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REPRESENTING PROPERTY OWNERS ASSOCIATIONS FOR MORE THAN 25 YEARS

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TEXAS POA LEGISLATIVE UPDATE
By: Connie N. Heyer

The Texas Legislature is in full swing, and there have been more than 50 bills filed that directly or significantly affect POAs and their members. The bill filing deadline was Friday March 15th. There are far fewer POA bills this session than last (130+ in the 2011 session), but plenty to be excited about and concerned about.

This article will highlight some of the more important bills. Some would benefit POAs. Many have the potential to be quite detrimental.

All opinions expressed are those of Connie Heyer individually. Connie is also on the board of directors of Texas Community Association Advocates (TCAA), a nonprofit trade organization whose express purpose is to protect, preserve, and enhance property and a POA's ability to perform its functions. The TCAA board consists of homeowners, management professionals, POA lawyers, and other POA service providers. Connie is also a former board member and past president of the Austin chapter of the Texas Community Associations Institute.

Please feel free to call or email me with any questions at conniehey@niemannlaw.com. TCAA has not issued any "legislative alerts" to date requesting its members to contact their legislators to oppose or support bills, but please keep an eye out for them, they may be coming.

"HB" denotes a House Bill, and "SB" denotes a Senate Bill.

XERISCAPE / LANDSCAPE:

SB 198 – (Sen. Kirk Watson): *Applicable to condos and HOAs.* As-originally filed this bill would have prohibited POAs from placing any restrictions on the installation of "drought-resistant landscaping or water-conserving turf." Thus, it would have given owners the statutory right to install artificial turf or cover the yard with lava rocks (both of which I have witnessed and dealt with in the past for POA clients!) TCAA brought these concerns to Sen. Watson, who worked with TCAA and filed a committee substitute that retains a POA's ability to require submittal and approval of plans to ensure aesthetic compatibility

with other landscaping, and specifically references "natural" turf to be clear that artificial turf is not contemplated.

Rep. Dawna Dukes has filed HB 449 (*applicable to HOAs and condos*), which in current form prohibits a POA from "unreasonably restricting" xeriscape-type installations. This bill is pending in its committee.

HB 727 (Rep. Cindy Burkett): *Applicable to condos and HOAs.* This bill removes all authority of POAs to regulate installation of "drought resistant landscaping, including cacti". Hello Astro-turf and lava rocks! TCAA testified in opposition to this bill at its hearing on March 19th. This bill was left pending in committee. There is no way to be certain, but the Watson and Dukes bills appear to have less opposition, and thus in my judgment have a leg up on this bill.

HB 1858 (Rep. Paul Workman): *Applicable to condos and HOAs.* As filed this bill gives a POA owner total discretion to remove any tree on this lot that the owner "believes" to be a fire risk. This bill has the potential to have unintended consequences, people who want to remove a tree can simply claim that they believe it to be a fire risk. This bill has not been set for hearing as of March 20th.

HB 680 (Rep. Cindy Burkett): *Applicable to condos and HOAs.* This bill further restricts a POA's ability to control flag placement (major flag legislation passed in the 2011 session.) It gives owners the express right to have a flag pole in their front yard (often in zero-lot line situations this is awkward or aesthetically inferior to a side yard or back yard placement.) TCAA believes the bill does not address the right of an ACC to exercise appropriate review. This bill was voted out of the House Business & Industry Committee on March 19th, and will head eventually to the House floor for a vote.

VOTING PROVISIONS:

HB 818 – (Rep. James White): *Applicable to HOAs, n/a to condos.* This bill authorizes POAs to have "secret" ballots. Current law requires all ballots to be signed (to ensure accuracy and prevent fraud) but protects privacy by expressly prohibiting owners from seeing (even upon request) the ballots – the POA may NOT produce them to residents and no vote tallier may disclose how any one person voted.

This bill is pending in the House Business & Industry Committee as of March 20th.

