a new section to TUCA - Section 82.070, titled *Meeting at Which Amendments May be Adopted*. Presumably Representative Van de Putte and CAI's TLAC had no strenuous objections to the addition.

Fortunately, Section 82.070 does not apply to pre-TUCA condominiums because the applicability section of TUCA was not amended to make Section 82.070 "retroactive." Unfortunately the easily-overlooked seemingly-innocuous troublesome new statutory requirement does apply to post-TUCA condominiums. Keep in mind that the amendment was not heard in committees, was not reviewed by the Real Estate Lobby, and had no opportunity to be improved. The well-intentioned but poorly drafted floor amendment became a law that

affects every post-TUCA condominium in Texas because no one cared enough or knew enough to say "No."

What is wrong with Section 82.070? It sounds reasonable - to give the owners advance notice of every proposed amendment to any governing document. Here is one example - it requires proof of delivery of notices by signed receipts or U.S. mail postmarks in an era when many POAs communicate with owners by posting notices on doors, in mailboxes, on websites, or via email. Well, you get the idea.

VI. EVOLUTION OF HOA STATUTES

[ADD TEXT]

Politics is the art of the passable.

A. BRACKET BILLS? Of the 24 Texas POA state statutes identified in Appendix A of this article, almost half are not statewide in application. Instead, they are "bracketed" to particular but unnamed geographic areas. What does a "bracket" look like? Property Code Chapter 203 is an example of a simple bracket - it applies to "a county with a population of more than 200,000." Now for an example of a more complex bracket - Property Code Chapter 206:

This chapter applies only to: (1) a residential real estate subdivision that: (A) consists of at least 4,600 homes; (B) is located in whole or in part in a municipality with a population of more than 1.6 million located in a county with a population of 2.8 million or more; and (C) has restrictions the terms of which are automatically extended but has a regular assessment that is established by a separate document that permits the assessment to expire and does not provide for extension of the term of the assessment; or (2) a residential real estate subdivision that: (A) consists of at least 750 homes; (B) is located in two adjacent municipalities in a county with a population of 2.8 million or more; and (C) has use restrictions the terms of which are automatically extended but has a regular assessment that is established by two separate documents that permit the assessment to expire and do not provide for extension of the term of the assessment.

Bracket bills are easily confused with local bills - the ones that create a reclamation district, road district, hospital district, or a county court. Local bills, by their nature, are of interest only to voters and lawmakers in the affected area. Bracket bills, on the other hand, are considered general law. Texas law allows a bill to be limited to a particular class of political subdivisions or geographic areas through use of population or another classification device, provided the classification is reasonable and bears a logical relationship to the purpose of the law. A lengthy discussion of bracketing is found in the memorandum of January 28, 1999, from the executive director of the Texas Legislative Council, in Appendix 7 of the Drafting Manual published by the Texas Legislative Council (October 2000 edition).

On the positive side, bills that are narrowly bracketed to a small geographic area avoid the scrutiny that statewide bills receive. By narrowly bracketing his bill, a lawmaker has a better chance of being a hero to his constituents. Lawmakers and lobbyists are not much interested in bills that impact only a portion of the state that is outside their area of interest. By trying it out in one area, bracketing could be a positive step in taking a statute statewide.

On the negative side, we have general state laws that are not statewide in application. HOAs in Dallas and Kerrville are not subject to the same state laws as HOAs in Houston. Also, bracketed statutes have the ability to become statewide law with only a small change to the applicability provision of the statute. This means that a badly written law which did not attract attention when enacted as a narrowly bracketed bill can become the law of the entire state with a tiny amendment that comes in under the radar screen of lobbyists and the public.

The Texas experience with POA statutes is that the bracketed statutes are usually bracketed to the Houston area, as illustrated on Appendix A of this article. Why Houston?

B. WHY HOUSTON? Houstonians do not seem to understand when lawmakers and lobbyists from other parts of Texas shake their heads and say solemnly "It's a Houston problem." Houstonians know planned communities and HOAs exist statewide, so they cannot imagine how it can be different elsewhere. But it is. In terms of HOAs and planned communities, Houston has developed differently from the rest of the state. Being lawyers, we can only share with you our observations and theories. We invite academicians to prove us right or wrong.

1. No Zoning. Unlike every other city in Texas (and in most of the U.S.), the city of Houston does not zone real property. The traditional example given to illustrate lack of zoning is that nothing in the public domain prevents a gas station from being built next to a mansion. So, Houston's real property developers used deed restrictions to regulate land use, and created mandatory HOAs to enforce the private land use restrictions. A function that is public in the rest of urbanized Texas is relegated to the private sector in Houston, our largest city.

During the past 40 years, when Houston got "built," a high percentage of real estate was developed with deed restrictions and mandatory HOAs. As a result, most Houstonians - including lawyers and judges and lawmakers - have years of personal experience with HOAs as residents and owners. They witness daily the vagaries of HOA management, administration, and enforcement.

As a sidenote, in 1987 Chapter 203 was added to the Property Code to allow the county attorney to enforce private deed restrictions. Based on a cursory search of county websites, it appears that some Texas counties (such as Harris, Travis, and Nueces) have county attorneys. Others (such as Dallas, Tarrant, and Bexar) do not. The Dallas author finds it ironic that Houston, which shuns the police power of zoning, has a public official empowered to enforce private deed restrictions - restrictions that exist precisely because of a lack of zoning. The Houston author stands too close to the trees to see the irony.

2. **The Neighborhood Program.** An overview of the forces that helped shape the face of HOAs in Houston requires a visit to the late 1980s. Property values in all of Texas were hurt by the real estate crash and economic recession of the late 1980s. Mortgage foreclosures and personal bankruptcies were rampant. Houston was particularly hard hit because of its dependence on the oil industry which also was in a slump.

To combat plummeting property values, Houston's mortgage bankers' industry asked Dr. Barton Smith, an economics professor at the University of Houston, to investigate why some neighborhoods were better able than others to maintain their property values. Dr. Smith observed that neighborhoods which enforced deed restrictions and maintained common areas were able to maintain their property values better than neighborhoods that did not. Who typically performs these functions? In Houston, the answer was HOAs and civic clubs. Dr. Smith asked two University of Houston employees, one of whom was Susan Hill, to help him prove his theory.

With the assistance of Houston Proud and the Houston Chapter of CAI, Dr. Smith's team identified and contacted neighborhood leaders. This effort became the basis of the Neighborhood Program, which organized the volunteer services of real estate lawyers, lenders, managers, agents, and others real estate professionals to help create civic clubs where none previously existed and to train leaders of civic clubs and HOAs. Eventually, Susan Hill left her job at the University to devote herself fully to the Neighborhood Program, which was adopted by Houston Proud. Article author Roy Hailey served as co-chair of the Neighborhood Program during one period.

The Neighborhood Program proved to be such a success that in 1991 the Harris County Housing and Community Development Agency gave the Neighborhood Program a \$30,000 grant to strengthen the neighborhood organizations of certain particularly hard hit neighborhoods, most of which were located in Representative Kevin Bailey's district. This fact becomes significant in the history of Chapter 204 of the Property Code, described later in this article.

