

# 2011 TEXAS BILLS PERTAINING TO COMMON INTEREST DEVELOPMENTS (POAs, HOAs, Condos)

IN NUMERICAL ORDER BY CHAMBER ~ BILLS POSTED ONLINE THROUGH 2/24/11

Prepared by Sharon Reuler - Page 1 of 13

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BILL NO. AUTHOR	SUBJECT	Single or Multi- Purpose	Statute/ Code Affected	Bracketed or Statewide	Property Type	Last Action 2011
<b>HOUSE BILLS</b> (in numerical order)						
<a href="#">HB 44</a> Menendez	<b>USES - ADJOINING LOTS.</b> Defines "residential purpose" in a peculiar way, and allows owner of adjoining lots to use the "extra" lot for any "residential purpose". <i>(Designed to tackle one constituent's beef with his HOA?)</i>	Single	TPC 202 - adds 202.0075	Statewide	SF & Condo	B+I Hearing 2/28
<a href="#">HB 45</a> Menendez	<b>ASSESS - LIEN.</b> Authorizes homeowner to record a notice of HOA lien release under certain circumstances, similar to right given to title companies in 2009.	Single	TPC Ch. 12 adds 12.0171	Statewide	SF & Condo	B+I Hearing 2/28
<a href="#">HB 175</a> Jackson	<b>USES - Booze.</b> Not POA-Specific. Requires permit for on-premises alcohol consumption. May apply to POAs with party rooms. Proposed definition of "a public place" as any premises other than a private residence could become problematic if it migrates to other codes.	Single	Alcohol Bev Code - adds Ch 56	Statewide	SF & Condo	Lic&Admin Hearing 3/1
<a href="#">HB 232</a> White	<b>RESTRICTIONS - AMEND &amp; RENEW.</b> Makes amendments adopted under Chapter 211 effective when publicly recorded, even if the restrictions specify a date certain for amendments to be effective. <i>(An unusual circumstance.)</i>	Single	TPC 211.002 amends (b), adds (d) + (e)	Bracketed	SF only	Land & Res Mgmt
<a href="#">HB 362</a> Solomons	<b>USES - SOLAR &amp; ROOFS.</b> <i>Purpose #1</i> - Gives owner carte blanche to install a "solar energy device" (using an odd Tax Code definition), subject to right of POA to enforce a few limitations, such as "only on roof or within fenced yard." [HINT. Get rid of (c), which VOIDS restrictions, as unnecessary and possibly fraught with unintended consequences.] <i>Purpose #2</i> - POA can't stop owner from using roofing shingles that are similar to the "standard" in appearance, even though the specs are different.	Dual	TPC 202 adds 202.010 & 202.011	Statewide	SF & Condo	B+I Hearing 2/28
<a href="#">HB 364</a> Turner	<b>CONDOMINIUM - HOUSTON ONLY.</b> [Bracketed for Houston] <b>SECTIONS 2-4</b> > Amends TUCA to increase disclosures by declarant to buyer (in CIS), and by owner to appraisal district. <b>SECTIONS 1&amp;5</b> > Amends Local Govt Code to let Houston use eminent domain to eliminate blight if no construction activity on a condo project for 1 yr. <i>(Heads up, Houston condo developers!)</i>	Dual	TPC 82 (TUCA) 82.118 - adds (c), amends 82.153(a)(12), <u>AND</u> Local Govt Code Ch 214, adds Subch I, which ties to Govt Code 2206.001(b)	Bracketed	Condo only	Land & Res Mgmt
<a href="#">HB 366</a> Orr	<b>ASSESS - PAYMENTS.</b> Mandates how POA applies owners' payments - with only 4 categories that do not cover all types of charges. [Weirdly placed in a foreclosure section. Uses "debt" to refer to owner's account. ]	Single	TPC 209.009 adds (b)	Statewide	SF only	B+I

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BILL NO. AUTHOR	SUBJECT	Single or Multi- Purpose	Statute/ Code Affected	Bracketed or Statewide	Property Type	Last Action 2011
<a href="#">HB 410</a> Craddick	<b>ASSESS - COLLECTION.</b> <u>Not POA-specific.</u> Prohibits a debt collector from collecting a fee to assist a consumer in arranging credit for personal, family or household purposes, and deems such a fee to be a usurious charge of interest. Doesn't exempt or address assessment collection by HOA manager or attorney. If not intended to apply, may need an exemption. <i>(Same as HB 656, 661, 1323, and SB 251, 253)</i>	Single	Finance Code, adds Sec. 302.003 & 393.308, and amends 393.001(3)	Statewide	?	Financial Services
<a href="#">HB 450</a> Lucio III	<b>USES - SOLAR.</b> Gives owner carte blanche to install a "solar energy device" (using an odd Tax Code definition), subject to right of POA to enforce a few limitations, such as "only on roof or within fenced yard." <u>Has one more limitation than the other solar bills.</u> [HINT. Get rid of (c), which VOIDS restrictions, as unnecessary and possibly fraught with unintended consequences.]	Single	TPC 202 adds 202.010	Statewide	SF & Condo	B+I
<a href="#">HB 456</a> Lucio III	<b>LIEN - SECURITY SERVICE.</b> Creates lien over real and personal property owned by "commercial entity" which contracts for security services, but doesn't pay. Bill doesn't define "commercial entity". May apply to some POAs.	Single	TPC adds Ch. 64	Statewide	SF & Condo	B+I
<a href="#">HB 565</a> Solomons	<b>ASSESS - FORECLOSE.</b> Requires expedited judicial foreclosure of POA assessment liens, unless homeowner waives.	Single	TPC 209 adds 209.0091	Statewide	SF only	B+I Hearing 2/28
<a href="#">HB 635</a> Guillen	<b>ASSESS - FORECLOSE.</b> Protects surviving spouses of military service members from foreclosure of contract liens. [Not POA-specific.]	Single	TPC 51.015-amends (b),(d),(e) & adds (c-1),(c-2)	Statewide	SF & Condo	Defense & Vet Affairs
<a href="#">HB 656</a> Farias	<b>ASSESS - COLLECTION.</b> <u>Not POA-specific.</u> See description for HB 410. <i>(Same as HB 410, 661, 1323, and SB 251, 253)</i>	Single	Finance Code - see HB 410	Statewide	?	Financial Services
<a href="#">HB 661</a> Rodriguez	<b>ASSESS - COLLECTION.</b> <u>Not POA-specific.</u> See description for HB 410. <i>(Same as HB 410, 656, 1323, and SB 251, 253)</i>	Single	Finance Code - see HB 410	Statewide	?	Financial Services
<a href="#">HB 663</a> Kleinschmidt	<b>RESTRICTIONS - AMEND &amp; RENEW.</b> TPC Ch 211 now bracketed to counties of 65K or less. This clarifies that applicability is determined by headcount based on the latest federal dicennial census.	Single	TPC 211.002 - amends (a)	Bracketed	SF only	B+I Hearing 2/28
<a href="#">HB 893</a> Howard of FB	<b>GOVERN - MEETINGS.</b> Makes POA meetings subject to the same open meetings requirements that cities have. (Cities also have immunities that POAs don't have.) [Doesn't apply to condos because bill uses TPC Ch. 209 definition of POA.]	Single	Gov Code 551.015 amends (a) and adds (c) & (d)	Statewide	SF only	B+I

