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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. 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 the status of some of the more important bills.

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 connieheyer@niemannlaw.com.

"HB" denotes a House Bill, and "SB" denotes a Senate Bill. A bill must generally pass a Senate Committee vote, a vote of the full Senate, a House committee vote, and a vote of the full House, in order to pass.

XERISCAPE / LANDSCAPE:

SB 198 – (Sen. Kirk Watson; Rep. Dawna Dukes): *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. *This bill has passed the Senate and has been voted out of its House committee on April 22nd. It still needs to be*

approved by a full House vote but appears to be on its way to passage.

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. *It appears unlikely to pass as it has not met the deadlines for movement through the legislative process. (But there is always the possibility of the language being amended onto other bills that are further along in the process.)*

HB 1858 (Rep. Paul Workman). *Applicable to condos and HOAs.* As filed, and in its current committee substitute form, 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. *It appears unlikely to pass as it has not met the deadlines for movement through the legislative process. (But there is always the possibility of the language being amended onto other bills that are further along in the process.)*

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 has been approved the House, and has been set for a Senate hearing. *TCAA is working on Senate amendments that would make the bill satisfactory.*

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. *It appears unlikely to pass as it has not met the deadlines for movement through the legislative*

process. (But there is always the possibility of the language being amended onto other bills that are further along in the process.)

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 as-filed would establish a government bureaucracy with far-reaching powers of oversight to regulate, enforce, and impose red tape on POAs. The bill’s current substitute form is still in TCAA’s opinion a governmental overreach, requiring certain fidelity insurance for all HOAs in Texas. TCAA is closely tracking its movement and has issued alerts in the past for this bill, and our firm has sent alerts as well. *Sign up to be on TCAA’s alert list on their website, www.txcaa.org, or contact me if you would like to be on my distribution list, connieheyer@niemannlaw.com*
This bill has not been voted on yet by the full House so appears unlikely to pass.

HOA CONTRACTS WITH BOARD MEMBERS:

HB 503 – (Rep. Hernandez) *n/a to condos; applicable to HOAs only.* This bill prohibits HOA boards from entering into a contract with a board member, relative of a board member, or entity in which a board member owns more than a 51% interest unless: (1) the HOA gets at least 2 other competing bids if reasonably possible; (2) the relationship of the board member to the company are disclosed or known to the board and the contract is approved by majority vote of disinterested directors (3) the interested board members is not given access to other bids, does not participate in discussion, and does not vote on the contract; and (4) the board approves a resolution by a majority of disinterested directors confirming that all the requirements of this law have been followed. *This bill has passed the House and is currently awaiting vote by a Senate committee.*

COLLECTION COST INCREASES:

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 has passed the Senate but has not yet been voted out of its House 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. *SB 440 has not been set for hearing. HB 2524 was approved by its House committee on April 15th but has had no further action.*

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. *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. *This bill has passed the House but has yet to be approved on the Senate side. There is talk of a Senate amendment that would apply the complex record-production requirements applicable to HOAs to condos. TCAA is not in favor of any such amendment.*

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. *It appears unlikely to pass as it has not met the deadlines for movement through the legislative process. (But there is always*

the possibility of the language being amended onto other bills that are further along in the process.)

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 200 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.