3. **Critical Mass.** The Houston area has attained a critical mass of HOAs that produces political activism. During the Houston Proud period, the citizens of Houston became self aware and developed an attitude of "If we don't help ourselves, who will?": Through networking and coalition-building Houston's HOA community realized that it is big enough to have political clout. Houston's HOA community, however, consists of two groups – the "pro-HOA" faction and the "anti-HOA" (or "pro-consumer") faction, both of which began making demands on city and county officials, and on state lawmakers. By 1999, Houston's HOA factions were embroiled in political activism of a type and intensity that is unknown elsewhere in Texas. During the 1999 legislative session, busloads of Houstonians trekked to Austin to testify at legislative hearings - both for and against HOA bills. No other part of Texas fielded measurable testimony.

4. **Budget Caps.** Having been developed in the 1960s and 1970s, the planned communities in Houston have "first generation" restrictions. The drafters of that era, being unfamiliar with HOAs, sought to "protect" the homeowners from crazed boards of directors by making the documents extremely difficult to amend and by requiring incredibly high rates of

approval for budget changes. As a result, many HOAs are saddled with budget caps that make the HOAs desperate to collect every dollar of the capped "dues" at the lowest possible cost to the HOA. The same first generation restrictions often lack self-help remedies that empower the HOA to abate or remedy a violation when the owner is not responsive. The HOA managers and attorneys, in turn, are pressured to collect money and to enforce the restrictions in the fastest and cheapest ways (cheap for the HOA, that is). If the HOA managers and attorneys cannot collect from the financially strapped HOAs, they look to the hapless homeowner for compensation. Is it not a tad ironic that today's alleged HOA abuses are partly the result of restrictions that were put in place 30 or years ago to protect the consumer by limiting the HOA?

By contrast, modern restrictions typically give the HOA's directors considerable latitude in setting the HOA's budget and levying assessments. With that flexibility, an HOA can elect to cover budget deficits created by large numbers of small delinquencies that are not "worth" collecting. Or, alternatively, the HOA can elect to absorb - as common expenses of the HOA - some or all of the costs of hiring professionals to collect the debts or to enforce the violations.

5. Chapter 204 Power Corrupts. In addition to the observation that HOAs in Houston have developed differently than elsewhere in the state, the authors believe there is another answer to "Why Houston?" Although the state does not have an HOA empowering statute, Harris County does - Chapter 204 of the Property Code. Some would argue that the provisions and interpretations of Chapter 204 are the true genesis of the "Houston Problem.."

When Chapter 204 of the Property Code is mentioned at HOA public hearings, the pro-consumer faction quotes Lord Acton's famous phrase: "Power tends to corrupt, and absolute power corrupts absolutely." Invariably, the quoter is referring to Section 204.010 (a) (11) and (12), which have been construed together to allow an HOA to foreclose its assessment lien against a homestead to recover attorneys fees related to a deed restriction violation, even if the "dues" are paid timely and fully.

Couple this Chapter 204 power with Houston lawyers who market their services to HOAs on the basis that the financially strapped HOA does not have to pay for the attorney's services. Instead, the attorney will collect his fees from the rule-breaking owner who risks losing his home for failure to pay the HOA's attorney. The Houston Chronicle has carried numerous articles about homeowners that are on the verge of losing their homes due to tattered basketball nets or doors that needed painting.

Consider Geneva Brooks' story, which is reported on the website of her Property Rights Foundation and is the basis of a lawsuit. According to Ms. Brooks, her HOA sued her because her door needed painting. She said she was singled out because she was a "senior and rents her house to Hispanics." She claimed that the POA lawyer threatened that \$30,000 in legal fees would mount to \$80,000.00 or more if the matter went to court over her door that needed painting and that, upon prevailing, the HOA would foreclose on the house. While there are always two sides to a story, the bottom line is that an elderly woman was being threatened with losing her property for a "door that needs painting." The underlying lawsuit is currently on appeal to the Texas Supreme Court. Geneva Brooks d/b/a Committee to Remove the Board,

Diane Higgins, Pauline White, Don Yust, Virginia Yust, Aurelio Ojada, Anthony McBride, and Susan Auclair v. Northglen Association, 76 S.W.3d 162 (Tex.App.-Texarkana, 2002).

1. **The Dallas Comparison.** For starters, the Dallas area is not subject to the Property Code's bracketed Chapter 204. For oversimplified and overgeneralized comparison purposes only, here is a thumbnail sketch of how HOAs developed in North Texas.

Almost all of the Dallas/Fort Worth Metroplex is within limits of cities that enforce zoning and building codes. Because of public zoning and code enforcement, real estate developers saw no need to create HOAs for their residential subdivisions. Indeed, they avoided creating HOAs which they viewed as troublesome, expensive, and unnecessary. Into the mid-1990s, many developers believed homebuyers were resistant to mandatory membership HOAs and the obligation for "dues." Sure, there were always some HOAs - the subdivisions with gated entrances or community pools - but never a lot.

That began to change with the real estate rebound of the mid-1990s. Almost overnight, new subdivisions were created with mandatory HOAs. As the Metroplex expands to newly urbanized rural areas, city councils see HOAs as a handy device for shifting public responsibilities, like right-of-way maintenance, to the private sector. Some North Texas cities have passed ordinances requiring that all new residential developments have mandatory HOAs, others make it a condition of plat approval. In short, North Texas is just now birthing the HOAs that - in 10 or 20 years - will reach the critical mass that Houston attained 10 years ago.

C. **STORIES BEHIND SOME HOA STATUTES.** [ADD TEXT]

If there isn't a law, there will be. - Gates' Law

1. **Chapter 204 Property Code.** In 1994, the Legislative Action Committee of the Cypress Creek United Civic Association (CCUCA) began working on legislation addressing the concerns of CCUCA members. Houston attorney Michael Gainer, the chair of the committee, drafted the bill that became Chapter 204 of the Property Code. Thinking that parts of TUCA would be beneficial for the non-condominium CCUCA members, Mr. Gainer started with the "board powers" provisions of TUCA. He went on to address a laundry list of problems he had encountered in his CCUCA practice, including a new procedure for amending restrictions, even restrictions lacking an amendment clause, and throwing a life line to architectural control committees that are about to expire.

Some parts of Chapter 204 "codify" Texas case law. For example, Subsections (a) and (b) of Section 204.009 reflect the holding of Candlelight Hills Civic Association v. Goodwin, 763 S.W.2d 474 (Tex. App.-Houston [14th Dist.] 1988, writ denied).

Houston Representative Kevin Bailey, the bill's author, also wanted to address a concern raised by the voters in his district, which had few planned communities with HOAs but many older neighborhoods that were beginning to show their age. Thinking that HOAs could breathe

new life into the older neighborhoods of his district, Representative Bailey initiated Section 204.006 which contains a mechanism for creating a grassroots HOA. Also drafted by Mr. Gainer, Section 204.006 allows a deed restricted neighborhood to create an HOA with the consent of 60% of the owners, regardless of the amendment clause in the existing restrictions, or even in absence of one.

When the bill was filed, its application was initially bracketed to the counties of Harris, Galveston, Fort Bend, Brazoria, and Montgomery. Before the bill was adopted by the 1995 Legislature, the bracketing was narrowed to Harris County only, due to a lack of support from lawmakers representing the other counties.

Chapter 204 is an example of a significant piece of HOA legislation that was enacted the first time it was introduced. That success is due partly to bracketing, which reduces the potential for opposition.