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<a href="#">HB 912</a> Dutton	<b>ASSESS - FORECLOSE.</b> Exempts homesteads from foreclosure of assessment liens created by covenants adopted after this bill becomes effective.	Single	TPC 202 - adds 202.010	Statewide	SF & Condo	B+I
<a href="#">HB 953</a> Lozano	<b>ASSESS - COLLECTION.</b> <u>Not POA-specific.</u> Collection of "consumer debt" must be deferred or abated for certain active duty military. Doesn't exempt or address assessment collection by HOA, which may not qualify as "consumer debt." Bears watching.	Single	Finance Code - adds Chapter 397	Statewide	?	filed
<a href="#">HB 1025</a> Phillips	<b>USES - WILDLIFE.</b> Amends existing law that allows POA to trap and transport surplus white tail deer. [Companion to SB 498]	Single	Parks&Wildlife Code - amends 43.0612	Statewide	SF & Condo	filed
<a href="#">HB 1071</a> S. Davis	<b>RESTRICTIONS - AMEND + RENEW.</b> [ <u>Bracketed for Houston</u> , possibly for one development] If Restrictions authorize only one extension of term, this bill creates process by which owners of a majority of lots may approve successive extensions, so Restrictions don't expire.	Single	TPC - adds Chapter 212	Bracketed	SF only	filed
<a href="#">HB 1118</a> Ritter	<b>LIEN - TAXES.</b> <u>Not POA-specific,</u> this bill addresses private resale following foreclosure of property tax lien. Bears watching to make sure it doesn't adversely impact liens created by restrictive covenant.	Single	Tax Code 34.05 - adds (j)-(l)	Statewide	SF & Condo	filed
<a href="#">HB 1127</a> Gutierrez	<b>VIOLATIONS - NOTICE.</b> Protects military by requiring statement of federal rights in many types of notices not specific to POAs, such as foreclosure and eviction. SECTION 7 is specific to POAs - adds to content of required violation notice to owner.	Single	TPC 209.006- amends (b) - also TPC Ch 24, 51, 91+92	Statewide	SF only	filed
<a href="#">HB 1196</a> Dutton	<b>ASSESS - FORECLOSE.</b> Purpose #1. POA can't foreclose without giving owner a current appraisal and obtaining at least 80% of appraised value at sale. Purpose #2. Dictates application of foreclosure sale proceeds.	Dual	TPC 209 - adds 209.0091+209.0092	Statewide	SF only	filed
<a href="#">HB 1222</a> Anchia	<b>ASSESS - COLLECTION.</b> <u>Not POA-specific.</u> Adopts the Uniform Debt Management Services Act. Doesn't exempt or address assessment collection by HOA manager or attorney. If not intended to apply, may need an exemption. [Companion to SB 141]	Single	Finance Code Ch 394 - adds Subch D	Statewide	?	filed
<a href="#">HB 1228</a> Dutton	<b>ASSESS - FORECLOSE.</b> Before foreclosing, POA must give the most senior lienholder written notice and 60 days to cure owner's delinquency.	Single	TPC Ch 209 - adds 209.0091	Statewide	SF only	filed
<a href="#">HB 1278</a> Coleman	<b>USES - RELIGIOUS.</b> HOA can't stop residents from putting mezzuzahs on doors (or other religious item that is expected to be displayed by a "tenet" of the resident's religion). [ <i>Same as Coleman's HB 3025 from 2009 Session</i> ]	Single	TPC Ch 202 - adds 202.018	Statewide	SF + Condo	filed
<a href="#">HB 1323</a> Johnson	<b>ASSESS - COLLECTION.</b> <u>Not POA-specific.</u> See description for HB 410. ( <i>Same as HB 410, 656, 661, and SB 251, 253</i> )	Single	Finance Code - see HB 410	Statewide	?	Financial Services