GOVERNMENTAL OVERSIGHT OF POAS:

HB 3803 – (Rep. Ruth McClendon): *Applicable to condos and HOAs.* This bill is of significant concern as it jeopardizes homeowner’s rights and ability to administer their own POA. The bill would establish a government bureaucracy with far-reaching powers of oversight to regulate, enforce, and impose red tape on POAs. TCAA is closely tracking its movement and will alert its stakeholders if action to contact legislators is needed. *Sign up to be on TCAA’s alert list on their website, www.txcaa.org.*

GOVERNMENTAL OVERSIGHT OF POAS:

SB 1202 – (Sen. Royce West): This bill is of concern as it expressly allows a judge to require lienholders using the expedited foreclosure process (POAs are one of the lienholders required to use this process) to go to mediation with the debtor. A judge can order the parties to mediate even if the debtor doesn’t even file an answer and the POA would otherwise be entitled to a default judgment.

Expedited foreclosure is meant to give a debtor “his day in court” to ensure that the POA or other lienholder claiming a lien truly has a lien for the amount requested, and it serves a valuable purpose. But it is supposed to be an expedited and efficient, cost-effective process. POAs already have to offer payment plans to owners under the POAs adopted payment plan guidelines. This bill would give judges determined to favor debtors (and there are many of them) the ability to force lienholders like POAs to bear more costs and prolong the process, by requiring mediation. This bill is set for hearing on March 26th in the Senate Jurisprudence committee.

ENERGY:

SB 440 – (Sen. Brian Birdwell) and HB 2524 (Rep. Rene Oliveira): *Applicable to condos and HOAs.* These bills are of concern. They give owners broad discretion to install generators on their lots, and significantly limit a POAs ability to regulate the installation. TCAA will attempt to address all concerns. Neither bill has been set for hearing as of March 20th.

HB 3780 (Rep. Jason Isaac). *Applicable to condos and HOAs.* This bill gives owners the right to install liquid propane tanks on their lots of a size sufficient to meet the gas requirements of the home. The only oversight a POA would have would be the ability to mandate screening of the tank. The bill also prohibits

municipalities from prohibiting tank installations. As of March 20th this bill has not been set for hearing.

CONDOMINIUM LAWS:

HB 2075 (Rep. Rafael Anchia) and SB 1231 (Sen. Royce West): This bill would address lingering issues in condo statutes by giving condo associations more flexibility in dealing with insurance deductibles and in obtaining loans, among other items. TCAA supports these bills. Neither bill has had a hearing as of March 20th.

HB 1933 (Rep. Alma Allen): This bill would apply the (quite complicated) open meetings and record production requirements of HOAs to condos. The HOA requirements were adopted in the 2011 session. The condo act already requires open meetings and owner access to records, but this would significantly complicate the procedures. As of March 20th this bill has not been set for hearing.

HOW TO GET INVOLVED: Contact our firm, connieheyer@niemannlaw.com, and visit www.txcaa.org.

You can find out what legislators represent you, and their contact information, by visiting www.capitol.state.tx.us and clicking on “who represents me?” You may also pull up the full text of any bill on this same site by clicking on “bill lookup” and entering the bill number.

NIEMANN & HEYER LLP. Our firm was founded over 40 years ago and has since its inception focused on real estate law, representing numerous real estate trade organizations and focusing on property owners’ association (POA) representation. Our lawyers have lobbied the Texas Legislature for more than 20 years on behalf of POAs. Our lawyers have been instrumental in drafting all major POA statutes in the last 20 years, including the Texas Uniform Condominium Act and the Texas Real Property Owners Protection Act. Currently, our firm represents over 150 POAs in central Texas, ranging in size from an eight-unit condominium development to a subdivision with over 5,000 residences.

Services include deed restriction enforcement, deed restriction drafting, litigation, and full-service collections. Our state-of-the art web-based collection software enables all board members and managers remote access to a secure system showing real-time status of all collection activity on their association’s accounts.