2. Open Meetings - Government Code. Representative Tommy Williams lives in The Woodlands, a 27,000-acre master planned community near Houston, with several large subassociations. Being a proponent of open government, Representative Williams wanted his neighbors and constituents in The Woodlands to enjoy the same rights of open meetings and open records that local governments are required to provide to citizens. According to local lore, Representative Williams took the initiative to sponsor a bill that would require the largest planned communities in The Woodlands to be subject to the Open Records and Open Meetings Laws that govern state, county, local, and quasi-governmental entities. First filed and passed in 1999, the bill that created Sections 551.0015 and 552.035 of the Government Code is narrowly and creatively bracketed to apply only to 4 specific HOAs in The Woodlands. This appears to be the only "government" law in Texas that applies to private planned communities.

3. Chapter 206 Property Code. Friendswood Development Company began developing the Clear Lake Area near Houston in the 1960s, starting with Clear Lake City. Although named "City," Clear Lake City is a large private mixed-use planned community. Friendswood imposed on the Clear Lake City acreage a Service Charge Agreement that required all future owners to be members of the Clear Lake City Community Association and to pay an annual "mill" assessment. The Service Charge Agreement had a termination "drop dead" date of 2003 and no provision for amending or extending the restriction. As 2003 neared, Clear Lake City Community Association was facing an economic and legal crisis.

In the late 1990s, the Clear Lake City Community Association considered its options. The property is within the bracketed area of Chapter 201 of the Property Code, which provides a mechanism for renewing and extending restrictions. Because that statute allows property owners to "opt out" of the extended restrictions, its use would not guarantee universal assessment coverage for Clear Lake City. Finding no other remedy, the Association's attorney, Marilyn Mieszkuc, drafted a 1997 bill that became Chapter 206 of the Property Code. It is narrowly bracketed to apply only to Clear Lake City, which contributed to its swift passage in 1997.

A few years later, another part of the Clear Lake Area realized that it, too, was facing termination of the restriction that creates an assessment obligation for all property owners. Ms. Mieszkuc's partner Elizabeth Scott, went back to the well on behalf of Clear Lake Forest Community Association. In 2001, the bracketing of Chapter 206 was amended to apply to Clear Lake Forest as well as Clear Lake City, although neither property is named in the statute.

4. Chapter 209 Property Code. Chapter 209 of the Property Code was adopted in 2001 as the Texas Residential Property Owners Protection Act. Its first incarnation was in 1999 as parts of Senator Carona's S.B. 699, the Texas Planned Community Act. The purpose of the proposed Texas Planned Community Act was to create a statewide statutory framework for the operation of HOAs, with some balancing consumer protections. Unlike TUCA, the proposed Texas Planned Community Act was not a comprehensive "Uniform" act and did not attempt to replace the other piecemeal HOA statutes. It would have been one more Band-Aid ~~piecemeal~~ statute, albeit somewhat broader in scope than the others.

Having started the 1999 session as a primarily "pro-HOA" bill, S.B. 699 ended the 1999 session as an awkward amalgam of provisions that had been shaped by a difficult and acrimonious lobbying process. It came close to passing, but ran out of steam waiting to be read for the third and final time on the last day of the 1999 session.

Two years later, Senator Carona took the "homeowner protections" parts of the previous session's S.B. 699 and filed S.B. 507 as the Texas Residential Property Owners Protection Act. The pro-HOA bill was reborn as a pro-consumer bill.

Until the final weeks of the session, S.B. 507 enjoyed a relatively predictable and leisurely trip through the 2001 legislative processes. Homeowner rights groups supported the bill and the various groups and personalities informally comprising the HOA lobby were either supportive or neutral. The winds changed when the Houston media, and then the national media, announced the plight of Wenonah Blevins who was evicted from her \$150,000 Houston home on April 10, 2001, following her HOA's judicial foreclosure of its lien for an assessment delinquency of less than \$1,000.

By the first week in May 2001, in response to the heavy media coverage Mrs. Blevins was receiving, Houston lawmakers had introduced a flurry of statewide bills that would have crippled all HOAs in Texas as punishment for the perceived wrong to Mrs. Blevins. Because the bill filing deadline had expired, the rules were suspended so the Houston legislators could file "emergency bills," which they valiantly tried to push through the legislature during its waning weeks. Refer to this article's Appendix B, which lists the HOA bills filed in 2001.

Suddenly, S.B. 507 became attractive as a vehicle to which the late-filed bills could be attached as amendments. A publicized battle of wills between Senators Carona and Lindsay ensued - Senator Carona trying to keep S.B. 507 intact, Senator Lindsay trying to amend S.B. 507 with his additional consumer protections. When the dust settled, S.B. 507 passed largely intact, with one bow to Senator Lindsay's efforts. The new law would be known informally as the "Wenonah Blevins Residential Property Owners Protection Act."

Codified as Chapter 209 of the Property Code, S.B. 507 does not apply to condominiums. The awkwardly worded applicability provision (taken from the predecessor S.B. 699) excludes condominiums subject to Chapter 82 of the Property Code. By referencing Chapter 82 and not Chapter 81 (the old Condominium Act), the exclusion appears to draw a distinction between pre-TUCA and post-TUCA condominium regimes. The authors consider such a distinction meaningless for several reasons.

First, every condominium in Texas is subject to Chapter 82, in part if not in whole. No condominium in Texas is not subject to Chapter 82, although the pre-TUCA condominiums are also subject to Chapter 81. Second, if Chapter 209's reference to Chapter 82 was intended to make Chapter 209 applicable to pre-TUCA condominiums, the result would be nonsensical. Pre-TUCA condominiums are already subject to the sections of TUCA that are mirrored in Chapter 209 - the requirement of a management certificate, right of redemption following foreclosure, and due process procedures. Surely our lawmakers would not have been so cruel as to subject older condominiums to two different standards and procedures for the same activities.

VII. CONCLUSION.

Texas is too important and too dynamic a state to be saddled with inept property laws, no matter how well intended. Having made a complete 180 degree turn from where we started, we now embrace the concept of a comprehensive statutory framework for planned communities, much as the condominiums of Texas have under TUCA. The time is ripe for a bold legislative initiative to replace the hodgepodge of existing POA laws with a well-conceived, carefully drafted, comprehensive statute that brings Texas into the family of uniform act states for planned communities, as well as condominiums.

VIII. AUTHORS' DISCLOSURES. Like the proverbial blind men with the elephant, our statutory story telling reflects our personal and professional experiences and perspectives. Therefore, we are disclosing our respective affiliations which undeniably color our points of view.

Sharon Reuler currently chairs the State Bar's Committee on Property Owners Associations and serves on the Governmental Relations Committee of the Greater Dallas Home Builders Association. She is a member of the Dallas/Ft. Worth Chapter of the Community Associations Institute, of which she is a founding director (1981). In the mid-1990s (1993-1996) she chaired the Dallas Delegation to the Texas Legislative Action Committee of the Community Associations Institute. In the early 1990s (1990-1993) she chaired the ad hoc TUCA drafting committee and was the spokesperson for the Texas Uniform Condominium Act. During the 1987 legislative session, while completing her law degree, Sharon worked as legislative aide to Representative Gwyn Clarkston Shea of Irving, Texas. In the early 1980s Sharon was an active member of the Greater Dallas and Texas Associations of Realtors, with whom she worked on the Texas Uniform Condominium Act. She has been a condominium owner and resident since 1977, represented buyers and sellers of condominiums and townhomes in the early 1980s as a real estate broker, has represented POAs as an attorney since 1987, and now represents developers of new POAs.