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<a href="#">HB 1392</a> Naishtat	<b>ASSESS - FORECLOSE.</b> <u>Not POA-specific.</u> County clerk must collect a \$95 fee for indigent legal services when a trustee's deed is filed following a nonjudicial foreclosures, unless the lien holder at time of sale was the original grantee under the deed of trust or contract lien.	Single	LocGovtCode Ch 118, amends 118.011(a), adds 118.026, and adds (g) to TPC 51.0075	Statewide	SF + Condo	filed
<a href="#">HB 1397</a> Farias	<b>ASSESS - FORECLOSE.</b> Protects military service members by requiring conspicuous notice inviting service member or spouse to contact creditor about active duty. Also emphasizes that POA assessments are contract liens under TPC 51.015. [HINT. Bill's caption doesn't match content.] <i>(Same as SB 101)</i>	Single	TPC 51.002-adds (i) TPC 51.015-amends (a)+(b)	Statewide	SF & Condo	filed
<a href="#">HB 1635</a> Paxton	<b>SALES - TRANSFER FEES.</b> <u>Not POA-specific.</u> Adds an exemption to the prohibition against transfer fees - for fees that support conservation easements in certain counties.	Single	TPC 5.017	Bracketed	SF & Condo	filed
<a href="#">HB 1639</a> Dutton	<b>ASSESS - FORECLOSE.</b> Owner not liable for attorneys fees incurred by POA in foreclosing its lien - judicially or non-judicially.	Single	TPC 209.008 - amends (a) and adds (h)	Statewide	SF only	filed
<a href="#">HB 1737</a> Bohac	<b>USES - TRAFFIC.</b> POA may install speed feedback signs under certain circumstances.	Single	Trans.Code Ch. 430, adds 430.002	Statewide	SF & Condo	filed
<a href="#">HB 1821</a> R. Anderson	<b>SALES - RESALE CERTIFICATE.</b> Significant changes to Chapter 207, including changing name from "resale certificate" to "association disclosure statement" - though it is really a package of materials, and not a "statement" or a "certificate". Name change eliminates distinction between new home sales & resales. POAs given longer to issue certificate (ie, more expedited service fees?). Nothing increases likelihood that home buyer will have the information at time of contract (original intent of Chapter 207), or the ability of title companies to obtain only assessment estoppels from the POA at time of closing (which may be all that is wanted). Favorable for POA managers. [Note: For condos, the developer issues disclosure on new home sales, the POA issues disclosure on resales. In SF, no developer disclosure - only by POA.]	Single	TPC 207.003	Statewide	SF only (intent)	filed
<b>more coming</b>	<b>. . . . without a doubt . . . . two weeks remain for bill filing ~ March 11 is last day for most.</b>					

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<b>SENATE BILLS</b> (in numerical order)						
<a href="#"><u>SB 101</u></a> Van de Putte	<b>ASSESS - FORECLOSE.</b> Protects military service members by requiring conspicuous notice inviting service member or spouse to contact creditor about active duty. Also emphasizes that POA assessments are contract liens under TPC 51.015. [HINT. Bill's caption doesn't match content.] <i>(Same as HB 1397)</i>	Single	TPC 51.002-adds (i) TPC 51.015-amends (a)+(b)	Statewide	SF & Condo	IGR
<a href="#"><u>SB 141</u></a> Eltife	<b>ASSESS - COLLECTION.</b> <u>Not POA-specific.</u> Adopts the Uniform Debt Management Services Act. Doesn't exempt or address assessment collection by HOA manager or attorney. If not intended to apply, may need an exemption. [Companion to HB 1222]	Single	Finance Code Ch 394 - adds Subch D	Statewide	?	Bus&Comm Heard 2/22/11
<a href="#"><u>SB 142</u></a> West	<b>*** See SECTION by SECTION Overview of Sen. West's Omnibus POA Bill - SB 142 - on Pages 5 - 10. ***</b>	Multiple	Multiple & mixed	Mixed	Mixed	IGR
<a href="#"><u>SB 238</u></a> West	<b>USES - SOLAR.</b> Gives owner carte blanche to install a "solar energy device" (using an odd Tax Code definition), subject to right of POA to enforce a few limitations, such as "only on roof or within fenced yard." [HINT. Get rid of (c), which VOIDS restrictions, as unnecessary and possibly fraught with unintended consequences.]	Single	TPC 202 - adds 202.010	Statewide	SF & Condo	IGR Hearing 3/2
<a href="#"><u>SB 302</u></a> Wentworth	<b>USES - SOLAR.</b> Gives owner carte blanche to install a "solar energy device" (using an odd Tax Code definition), subject to right of POA to enforce a few limitations, such as "only on roof or within fenced yard." [HINT. Get rid of (c), which VOIDS restrictions, as unnecessary and possibly fraught with unintended consequences.]	Single	TPC 202 - adds 202.010	Statewide	SF & Condo	IGR
<a href="#"><u>SB 446</u></a> Jackson	<b>ASSESS - FORECLOSE.</b> Allows POA claim on a homestead, but forbids foreclosure, and lets POA collect when home sells. [MUDDLED CONCEPT. POA defined by TPC 202 - includes condos. Does not repeal TUCA's foreclosure section. If bill is not intended to apply to condos, should change POA definition to TPC 209. If bill IS intended for condos, should repeal TUCA provisions. (tied to SJR 19)	Single	TPC Chapter 41 - adds 41.0011	Statewide	SF & Condo	IGR
<a href="#"><u>SB 447</u></a> Jackson	<b>USES - SOLAR.</b> Gives owner carte blanche to install a "solar energy device" (using an odd Tax Code definition), subject to right of POA to enforce a few limitations, such as "only on roof or within fenced yard." [HINT. Get rid of (c), which VOIDS restrictions, as unnecessary and possibly fraught with unintended consequences.]	Single	TPC 202 - adds 202.010	Statewide	SF & Condo	IGR
<a href="#"><u>SB 472</u></a> West	<b>*** See Section by Section Overview of Sen. West's POA Voting Practices Bill - SB 472 - on Page 11. ***</b>	Multi	TPC Ch. 209 - adds 5 sections	Statewide	SF only	IGR Hearing 3/2