Roy D. Hailey currently serves on the attorney task appointed in January 2002 by the Senate Interim Subcommittee of the Intergovernmental Relations Committee, the State Bar's Committee on Property Owners Associations, and the Texas Legislative Action Committee of the Community Associations Institute. Roy is an active member of the Greater Houston Chapter of the Community Associations Institute, of which he was president in 1998. He chaired the Chapter's Legal Committee in 19___. Roy was a member of the ad hoc TUCA drafting committee that formed 1990-1993. During the 1980s, he was an active member of Houston Proud's Neighborhood Program, which he co-chaired for a period. Roy has been an HOA owner and resident since ____, and (has?) serve(s)(d) as president of his HOA.

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LIST OF EXHIBITS: **???????**

- 1 - CHRONOLOGY OF TEXAS STATUTES THAT DIRECTLY ADDRESS POAS
- 2 - POA BILLS FILED 2001
- 3 - PROPERTY CODE DEFINITIONS PERTAINING TO POAS
- 4 - LIST OF PERTINENT STATUTES

Appendix A

Chronology of Texas Statutes That Directly Address Planned Communities or Condominiums

Prepared by Sharon Reuler and Roy Hailey, August 2002

B = "Bracketed" statutes that apply to certain counties or cities based on a population bracket, hence not statewide.

YEAR ENACTED	STATUTE	APPLIES TO		
		Bracketed	Planned C. and/or Condo.	STATEWIDE Planned Commu- nities Condo- miniums
1963	(NEW) Art. 1301a Tex. Rev. Civ. Stat. - Condominium Act [Codified in 1983 as Chapter 81 Property Code]			-
1979	(NEW) Sec. 25.09 Tax Code (Property) - Condominiums and Planned Unit Developments			-
	(NEW) Sec. 23.18 Tax Code (Property) - Property Owned by a Nonprofit Homeowners' Organization for the Benefit of its Members			-
	Amends Sec. 25.09 Tax Code (Property) - Condominiums and Planned Unit Developments			-
1981	(NEW) Sec. 171.082 Tax Code (Franchise Tax) - Exemption - Certain Homeowners Associations			-
	Codification of Property Code, Art. 1301a TRCS became Chapter 81 Property Code - Condominium Act			-
1983	(NEW) Sec. 5.006 Property Code - Attorney's Fees in Breach of Restrictive Covenant Action			-
1984	(NEW) Sec. 81.111 Property Code - Amendment of Condominium Declaration, and corresponding change to Sec. 81.102 - Contents of Declaration) ["Sondock Amendment"] (Chapter 81 is Condominium Act)			-

B = "Bracketed" statutes that apply to certain counties or cities based on a population bracket, hence not statewide.

YEAR ENACTED	STATUTE	APPLIES TO		
		Bracketed	STATEWIDE	
		Planned C. and/or Condo.	Planned Communities	Condo-miniums
	(NEW) Chapter 201 Property Code - Restrictive Covenants Applicable to Certain Subdivisions [Bracketed 1985 - Bracket expanded 1997]	B/H		
1985	(NEW) Chapter 202 Property Code - Construction and Enforcement of Restrictive Covenants		-	-
	Amends Chapter 201 Property Code - Restrictive Covenants Applicable to Certain Subdivisions [Bracketed]	B/H		
	(NEW) Chapter 203 Property Code - Enforcement of Land Use Restrictions in County with Population of More than Two Million [Bracketed 1987 - Bracket expanded 1997]	B/H		
1987	(NEW) Chapter 84 Civil Prac. & Rem. Code - Charitable Immunity and Liability Act of 1987		-	-
	Amends Chapter 81 Property Code - Condominium Act (Sec 81.110 - Termination of Condominium Regime)			-
1989	Amends Chapter 201 Property Code - Restrictive Covenants Applicable to Certain Subdivisions [Bracketed]	B/H		
	Amends Chapter 201 Property Code - Restrictive Covenants Applicable to Certain Subdivisions [Bracketed]	B/H		
1991	Amends Sec. 32.05 Tax Code (Property) - Priority of Tax Liens Over Other Property Interests		-	-
	(NEW) Sec. 5.008 Property Code - Seller's Disclosure of Property Condition		-	-
	(NEW) Chapter 82 Property Code - (Texas) Uniform Condominium Act <i>TUCA</i>			-
1993	Amends Sec. 34.21 Tax Code (Property) - Right of Redemption		-	-

B = "Bracketed" statutes that apply to certain counties or cities based on a population bracket, hence not statewide.

YEAR ENACTED	STATUTE	APPLIES TO			
		Bracketed	Planned C. and/or Condo.	Planned Communities	Condo-miniums
	(NEW) Chapter 204 Property Code - Powers of Property Owners Association Relating to Restrictive Covenants in Certain Subdivisions [Bracketed]		B/H		
	(NEW) Chapter 205 Property Code - Restrictive Covenants Applicable to Revised Subdivisions in Certain Counties [Almost statewide - Bracketed to 65,000+ counties]		B		
	(NEW) Sec. 27.034 Government Code - Deed Restriction Jurisdiction (Justice Courts) [Bracketed 1995 - Statewide in 1997]		B/H		
	(NEW) Sec 542.006 Transportation Code - Speed Restrictions on Private Roads [Bracketed]		B		
1995	(NEW) Sec. 542.007 Transportation Code - Traffic Regulations: Private Subdivision in Certain Counties [Bracketed]		B		
	Amendments of Chapter 82 Property Code - (Texas) Uniform Condominium Act - changes to 82.002 and 82.108 (open meetings) <i>TU</i>				—
	(NEW) Sec. 82.070 Property Code - Meeting at Which Amendments May be Adopted (Ch. 82 - (Texas) Uniform Condominium Act) <i>TUCA</i>				—
	Amends Chapter 201 Property Code - Restrictive Covenants Applicable to Certain Subdivisions [Expands bracket to cities of 100,000+]		B		
1997 (continues)	Amends Chapter 203 Property Code - Enforcement of Land Use Restrictions in Certain Counties [Expands bracket to 200,000+ counties]		B		
(continued) 1997	(NEW) Sec. 205.004 Property Code - Amendment of Restrictions by Governing Body of Property Owners Association, also amends Sec. 205.001 [Almost statewide - Bracketed to 65,000+ counties]		B		

B = "Bracketed" statutes that apply to certain counties or cities based on a population bracket, hence not statewide.