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<a href="#">SB 492</a> Fraser	<b>USES - SOLAR.</b> Only SECTION 7 of 29-page bill deals with POAs. Gives owner carte blanche to install a "solar energy device" (using an odd Tax Code definition), subject to right of POA to enforce a few limitations, such as "only on roof or within fenced yard." [HINT. Get rid of (c), which VOIDS restrictions, as unnecessary and possibly fraught with unintended consequences.]	Single (as to POAs)	TPC Ch 202 - adds 202.010	Statewide	SF & Condo	filed
<a href="#">SB 498</a> Jackson	<b>USES - WILDLIFE.</b> Amends existing law that allows POA to trap and transport surplus white tail deer. [Companion to HB 1025]	Single	Parks&Wildlife Code - amends 43.0612	Statewide	SF & Condo	Ag&Rural
<a href="#">SB 251</a> West	<b>ASSESS - COLLECTION.</b> <u>Not POA-specific.</u> Prohibits a debt collector from collecting a fee to assist a consumer in arranging credit for personal, family or household purposes, and deems such a fee to be a usurious charge of interest. Doesn't exempt or address assessment collection by HOA manager or attorney. If not intended to apply, may need an exemption. <i>(Same as HB 410, 656, 661, 1323, and SB 253)</i>	Single	Finance Code, adds Sec. 302.003 & 393.308, and amends 393.001(3)	Statewide	SF & Condo	FinanSvcs Heard 2/22
<a href="#">SB 253</a> Davis	<b>ASSESS - COLLECTION.</b> <u>Not POA-specific.</u> See SB 251. <i>(Same as HB 410, 656, 661, 1323, and SB 251)</i>	Single	Finance Code - see SB 251	Statewide	SF & Condo	FinanSvcs Heard 2/22
<a href="#">SB 619</a> Rodriguez	<b>USES - SOLAR.</b> If subdivision has more than 50 lots, builder must offer option of installing solar energy devices.	Single	Bus& Commerce Code - Adds Ch 106	Statewide	SF & Condo	filed
<a href="#">SB 710</a> Van de Putte	<b>SALES - CONTRACT.</b> Amends the property condition disclosure for residential re-sales (and new condo conversions) to disclose dangerous drains in pools and spas - even common area pools. The expansion of the house seller's disclosure of property condition to common areas is a problematic. Sellers are unlikely to have access to that kind of info.	Single	TPC 5.008	Statewide	SF & Condo	Bus+Comm
<a href="#">SB 748</a> Carona	<b>GOVERNANCE - CORPORATE.</b> <u>Not POA-specific.</u> Bill amends many parts of Business Organizations Code. SECTION 33 of bill affects nonprofit corporations, regarding "interested" directors.	Single (as to non-profits)	Bus.Organs.Code - amends 22.153	Statewide	SF & Condo	Bus+Comm
<a href="#">SJR 19</a> Jackson	<b>ASSESS - FORECLOSE.</b> Invites Texas voters to amend Texas constitution to authorize POA claims on homesteads, but to prohibit forced sales of POA assessment liens unless authorized by POA members. [PROBLEM: MUDDLED. POA is not defined. Does POA include condos? What about TUCA's private power of sale in TPC 82.113(d)?] (tied to SB 446)	Single	Texas Constitution	Statewide	SF & Condo	IGR
<b>more coming</b>	<b>. . . . without a doubt . . . . two weeks remain for bill filing ~ March 11 is last day for most.</b>					

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## SEN. WEST'S OMNIBUS POA BILL - SB 142

~ IN NUMERICAL ORDER OF BILL'S SECTIONS ~

Sharon Reuler's Report of February 24, 2011 - Page 7 of 13

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BILL SECTION	SUBJECT	Single or Multi-Purpose SECTION	TX PROPERTY CODE SECTION AFFECTED	Bracketed or Statewide	Property Type
1 <i>Pg 1, Ln 4</i>	<b>VIOLATIONS - REMEDY.</b> Removes 4 words to allow any prevailing party in an enforcement lawsuit to recover attorneys fees, not just the plaintiff. <b>ALSO</b> , expands scope of statute from "breach of restrictive covenant" to add "breach of statute."	Single	5.006(a)	Statewide	SF & Condo
2 <i>Pg 1, Ln 12</i>	<b>SALES - CONTRACT + RESALE CERTIFICATES.</b> Expands the notice that sellers give to buyers of homes in mandatory owners associations, and requires payment for issuance of resale certificate. [NOTE - This subtly institutionalizes "resale certificates" for new home sales.] <b>ALSO</b> , prepayment of resale certificate fee requires that certificate be ready for delivery and timely.	Single	5.012 - amends (a) and adds (f) & (g)	Statewide	SF only
3 <i>Pg 3, Ln 16</i>	<b>SALES - TRANSFER FEES.</b> New law in 2007, TPC §5.017 outlaws duty for transfer fees on future sales. This creates 2 new exemptions - mandatory membership golf clubs and country clubs, and conservation easements. [Non condo POAs are exempt from TPC 5.017 by reference to TPC §209.002 - which should be changed to TPC §202.001 to cover condos too.]	Single	5.017 - amends (c)	Statewide	SF only
4 <i>Pg 4, Ln 10</i>	<b>DOCUMENTS - DEFINITIONS.</b> Expands definition of "dedicatory instrument".	Single	202.001 - amends (1)	Statewide	SF & Condo
5 <i>Pg 5, Ln 2</i>	<b>VIOLATIONS.</b> This tries to move away from enforcing every violation with equal vigor by giving POA cover if the board thinks the circumstances of a violation do not warrant enforcement. Possibly beneficial. What is meaning of "other representative designated by an owner of real property . . . may grant a variance" in Line 5, Page 5?	Single	202.004 - adds (d) & (e)	Statewide	SF & Condo
6 <i>Pg 6, Ln 1</i>	<b>DOCUMENTS - RECORDING.</b> Since 1999, State law has required that all POA documents be recorded with the county, but is often ignored. This bill says " <i>A dedicatory instrument that is not filed in accordance with this section has no effect until filed.</i> " (Query. Shouldn't a doc be effective to parties with actual knowledge of the document, even before recording?)	Single	202.006 - amends (a), adds (b)	Statewide	SF & Condo
7 <i>Pg 6, Ln 13</i>	<b>VIOLATIONS - REMEDY.</b> Limits the circumstances under which a POA may enter a lot to stop a violation. Creates exceptions for abandoned homes, "forced mows" (not defined), and trash removal - with 10 days notice. Unlike most of Chapter 202, this one section does not apply to condos. Also exempts projects in which POA provides insurance, utilities, or exterior maintenance on the homes. (Does mowing front yards or painting trim every 10 years constitute "exterior maintenance on homes"?) Las Colinas is bracketed out of this new law by (c)(2). <b>PROBLEMS.</b> (1) This may interfere with HOA's control over screening walls, entry monuments, private streets, and other "common" improvements located on private house lots. (2) Seems to prohibit removal of bandit signs. (3) Even picking up trash on house lots near model homes before a grand opening requires 10 days notice.	Multi - 7 "bills"	Chapter 202 - adds 202.008	Statewide - but, bracketed to exclude Las Colinas.	SF only