YEAR ENACTED	STATUTE	APPLIES TO		
		Bracketed	STATEWIDE	
		Planned C. and/or Condo.	Planned Communities	Condo-miniums
	(NEW) Chapter 206 Property Code - Extension of Restrictions Imposing Regular Assessments in Certain Subdivisions [Bracketed - Clear Lake Forest]	B/H		
	Amends Sec. 27.034 Government Code - Deed Restriction Jurisdiction (Justice Courts) [Became statewide]		—	—
	(NEW) Sec. 545.307 Transportation Code - Overnight Parking of Commercial Motor Vehicle in Residential Subdivision [Bracketed to 220,000+ counties]	B		
	(NEW) Sec. 5.012 Property Code - Notice of Obligations Related to Membership in Property Owners' Association		—	x
	Amends Chapter 201 Property Code - Restrictive Covenants Applicable to Certain Subdivisions [Expands bracket to 100,000+ cities + ETJs]	B		
	(NEW) Sec. 202.006 Property Code - Public Records (Ch. 202 - Construction and Enforcement of Restrictive Covenants)		—	—
	(NEW) Chapter 207 Property Code - Disclosure of Information by Property Owners Associations		—	— (?)
	Amends Sec. 27.034 Government Code - Deed Restriction Jurisdiction (Justice Courts)		—	—
	(NEW) Secs 551.0015 + 552.035 Gov. Code - Certain Property Owners' Associations Subject to Law (Open Meetings) [Bracketed for The Woodlands]	B/H		
1999 (continues)	Amends Sec. 32.05 Tax Code (Property) - - Priority of Tax Liens Over Other Property Interests		—	—
(continued) 1999	Amends Sec. 34.21 Tax Code (Property) - Right of Redemption		—	—
	Amends Sec 542.006 Transportation Code - Speed Restrictions on Private Roads [Bracketed]	B		

B = "Bracketed" statutes that apply to certain counties or cities based on a population bracket, hence not statewide.

YEAR ENACTED	STATUTE	APPLIES TO		
		Bracketed	STATEWIDE	
		Planned C. and/or Condo.	Planned Communities	Condo-miniums
	Amends Sec. 542.007 Transportation Code - Traffic Regulations: Private Subdivision in Certain Counties [Bracketed]	B		
	Amends Sec. 545.307 Transportation Code - Overnight Parking of Commercial Motor Vehicle in Residential Subdivision [Bracketed to 220,000+ counties]	B		
	Amends Sec. 206.002 Property Code - Extension of Restrictions Imposing Regular Assessments in Certain Subdivisions [Bracketed for Clear Lake Forest]	B/H		
	(NEW) Chapter 209 Property Code - Texas Residential Property Owners Protection Act		—	x
	(NEW) Sec. 352.111 et. seq. Local Gov. Code - Gated Multi-Unit Housing Projects [Bracketed to certain unincorporated areas]	B		
2001	Amends Sec. 542.007 Transportation Code - Traffic Regulations: Private Subdivision in Certain Counties [Bracket size increased]	B		
2003	WATCH FOR COMING ATTRACTIONS			

POA BILLS FILED IN 2001 (77th) TEXAS LEGISLATURE

Bills By Subject: Property Interests - Property Owners Association

Number of Bills: 18, of which 14 (78%) were filed by Houston area lawmakers **H**

Appendix B

FILED BILLS THAT BECAME LAW

SB 507 AUTHOR: Carona / et al. , SPONSOR: Dutton - Effective on 1/1/02
Relating to residential subdivisions that require membership in a property owners' association.

SB 620 AUTHOR: Jackson **H**, SPONSOR: Davis, John - Effective on 9/1/01
Relating to extension of restrictions imposing regular assessments in certain residential real estate subdivisions.

FILED BILLS THAT WERE NOT ENACTED:

HB 707 AUTHOR: Bailey **H**
Relating to the purchase or lease of a residence purchased by a property owners' association at the foreclosure sale of the association's lien.

HB 879 AUTHOR: Dutton **H**
Relating to requiring arbitration to establish a property owners' association lien for assessments.

HB 1423 AUTHOR: Bailey **H**
Relating to mandatory mediation for certain disputes involving a property owners' association.

HB 1580 AUTHOR: Coleman **H**
Relating to the creation of restrictions, the extension of, addition to, or modification of existing restrictions, and the reinstatement of expired restrictions in certain residential subdivisions.

HB 1859 AUTHOR: Davis, John **H**
Relating to extension of restrictions imposing regular assessments in certain residential real estate subdivisions.

HB 2592 AUTHOR: Davis, John **H**
Relating to fee agreements between attorneys and property owners' associations.

HB 2683 AUTHOR: Allen, SPONSOR: Madla
Relating to public improvement projects to enforce deed restrictions and perform architectural control.

HB 2685 AUTHOR: Bosse **H**
Relating to prohibiting certain attorney's fees from being included in the cost of foreclosure of a property owners' association's lien and establishing a right of redemption in relation to the foreclosure.

HB 2727 AUTHOR: Hilderbran
Relating to removal of certain discriminatory provisions in the dedicatory instruments of residential real estate subdivisions.

HB 3322 AUTHOR: Yarbrough **H** / et al.
Relating to restrictive covenants in certain residential real estate subdivisions.

POA BILLS FILED IN 2001 (77th) TEXAS LEGISLATURE

Bills By Subject: Property Interests - Property Owners Association

Number of Bills: 18, of which 14 (78%) were filed by Houston area lawmakers **H**

HB 3479 AUTHOR: Eiland **H**

Relating to the applicability of provisions governing the powers of property owner's associations concerning restrictive covenants in certain subdivisions.

HB 3517 AUTHOR: Turner, Bob

Relating to: a means to amend building restrictions in residential unincorporated subdivisions in counties with the population less than 65,000.

SB 1677 AUTHOR: Jackson **H**, SPONSOR: Eiland

Relating to the applicability of provisions governing the powers of property owners associations concerning restrictive covenants in certain subdivisions.

SB 1834 AUTHOR: Lindsay **H** / et al., SPONSOR: Solomons

Relating to reimbursements to property owners following foreclosure, sales by property owners' associations.

SB 1835 AUTHOR: Lindsay **H** / et al.

Relating to encumbrances that may be fixed on homestead property.

SJR53 AUTHOR: Lindsay **H** / et al.

Proposing a constitutional amendment permitting an encumbrance to be fixed on homestead property for an obligation to pay certain property owners' association fees without permitting the forced sale of the homestead.

Texas Legislature Online

Revised: 08/22/2001

Appendix C

DOCUMENT DEFINITIONS

**TEXAS PROPERTY CODE DEFINITIONS PERTAINING TO
THE DOCUMENTS THAT CREATE OR GOVERN A COMMON INTEREST COMMUNITY**

TX. PROP. CODE SECTION	DEFINITION
201.003.(1)	" 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 county real property records, map records, or deed records.
202.001.(1)	" Dedictory instrument " means each governing instrument covering the establishment, maintenance, and 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 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, or to all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.
202.001.(4)	" Restrictive covenant " means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.
203.002.	" Restriction " means a limitation that affects the use to which real property may be put, fixes the distance at which buildings or other structures must be set back from property, street, or lot lines, affects the size of lots, or affects the size, type, or number of buildings or other structures that may be built on the property.
204.001.(1)	" Restrictions " has the meaning assigned by §201.003.
204.001.(2)	" Dedictory instrument " and " restrictive covenant " have the meanings assigned by §202.001.
205.001.(1)	" Restrictions " has the meaning assigned by §201.003.
206.001.(2)	" Dedictory instrument " and " restrictive covenant " have the meanings assigned by §202.001.
207.001.(1)	" Restrictions " has the meaning assigned by §201.003.
207.001.(2)	" Dedictory instrument " and " restrictive covenant " have the meanings assigned by §202.001.
208.001.(2)	" Dedictory instrument " and " restrictive covenant " have the meanings assigned by §202.001.

TX. PROP. CODE SECTION	DEFINITION
209.002.(3)	"Declaration" means an instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision.
209.002.(4)	"Dedicator 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.
209.002.(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.
209.002.(11)	"Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.
221.002.(15)	"Project instrument" means one or more recordable documents, by whatever name denominated, applying to the whole of a timeshare project and containing restrictions or covenants regulating the use, occupancy, or disposition of units in a project, including a master deed, master lease, declaration, or bylaws for a condominium.
81.002.(5)	"Declaration" means the instrument that establishes property under a condominium regime.
81.002.(8)	"Master deed" means a deed that establishes property under a condominium regime.
82.003.(a)(11)	"Declaration" means a recorded instrument, however denominated, that creates a condominium, and any recorded amendment to that instrument.

ASSOCIATION DEFINITIONS

TEXAS PROPERTY CODE DEFINITIONS PERTAINING TO THE ASSOCIATION OF OWNERS OF LOTS OR UNITS IN A COMMON INTEREST COMMUNITY

TX. PROP. CODE SECTION	DEFINITION
202.001.(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.
204.004.(a)	A property owners' association is a designated representative of the owners of property in a subdivision and may be referred to as a "homeowners association," "community association," "civic association," "civic club," "association," "committee," or similar term contained in the restrictions. The membership of the association consists of the owners of property within the subdivision.
205.001.(2)	" Property owners' association " has the meaning assigned by §202.001.
206.001.(1)	" Community association " means an incorporated association created to enforce restrictions.
207.001.(2)	" property owners' association " has the meaning assigned by §202.001.
208.001.(2)	" property owners' association " has the meaning assigned by §202.001.
209.002.(2)	" Board " means the governing body of a property owners' association.
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.
81.002.(4)	" Council of owners " means all the apartment owners in a condominium project.
82.003.(a)(3)	" Association " means the unit owners' association organized under §82.101.
82.003.(a)(4)	" Board " means the board of directors or the body, regardless of name, designated to act on behalf of the association.

PROPERTY DEFINITIONS

TEXAS PROPERTY CODE DEFINITIONS PERTAINING TO COMMON INTEREST COMMUNITY

TX. PROP. CODE SECTION	DEFINITION
201.003.(2)	" Residential real estate subdivision " or " subdivision " means: (A) all land encompassed within one or more maps or plats of land that is divided into two or more parts if the maps or plats cover land within a city, town, or village, or within the extraterritorial jurisdiction of a city, town, or village and are recorded in the deed, map, or real property records of a county, and the land encompassed within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only; <u>or</u> (B) all land located within a city, town, or village, or within the extraterritorial jurisdiction of a city, town, or village that has been divided into two or more parts and that is or was burdened by restrictions limiting at least a majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county.
204.001.(1)	" residential real estate subdivision " and " subdivision " have the meanings assigned by §201.003.
205.001.	" subdivision " has the meaning assigned by §201.003.
207.001.(6)	" Subdivision " means all land that has been divided into two or more parts and that is or was burdened by restrictions limiting at least the majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county.
209.002.(5)	" Lot " means any designated parcel of land located in a residential subdivision, including any improvements on the designated parcel.
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; <u>and</u> (C) require membership in a property owners' association that has authority to impose regular or special assessments on the property in the subdivision.
82.003.(a)(23)	" Unit " means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described by the declaration.

Appendix D

LIST OF STATUTES USEFUL IN WORKING WITH TEXAS PROPERTY OWNERS ASSOCIATIONS

Updated September 2001

The following list of federal and state statutes does not purport to be complete or exhaustive. It is offered as a handy reference to many of the laws that property owners associations in Texas - and their attorneys - use from time to time. It identifies but does not detail statutes bracketed for the Houston area.

SOME PERTINENT FEDERAL LAW

1. Bankruptcy Code, Rules, and Forms, Title 11 of United States Code
2. Fair Housing Act, 42 U.S.C.A. '3600, *et seq*
3. Federal Fair Debt Collection Practices Act, 15 U.S.C.A. '1692
4. Income Tax Code, 26 U.S.C.A. '528, Certain Homeowners Associations
5. Telecommunications Act of 1996, 47 U.S.C.A. "151, 154, 207, 303 & 309(j)

SOME PERTINENT TEXAS STATUTES & RULES (alphabetical by topic)

1. **ASSOCIATIONS** - Incorporated or Not
 - a. Associations - Incorporated. *Texas Non-Profit Corporation Act*, Article 1396, Texas Revised Civil Statutes.
 - b. Associations - Incorporated. All corporations - business and nonprofit - are subject to *Texas Miscellaneous Corporation Act*, Article 1302, Texas Revised Civil Statutes.
 - c. Associations - Unincorporated. *Texas Uniform Unincorporated Nonprofit Association Act*, Article 1396-70.01, Texas Revised Civil Statutes. Enacted 1995.
2. **ATTORNEYS FEES**
 - a. Attorney's Fees in Breach of Restrictive Covenant Action, '5.006, Texas Property Code.
 - b. Recovery of Attorney's Fees, '38.001 *et seq*, Texas Civil Practice & Remedies Code (for use in breach of contract case).
 - c. Attorney's Fees with Declaratory Judgment. Uniform Declaratory Judgments Act, §37.009, *et seq*, Texas Civil Practice & Remedies Code.

- d. Non-Condo POAs. §209.008, Texas Property Code, applicable to all mandatory POAs except condos. Enacted 2001 as S.B. 507, to be effective January 1, 2002.
- 3. **BAD CHECKS**. You may not charge more than \$25 as a processing fee for a bounced check, according to *Processing Fee by Holder of Dishonored Check*, Article 9022, Texas Revised Civil Statutes. See also: *Issuance of Bad Check*, Texas Penal Code '32.41; *Fee for Collecting and Processing Sight Order*, Texas Criminal Procedures Code '102.007; *Justice Court Dishonored Check*, Texas Criminal Procedures Code '102.0071.
- 4. **COMMUNITY HOMES**. *Community Homes for Disabled Persons Location Act*, Chapter 123, Texas Human Resources Code. Restrictions may not prohibit qualified community homes. Enacted 1991, Amended 1999.
- 5. **CONDOMINIUMS**
 - a. Condominiums created after 1993 are subject to the *Texas Uniform Condominium Act (TUCA)*, Chapter 82, Texas Property Code. Enacted 1993, Effective 1/1/94, Amended 1997.
 - b. Pre-TUCA Condominiums - created before 1994 - are subject to the *Texas Condominium Act*, Chapter 81, Texas Property Code, which was enacted in 1963. Since January 1, 1994, pre-TUCA condominiums are ALSO subject to 14 sections of the Texas Uniform Condominium Act (**TUCA**), Chapter 82, Texas Property Code.

| *Which 14 sections of TUCA? The ones listed in §82.002(c), which are:*

"82.005, 82.006, 82.007, 82.053, 82.054, 82.102(a)(1)-(7) and (12)-(22), 82.108, 82.111, 82.113, 82.114, 82.116, 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 above 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.