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## SEN. WEST'S OMNIBUS POA BILL - SB 142

~ IN NUMERICAL ORDER OF BILL'S SECTIONS ~

Sharon Reuler's Report of February 24, 2011 - Page 8 of 13

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7 Pg 7, Ln 17	<b>USES - STREETS-PARKING.</b> POA can't regulate parking of personal cars + trucks on public streets or private driveways. BUT, the owner's parking privilege is limited to operable, noncommercial, and personal cars + trucks. Unlike most of Chapter 202, this one section does not apply to condos. Also exempts projects in which POA provides insurance, utilities, or exterior maintenance on the homes. Defines "noncommercial automobile" and excludes recreational vehicles as "personal auto or truck". [VOIDS a provision, which could have unintended consequences. Better to declare unenforceable.]	Multi - 7 "bills"	Chapter 202 - adds 202.010	Statewide	SF only
7 Pg 8, Ln 17	<b>SALES - RIGHT OF FIRST REFUSAL.</b> Outlaws rights of first refusal in favor of POAs or individual owners. Protects builders' buy-back rights during "development period," which is defined.	Multi - 7 "bills"	Chapter 202 - adds 202.011	Statewide	SF & Condo
7 Pg 9, Ln 4	<b>USES - SOLAR.</b> Gives owner carte blanche to install a "solar energy device" (using an odd Tax Code definition), subject to right of POA to enforce a few limitations, such as "only on roof or within fenced yard." [HINT. Get rid of (c), which VOIDS restrictions, as unnecessary and possibly fraught with unintended consequences.]	Multi - 7 "bills"	Chapter 202 - adds 202.012	Statewide	SF & Condo
7 Pg 9, Ln 27	<b>USES - RENTALS.</b> Pro-investor, anti-homeowner. POA can't <u>amend</u> a doc to prohibit or regulate rentals without the consent of 51% of votes. Identifies 3 types of permitted rental restrictions. Can POA adopt other qualifiers, such as limits on numbers or relationships of occupants, or number of rentals owned by one person? Can original POA docs have the restrictions that are prohibited by amendment? [Protects investors & renters at the expense of owner-occupants. Reverses decades of court cases upholding rights of POA to regulate and prohibit leasing. Hurts owners and brokers who rely on POA to make project eligible for mortgage financing by maintaining high degree of owner occupants. One owner can acquire enough units to control the POA, to the detriment of the other owners. POA could lose is franchise tax exemption and other public benefits that favor high rates of owner-occupancy. Apartment buildings are for investors.]	Multi - 7 "bills"	Chapter 202 - adds 202.013	Statewide	SF & Condo
7 Pg 10, Ln 17	<b>USES - CAPITAL IMPROVEMENTS.</b> POA can't amend a doc to require owners to make "capital improvements" to their units/lots (window treatments, trees, fences, sidewalks, drainage) without the consent of 67% of the votes, <u>and even then it applies only to future owners on a unit-by-unit basis.</u> Condos may not be able to require owners to use energy efficient appliances when installing replacements, to help control common utility costs. Developers, beware of changes to fence or landscaping specs during buildout of project.	Multi - 7 "bills"	Chapter 202 - adds 202.014	Statewide	SF & Condo
7 Pg 11, Ln 7	<b>VIOLATIONS - REMEDY.</b> Owner can sue his POA or its representative that violates or <u>threatens</u> to violate Property Code Chapter 202. <u>ALSO</u> , prohibits suit against individual officers + directors, removes express right of owner to recover legal fees from POA, AND limits what the POA can recover from an owner who brings a frivolous suit - max of \$4,500. PROBLEMS. Only partial due process for POA - owner must give POA 30 days advance notice before filing suit, but no opportunity to cure. "Threatens to violate" is too vague. [Parallels THIS BILL's new 209.0035 in SECTION 10.]	Multi - 7 "bills"	Chapter 202 - adds 202.015	Statewide	SF & Condo
8 Pg 12, Ln 13	<b>SALES - RESALE CERTIFICATE.</b> Minor changes to contents of resale certificate - adds disclosure of all transfer-related fees.	Single	Chapter 207 - amends 207.003(b)	Statewide	SF only (intent)

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## SEN. WEST'S OMNIBUS POA BILL - SB 142

~ IN NUMERICAL ORDER OF BILL'S SECTIONS ~

Sharon Reuler's Report of February 24, 2011 - Page 9 of 13

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BILL SECTION	SUBJECT	Single or Multi-Purpose SECTION	TX PROPERTY CODE SECTION AFFECTED	Bracketed or Statewide	Property Type
9 <i>Pg 14, Ln 12</i>	<b>LAS COLINAS CARVE-OUT.</b> Use of bracketing to exempt Las Colinas from 9 parts of Chapter 209.	Multi	209.005(b), 209.0056, 209.0057, 209.0058, 209.00591, 209.00593, 209.006(c), 209.0062, 209.014	Bracketed	
10 <i>Pg 15, Ln 3</i>	<b>VIOLATIONS - REMEDY.</b> Owner can sue his POA or its representative that violates or <u>threatens</u> to violate Property Code Chapter 209. <b>ALSO</b> , prohibits suit against individual officers + directors, removes express right of owner to recover legal fees from POA, AND limits what the POA can recover from an owner who brings a frivolous suit - max of \$4,500. Only partial due process for POA - owner must give POA 30 days advance notice before filing suit, but no opportunity to cure. "Threatens to violate" is too vague. [Parallels THIS BILL's new 202.015 in SECTION 7.]	Multi - 2 "bills"	Chapter 209 - adds 209.0035	Statewide	SF only
10 <i>Pg 16, Ln 9</i>	<b>DOCUMENTS - AMEND.</b> To adopt or amend any POA document requires at least 51% of votes allocated to owners IF the change affects property use or creates penalties for POA members. GOOD that amendments during "development period" are excluded - relying on new Sec. 209.011 for definition.	Multi - 2 "bills"	Chapter 209 - adds 209.0041	Statewide	SF only
11 <i>Pg 18, Ln 4</i>	<b>GOVERN - RECORDS.</b> 5+ pages of State micro-management of POA records. Mixed bag of good and bad. Good that POAs not held to government standards, and that POAs can charge owner for manpower to produce POA records. Good to have guidelines for record retention, but bad that the "guidelines" are a mandatory duty for every size POA in Texas. Most POAs - especially small self-managed al-volunteer and Declarant-managed POAs - will be challenged to construe and comply with these many new statutory requirements. POA violates this new State law when it releases <u>ANY</u> requested information ( <i>even a newsletter!</i> ) that identifies an individual POA member. [Nonsensical.] POA is not given the option of reporting to owner that a requested record does not exist. Is the POA compelled to create records to meet the owner's request? Also, it will be a violation of State law if a POA fails to keep <u>FOREVER</u> "all records as to changes to the dedicatory instruments". Why isn't reliance on public records sufficient? Does "all records" mean more than the instruments themselves - correspondence? proposals that were defeated? Even docs that have been restated or terminated? There's more to this new section. D&O insurance may not cover per se violations of State law - and this Section is a minefield of new legal duties.	Single	Chapter 209 - rewrites 209.005	Statewide - but, Las Colinas bracketed out of (b)	SF only

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BILL SECTION	SUBJECT	Single or Multi-Purpose SECTION	TX PROPERTY CODE SECTION AFFECTED	Bracketed or Statewide	Property Type
12 <i>Pg 23, Ln 22</i>	<b>GOVERN - MEETINGS (BOARD).</b> 4+ pages of State micro-management of POA board meetings. Mixed bag of good and bad. Bill identifies only a few exceptions to the new law that if the directors are together and talking about the POA, it's automatically a board meeting. <b>BAD FOR DEVELOPERS.</b> Declarant-appointed directors usually work together - for the developer - and discuss the project and the POA in the course of their workday. Under this law, Declarant boards could be inadvertently holding "board meetings" every day and running afoul of the law's many requirements. BAD for POAs. Prohibits discussion of topics not identified in notice of board meeting. Will broad topics like "Old Business" and "New Business" and "Committee Reports" provide enough cover? Recessed meetings must continue the following " <b>regular business day</b> " or else new notices must go out. What about boards that meet evenings and weekends? At emergency meetings, boards are prohibited from discussing assessment increases - but can they approve an emergency expense that will - of necessity - result in higher dues for the owners? <b>INTERESTING.</b> Creates new category of board meetings - "administrative" - unknown to Roberts Rules or Texas Business Organizations Code - in addition to regular, special, executive, and emergency. There is much more to this new section. D&O insurance may not cover per se violations of State law - and this Section is a minefield of new legal duties.	Multi - 8 "bills"	Chapter 209 - adds 209.0051	Statewide	SF only
12 <i>Pg 28, Ln 11</i>	<b>GOVERN - VOTING.</b> POA must give owners 30 days or less (how little? 3 days?) written notice of elections or votes. Notice must be given to each OWNER, not to an owner of each lot - ie, 3 co-owners of one lot must each be given notice. Would be better written as "shall give to an owner of each lot in the property".	Multi - 8 "bills"	Chapter 209 - adds 209.0056	Statewide - except Las Colinas	SF only
12 <i>Pg 28, Ln 21</i>	<b>GOVERN - VOTING.</b> Allows owners to petition to require that votes be tabulated by a public official hired for that purpose. Also allows one owner to demand a recount. May impliedly preclude voice votes, show of hands, and votes by acclamation.	Multi - 8 "bills"	Chapter 209 - adds 209.0057	Statewide - except Las Colinas	SF only
12 <i>Pg 30, Ln 19</i>	<b>GOVERN - VOTING.</b> No secret ballots. Ballots must be signed by owners. [Wave bye-bye to political privacy, "hello" pay-back. Will it chill voting?] [ <u>Same as SB 472</u> ]	Multi - 8 "bills"	Chapter 209 - adds 209.0058	Statewide - except Las Colinas	SF only
12 <i>Pg 30, Ln 26</i>	<b>GOVERN - VOTING.</b> Voids provisions in POA documents that disqualify owner from voting on board elections or matters affecting his rights & responsibilities. [What about other decisions - like election of ACC? Could it be construed to void Declarant exercise of Builder votes, voting by classes during Declarant Control, or delegate voting? If lot has 3 owners, does a provision that allows only one vote per lot function as a disqualification? <b>HINT</b> > May create fewer unintended consequences to forbid disenfranchisement based on delinquency or violation. Isn't that the goal?] [ <u>Same as SB 472</u> ]	Multi - 8 "bills"	Chapter 209 - adds 209.0059	Statewide	SF only