— *But, §82.108, which requires open board meetings, became applicable to pre-TUCA condos on January 1, 1998.*

| *EXCEPTION: Pre-TUCA condominiums may amend their declarations to be governed exclusively by TUCA, in its entirety. Consult legal counsel to determine if such amendment is advisable for your condominium.*

6. CONSTRUCTION & CONTRACTORS

- a. Residential Construction Liability Act (aka RECLA), Chapter 27, Texas Property Code. Enacted 1989, Amended 1993 & 1999.
- b. Prompt Payment to Contractors and Subcontractors. Chapter 28, Texas Property Code. Enacted 1993, Amended 1999.
- c. Mechanics & Materialman's Liens. There are 2 authorities for M&M liens in Texas. The constitutional lien is found in Art. XVI, Sec. 37 of the Texas Constitution. The statutory lien is

found in Chapter 53 of the Texas Property Code, which is titled *Mechanic's, Contractor's, or Materialman's Lien*. The M&M statute was enacted in 1983, substantially amended in 1997, and amended again in 1999.

7. **COOPERATIVES.** *Cooperative Association Act*, Article 1396-50.01, Texas Revised Civil Statutes. Enacted 1975, Amended 1977-1997.
8. **DEBT COLLECTION ACT**, Chapter 392, Texas Finance Code.
9. **DECLARATORY JUDGMENTS.** *Uniform Declaratory Judgments Act*, '37.001, *et seq*, Texas Civil Practice & Remedies Code.
10. **DIRECTORS & OFFICERS - Liability**
 - a. Limitation of Liability, Article 1302-7.06, Texas Miscellaneous Corporation Laws Act, Texas Revised Civil Statutes. Enacted 1987, Amended 1989-1999.
 - b. Charitable Immunity & Liability Act of 1987, Chapter 84, Texas Civil Practice & Remedies Code. Covers "a homeowners association as defined by Section 528(c) of the Internal Revenue Code of 1986." Enacted 1987, Amended 1997 & 1999.
11. **DOCUMENTS - Project Documents, Governing Documents, Restrictions**
 - a. Recording. *Public Records*, '202.006, Texas Property Code, requires every mandatory property owners association (condo & non-condo) to file each of its governing documents in the county's real property records. Enacted 1999.
 - b. Amendment of Restrictions. *Restrictive Covenants Applicable to Certain Subdivisions*, Chapter 201, Texas Property Code. Provides a petition process for amending otherwise-impossible-to-amend restrictions. For subdivisions in cities of 100,000+ or in unincorporated areas in and around Harris County. Enacted 1985, Amended 1987-1997, Amended 1999 - statewide applicability.
 - c. Amend for FHA or VA. '205.004, Texas Property Code, allows a majority of owners to amend the declaration to comply with HUD/FHA or VA requirements. Owners must sign the amendment. Applies to counties with at least 65,000 people. Enacted 1997.
 - d. Interpretation. Requires "liberal" construction of restrictive covenants, thus reversing common law of "strict" or "narrow" construction. '202.003, Texas Property Code. Enacted 1987.
 - e. Preparation of Documents Affecting Title to Real Property. Only Texas attorneys and brokers may be compensated for preparing documents affecting title to real property (such as lien notices). *Certain Unauthorized Practice of Law, Chapter 83, Texas Government Code*. Enacted 1989.
 - f. Recording Requirements. Chapters 11, 12, and 13, Texas Property Code, particularly:
 - '11.001 - *Place of Recording* (record in county where property located)
 - '12.001 - *Instruments Concerning Property* (signature & acknowledgment)
 - '13.002 - *Effect of Recorded Instrument* (notice to the world)

13. **EMPLOYEES.** This list does not address the body of state and federal law dealing with employees and labor relations. If a POA has employees, be mindful of those bodies of laws.
14. **ENFORCEMENT OF RESTRICTIONS**
- a. Enforcement by Owners Association. *Construction and Enforcement of Restrictive Covenants*, Chapter 202, Texas Property Code. Authorizes court-awarded civil damages up to \$200 per day of violation. Enacted 1987.
 - b. Enforcement by Justice Court. *Deed Restriction Jurisdiction*, '27.034, Texas Government Code. Adopted 1995 (bracketed for Houston area). Amended 1997 (expanded statewide) & 1999 (prohibits injunctive relief).
 - c. Enforcement by County Attorney. *Enforcement of Land Use Restrictions in Certain Counties* (population 200,000+), Chapter 203, Texas Property Code. Enacted 1987, Amended 1997.
15. **EXEMPT PROPERTY.** Title 5, Chapters 41 (Homestead) and 42 (Personal Property), Texas Property Code.
16. **FAIR HOUSING.** *Texas Fair Housing Act*, Title 15, Chapter 301, Texas Property Code.
17. **FORECLOSURE OF REAL PROPERTY**
- a. Nonjudicial. *Provisions Generally Applicable to Liens*, Chapter 51, particularly '51.002, Texas Property Code.
 - b. Condominiums. '82.113 of TUCA, Chapter 82, Texas Property Code, applicable to condominiums only. Enacted 1993. Applies to all condominiums (pre-TUCA & post-TUCA).
 - c. Non-Condo POAs. '209.009-011, Texas Property Code, applicable to all mandatory POAs except condos. Enacted 2001 as S.B. 507, to be effective January 1, 2002.
18. **GATED Multi-Unit Housing Projects,** '352.111 et. seq., Subchapter E, Chapter 352, Local Government Code. Enacted 2001 as S.B. 1147, to be effective September 1, 2001.
19. **HARRIS COUNTY**
- Chapter 204, Texas Property Code, *Powers of Property Owners= Association Relating to Restrictive Covenants in Certain Subdivisions*. Enacted 1995.
 - Chapter 206, Texas Property Code, *Extension of Restrictions Imposing Regular Assessments in Certain Subdivisions*. Enacted 1997, Amended 2001 by S.B. 620.
 - Chapter 207, Texas Property Code, *Restrictive Covenants Applicable to Certain Nonresidential Property*. Enacted 1999.
 - Chapter 208, Texas Property Code, *Amendment and Termination of Restrictive Covenants in Historic Neighborhoods*. Enacted 1999 as Chapter 207, renumbered in 2001 by H.B. 2812.
20. **HOMESTEAD.** See Exempt Property.
21. **INTEREST,** Title 4, Subtitle A, §301 *et seq*, Texas Finance Code.

22. **JURISDICTION** of Justice Court and Small Claims Court, Texas Government Code: §27.031 (Justice Court) and '28.003 (Small Claims Court).

23. **MANAGEMENT CERTIFICATE**

- a. Condominiums. §82.116 of TUCA, Chapter 82, Texas Property Code, applicable to condominiums only. Enacted 1993. Applies to all condominiums (pre-TUCA & post-TUCA).
- b. Non-Condo POAs. §209.004, Texas Property Code, applicable to all mandatory POAs except condos. Enacted 2001 as S.B. 507, to be effective January 1, 2002.

24. **MEETINGS**

- a. Condominiums. Board meetings and association meetings must be open to members. However, the board may go into closed executive session for certain limited purposes. §82.108 of TUCA, Chapter 82, Texas Property Code. Enacted 1993, Amended 1997. The 1997 amendment became effective January 1, 1998, and applies to all condominiums (pre-TUCA & post-TUCA).
- b. Select POAs. A limited category of mandatory property owners association are subject to government open meeting laws and open records laws. Bracketed to Harris County and surrounding counties, and limited to POAs with assessments based on tax values. §§551.0015 + 552.0035, Texas Government Code. Enacted 1999.