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12 <i>Pg 31, Ln 6</i>	<b>GOVERN - VOTING.</b> No proxy voting. Voids proxy provisions in POA documents. [How to reconcile with State corporation law that allows allow proxy voting. Disrupts flexible voting systems for large-scale developments. What about developers with proxies from builders? Consider . . . there is no proxy voting in public elections, but there is also no quorum or minimum votes to decide an issue. Don't throw out proxy voting without also ridding us of quorums and minimum approvals. Proxy voting is an established corporate concept. Lack of proxy voting deprives interested owners of the right to have a trusted neighbor, employee, or agent attend a meeting, hear the discussion, and make an informed decision. This may result in less discussion of issues by members at a meeting and more electronic and directed ballots without benefit of discussion. Pity. Who benefits?] [ <b>HINT</b> > May create fewer unintended consequences to forbid voting by proxy without voiding a provision that might also allow quorums by proxy.] (TUCA authorizes proxy voting for condos.) [ <u>Same as SB 472</u> ]	Multi - 8 "bills"	Chapter 209 - adds 209.00591	Statewide - except Las Colinas	SF only
12 <i>Pg 31, Ln 10</i>	<b>GOVERN - ELECTIONS.</b> No qualifications for owners who runs for board. Purpose #1. Voids provisions in POA documents that restrict owner's right to run for the board. Purpose #2 - owners convicted for certain crimes can't serve on board. [Purpose #1 may undo many popular restrictions, such as term limits, requiring most directors to live at the property, or not allowing spouses to serve at the same time. May jeopardize proportional representation, such as directors from each phase of the project. <b>HINT</b> > May create fewer unintended consequences to forbid owner from being disqualified for delinquency or violation. Isn't that the goal?] [ <u>Same as SB 472</u> ]	Multi - 8 "bills"	Chapter 209 - adds 209.00592	Statewide	SF only
12 <i>Pg 31, Ln 21</i>	<b>GOVERN - VOTING.</b> Specifies procedures for voting by "absentee" or "electronic" ballot. Limits use of absentee ballot. New concepts and terms - not borrowed from Texas' corporate or government codes. Does "posting on an Internet website" cover online voting hosted by a third-party service? [ <u>Same as SB 472</u> ]	Multi - 8 "bills"	Chapter 209 - adds 209.00593	Statewide - except Las Colinas	SF only
13 <i>Pg 33, Ln 22</i>	<b>VIOLATIONS - FINES + NOTICE.</b> Adds procedures for POA's required violation notice to owner.	Single	209.006 - amends (b), and adds (c)-(f)	Statewide - except Las Colinas (c)	SF only
14 <i>Pg 35, Ln 18</i>	<b>VIOLATIONS - FINES.</b> Amounts of POA fines must be reasonable and capped. Authorizes fines against renters.	Multi - 4 "bills"	Chapter 209 - adds 209.0061	Statewide	SF only
14 <i>Pg 36, Ln 11</i>	<b>ASSESS - PAYMENT PLANS.</b> Creates procedures for payment plans. This section has two purposes - a payment plan for delinquent assessments (regular and special) <u>AND</u> procedures for collecting special assessments (not delinquent). POA must let all owners pay out any special assessment that is larger than 1/2 of the year's regular assessments, and the POA may offer to discount "lump sum" payment of special assessments. The freeze on monetary penalties during a payment plan doesn't apply to (1) interest, or to (2) the costs of administering the plan, which may result in the owner being liable to the POA manager for a monthly administrative fee.	Multi - 4 "bills"	Chapter 209 - adds 209.0062	Statewide - except Las Colinas	SF only
14 <i>Pg 38, Ln 2</i>	<b>ASSESS - PAYMENTS.</b> Mandates the order in which owners' payments must be applied by POA. 6 categories - attorneys fees are 3rd and 5th.	Multi - 4 "bills"	Chapter 209 - adds 209.0063	Statewide	SF only

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14 <i>Pg 38, Ln 16</i>	<b>ASSESS - STATUTE OF LIMITATIONS.</b> Extends the statute of limitations for assessment debt from 4 years to 10 years. Helps owners who need more time to pay, and POAs that can't justify costs of collecting small debts. <b>PROBLEM.</b> Must also amend Civ.Prac+Rem Code - can't be amended inside the Property Code.	Multi - 4 "bills"	Chapter 209 - adds 209.0064	Statewide	SF only
15 <i>Pg 38, Ln 23</i>	<b>VIOLATIONS - FINE.</b> Requires POA to use JP court litigation to collect fines. Must file suit within 180 days after owner's hearing with POA board to protest fine. POA has burden of proof. This responds to complaints that owners have no way to appeal fines levied by a POA. Judge can award attorneys fees to prevailing party IF either party has a groundless claim or acts in bad faith.	Single	209.007 - amends (a), adds (f)-(j)	Statewide	SF only
16 <i>Pg 40, Ln 7</i>	<b>ASSESS - FORECLOSE.</b> "Expedited foreclosure" is the only permitted method of foreclosing the POA's assessment lien. "Expedited foreclosure" is a court-directed foreclosure used with home equity liens. Considered a compromise between fast + cheap nonjudicial foreclosures (on courthouse steps each First Tuesday), and long and costly judicial foreclosures (a trial before judge or jury). Directs Texas Supreme Court to create rules for the process. Owners can waive expedited foreclosure, implying that the POA can use the foreclosure provisions in CC&Rs if the owner agrees. Authorizes vote of owners to amend POA docs to remove foreclosure power.	Single	Chapter 209 - adds 209.0091	Statewide	SF only
17 <i>Pg 41, Ln 12</i>	<b>ASSESS - FORECLOSE.</b> Adds to contents of notice POA gives to owner after foreclosure.	Single	209.010(a)	Statewide	SF only
18 <i>Pg 41, Ln 23</i>	<b>USES - RENTALS.</b> Pro-investor, anti-homeowner. POA can't limit number of lots one investor owns up to 25% of voting control, except <b>CARVE OUT FOR "development period"</b> as defined in a different section. BUT, carve out is deceptive - Because of the new 202.013, developers are still prevented from prohibiting or restricting leasing. Consequences. "Only" 25% is deceptive because a block that size will control most outcomes, and two investors could amass 50% voting control. Reverses decades of court cases upholding rights of POA to regulate and prohibit leasing. Hurts owners and brokers who rely on POA to make project eligible for mortgage financing by maintaining high degree of owner occupants. POA could lose its franchise tax exemption and other public benefits that favor high rates of owner-occupancy. Apartment buildings are for investors.]	Single	Chapter 209 - adds 209.014	Statewide - except Las Colinas	SF only
19 <i>Pg 42, Ln 5</i>	<b>RESTRICTIONS - AMEND + RENEW.</b> By removing bracket, turns TPC Chapter 211 into the "default" for POAs that need access to the petition process to extend or amend their restrictions.	Single	211.02	Statewide	SF only
20 <i>Pg 42, Ln 13</i>	<b>VIOLATIONS - DAMAGES.</b> The law that capped court-awarded damages at \$200 a day is considered "anti-consumer" because courts regularly award the maximum. This amendment cleverly eliminates the \$200 per day statutory cap on court-awarded damages for all but Las Colinas.	Single	202.004 - amends (c)	Statewide repeal - but for 1 POA	SF & Condo