25. **NON-CONDOMINIUMS - POAs, PDs, PUDs, MUDs, PIDs**

- a. Powers of Property Owners Association Relating to Restrictive Covenants in Certain Subdivisions, Chapter 204, Texas Property Code. Bracketed for Harris County. Enacted 1995.
- b. PUD District. Designation of a Planned Unit Development District in Extraterritorial Jurisdiction, §42.046, Texas Local Government Code.
- c. MUDs. Municipal Utility Districts, Chapter 54, Texas Water Code. Enacted 1971.
- d. PIDs. Public Improvement Districts, Subchapter A, Chapter 372, Texas Local Government Code. Enacted 1987.

26. **RECORDS - OPEN**

- a. Corporations. §1396-2.23 + 2.23A, Texas Non-Profit Corporation Act.
- b. Unincorporated POAs. §1396-70.01, Sec. 11, Texas Uniform Unincorporated Nonprofit Association Act.
- c. Condominiums. §82.114(b) of TUCA, Chapter 82, Texas Property Code, applicable to condominiums only. Enacted 1993. Applies to all condominiums (pre-TUCA & post-TUCA).
- d. Non-Condo POAs. '209.005, Texas Property Code, applicable to all mandatory POAs except condos. Enacted 2001 as S.B. 507, to be effective January 1, 2002.

27. **ROOFS.** *Wood Shingle Roof*, '5.025, Texas Property Code. Restrictions requiring use of wood shingle roofs are void. Enacted 1983.

28. **SALES OF UNITS OR LOTS**

- a. Condominium - Resale Certificate. Resales of units (residential and non-residential) in pre-TUCA and post-TUCA condominiums are subject to '82.157 of TUCA, which requires a condominium resale certificate executed by the condominium association if a written request received from seller. Enacted 1993.
- b. Unit (Condo) and Lot (Non-Condo) - Resale Certificate. Resales of units and lots in developments with mandatory property owners associations are subject to Chapter 207, Texas Property Code, which requires a resale certificate executed by the owners association if a written request received from (1) seller, (2) seller=s agent, or (3) seller=s title insurance company. Does not apply to nonresidential developments. Does not expressly exempt condominiums. Enacted 1999. NOTE: In 1999 Texas enacted 3 bills adding Chapter A207" to Property Code. This refers to the one titled ADisclosure of Information by Property Owners Association.@
- c. Lots (Non-Condo) - Notice of POA. Sales of residential lots in developments with mandatory property owners associations (non-condo only) are subject to '5.012, Texas Property Code, which requires sellers to give purchasers a ANotice of Obligations Related to Membership in Property Owners Association.@ The POA has no responsibility for this notice. Enacted 1999.

29. **SEX OFFENDER Registration Program**, Chapter 62, Texas Code of Criminal Procedure (formerly Art. 6252-13c.1 VACS). Enacted 1991, Amended 1993-1999.

30. **STREETS - Public & Private**

- a. Overnight Parking of Commercial Motor Vehicles in Residential Subdivision, §545.307, Texas Transportation Code. Applies to deed restricted residential subdivisions in counties with 220,000+ population. Enacted 1997, Amended 1999.
- b. Private Roads. Rules on Private Property - §542.005 and Speed Restrictions on Private Roads - '542.006, Texas Transportation Code. Enacted 1995.
- c. Private Subdivision in Certain Counties (under 10,000 population) - roads can be regulated by the county if petitioned by property owners. §542.007, Texas Transportation Code. Enacted 1999.

31. **SUBDIVISION REGULATION**. Texas Local Government Code: Chapter 212 - *Municipal Regulation of Subdivision and Property Development*; Chapter 232 - *County Regulation of Subdivisions*.

32. **SWIMMING POOL.** *Pool Yard Enclosures*, Chapter 757, Texas Health & Safety Code. Enacted 1993.

33. **TAXES**

- a. Appraisal for Property Taxes. Condominium and Planned Unit Developments, §25.09, Texas Tax Code. Enacted 1979, Amended 1981.

- b. Nominal Property Tax. *Property Owned by a Nonprofit Homeowners= Organization for the Benefit of Its Members*, §23.18, Texas Tax Code. Enacted 1981.
 - c. Franchise Tax. Incorporated associations are liable for the annual State franchise tax - unless granted an *Exemption - Certain Homeowners= Associations*, §171.082, Texas Tax Code. Enacted 1981, Amended 1995.
 - d. Priority of Tax Liens Over Other Property Interests. §32.05, Texas Tax Code. Amended 1999.
 - e. Obligation for POA Assessments when owner redeems after property tax foreclosure. §34.21, Texas Tax Code. Enacted 1979, Amended 1989-1999.
34. **TENANT/LANDLORD LAW**. This list does not address the body of State law dealing with tenant/landlord, which applies to POAs that own and lease units or homes. TAA's Redbook has a good compilation of tenant/landlord laws.
35. **TIMESHARING**. *Texas Timeshare Act*, Chapter 221, Texas Property Code. Enacted 1987, Amended.
36. **TOWING**
- a. *Abandoned Motor Vehicles*, Chapter 683, Texas Transportation Code. Enacted 1995, Amended 1999.
 - b. *Removal of Unauthorized Vehicle from Parking Facility or Public Roadway*, Title 7, Chapter 684, Texas Transportation Code. Enacted 1995, Amended 1997.
37. **UTILITIES**
- a. Cutoff (Any Utility). *Landlord Liability to Tenant for Utility Cutoff*, '92.301, Texas Property Code. Enacted 1989, Amended 1995.
 - b. Cutoff (Any Utility). *Interruption of Utilities*, §92.008, Texas Property Code. Enacted 1983, Amended 1985-1995.
 - c. Electric Cutoff. *Central System or Nonsubmetered Master Metered Utilities*, §25.141, Texas Administrative Code (Title 16, Part 2 [PUC], Chapter 25).
 - d. Electric Submetering. *Submetering for Apartments, Condominiums, and Mobile Home Parks*, §25.142, Texas Administrative Code (Title 16, Part 2 [PUC], Chapter 25).
 - e. Water Cutoff. *Discontinuance of Service*, §291.88, Texas Administrative Code (Title 30, Part 1 [TNRCC], Chapter 291).
 - f. Water Submetering. *Submetering and Plumbing Fixtures*, §13.502 + 13.506, Chapter 13, Texas Water Code, amended 2001 by H.B. 2404 to require individual or submetering of water for condominium units built after January 1, 2003.
 - g. Gas Submetering. *Gas Distribution in Mobile Home Parks, Apartment Houses, and Apartment Units*, §7.46, Texas Administrative Code (Title 16, Part 1 [RR Comm.], Chapter 7).

38. VIOLATIONS

- a. Condominiums. §82.102(a)(12), (c) + (d) of TUCA, Chapter 82, Texas Property Code, applicable to condominiums only. Enacted 1993. Applies to all condominiums (pre-TUCA & post-TUCA).
- b. Non-Condo POAs. §209.006-008, Texas Property Code, applicable to all mandatory POAs except condos. Enacted 2001 as S.B. 507, to be effective January 1, 2002.
- c. Harris County. §204.010(a)(11), Texas Property Code. Applies only to non-condo POAs in Harris County.