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**NOTE 2.** This report focuses on POA-specific bills and does not purport to cover all bills that may have an impact on POAs. It is guaranteed to be incomplete.

**NOTE 3.** This report is volunteered by attorney Sharon Reuler to provide general information to select audiences about certain types of proposed Texas legislation during the 2011 session. A nerdy hobby, to be sure.

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**NOTE 5.** Please contact Sharon if you learn about a bill that "belongs" in this report. Sharon Reuler, P.C., 5400 LBJ Frwy, Suite 1200, Dallas, Texas 75240. Tel: 972-720-9727, Email: sreuler@txlandlaw.com, website <http://www.txlandlaw.com> p:\legis\2011\POA Bills Numerical thru 2-24-11\_v1- rd=2/25/11 pd=2/25/11

## SEN. WEST'S POA VOTING PRACTICES BILL - SB 472

~ Identical to part of SECTION 12 of West's SB 142 ~

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(This is not a comprehensive or uniform approach. It pieces together law changes that are not interdependent. Each piece of this bill could stand alone as a separate bill.)

BILL SECTION	SUBJECT - IN NUMERICAL ORDER OF BILL'S SECTIONS	Single or Multi-Purpose SECTION	TX PROPERTY CODE SECTION AFFECTED	Bracketed or Statewide	Property Type
1	<b>GOVERN - VOTING.</b> No secret ballots. Ballots must be signed by owners. [Wave bye-bye to political privacy, "hello" pay-back. Will it chill voting?] [Same as SB 142, SECTION 12]	Multi - 5 "bills"	Ch 209, adds 209.0058	Statewide	SF only
1	<b>GOVERN - VOTING.</b> Voids provisions in POA documents that disqualify owner from voting on board elections or matters affecting his rights & responsibilities. [What about other decisions - like election of ACC? Could it be construed to void Declarant exercise of Builder votes, voting by classes during Declarant Control, or delegate voting? If lot has 3 owners, does a provision that allows only one vote per lot function as a disqualification? <b>HINT</b> > May create fewer unintended consequences to forbid disenfranchisement based on delinquency or violation. Isn't that the goal?] [Same as SB 142, SECTION 12]	Multi - 5 "bills"	Ch 209, adds 209.0059	Statewide	SF only
1	<b>GOVERN - VOTING.</b> No proxy voting. Voids proxy provisions in POA documents. [How to reconcile with State corporation law that allows allow proxy voting. Disrupts flexible voting systems for large-scale developments. What about developers with proxies from builders? Consider . . . there is no proxy voting in public elections, but there is also no quorum or minimum votes to decide an issue. Don't throw out proxy voting without also ridding us of quorums and minimum approvals. Proxy voting is an established corporate concept. Lack of proxy voting deprives interested owners of the right to have a trusted neighbor, employee, or agent attend a meeting, hear the discussion, and make an informed decision. This may result in less discussion of issues by members at a meeting and more electronic and directed ballots without benefit of discussion. Pity. Who benefits?] <b>HINT</b> > May create fewer unintended consequences to forbid voting by proxy without voiding a provision that might also allow quorums by proxy.] [Same as SB 142, SECTION 12]	Multi - 5 "bills"	Ch 209, adds 209.00591	Statewide	SF only
1	<b>GOVERN - ELECTIONS.</b> No qualifications for owners who runs for board. Purpose #1. Voids provisions in POA documents that restrict owner's right to run for the board. Purpose #2 - owners convicted for certain crimes can't serve on board. [Purpose #1 may undo many popular restrictions, such as term limits, requiring most directors to live at the property, or not allowing spouses to serve at the same time. May jeopardize proportional representation, such as directors from each phase of the project. <b>HINT</b> > May create fewer unintended consequences to forbid owner from being disqualified for delinquency or violation. Isn't that the goal?] [Same as SB 142, SECTION 12]	Multi - 5 "bills"	Ch 209, adds 209.00592	Statewide	SF only
1	<b>GOVERN - VOTING.</b> Specifies procedures for voting by "absentee" or "electronic" ballot. Limits use of absentee ballot. New concepts and terms - not borrowed from Texas' corporate or government codes. Does "posting on an Internet website" cover online voting hosted by a third-party service? [Same as SB 142, SECTION 12]	Multi - 5 "bills"	Ch 209, adds 209.00593	Statewide	SF only

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