

POA CHECKLIST
SUMMARIZED FROM 2011 TEXAS POA REFORM LAWS

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BEWARE!!!

This handout is intended to highlight the major new POA specific laws (from the 82nd Texas Legislative Session) and their effective dates for attorneys representing and creating POAs, managers of POAs and directors of POAs. It is not comprehensive. Not ALL new laws that may impact POAs are included and for brevity, bracketed laws, most exceptions and details are omitted. Subject matter and descriptions are intentionally brief to provide a quick checklist of "to dos", "need to knows" and deadlines. It is not intended to replace the advice of competent legal counsel or to address a particular situation. Legal knowledge may be required for the proper use of this material.

▪ POA = Property Owners Association ▪ C = Condos ▪ SF = Single Family (all POAs that are not condos)

✓	SUBJECT	TEX. PROP. CODE (BILL NO.)	PROP. TYPE	EFF. DATE
	~ PROPERTY USE ~			
	Rain Barrel Rules – Review existing POA dedicatory instruments and POA’s geographics (e.g. location of condo units, size of lots, setbacks, etc.) to determine need for rules. Absent any existing restrictions/rules, owners may have absolute right to install any number, anywhere.	§202.007(d) (HB 3391)	SF & C	9/1/11
	Solar Panel Rules – Review existing POA dedicatory instruments and POA’s geographics (e.g. location of condo units, size of lots, setbacks, etc.) to determine need for rules.	§202.010 (HB 362)	SF & C	6/17/11
	Storm Shingles – Owners absolute right to install, so long as they “resemble” other authorized shingles in the subdivision and “match the aesthetics” of the surrounding property.	§202.011 (HB 362)	SF & C	6/17/11
	Flag Rules – Review existing POA dedicatory instruments and POA’s geographics (e.g. location of condo units, size of lots, setbacks, etc.) to determine need for rules. Unless POA has rules that comply with the new law, POA may not be able to dictate any aspect of newly permitted flags.	§202.011 (HB 2779)	SF & C	6/17/11
	Religious Display Rules – Review existing POA dedicatory instruments and POA’s geographics (e.g. location of condo units, size of lots, setbacks, etc.) to determine need for rules.	§202.018 (HB 1278)	SF & C	6/17/11
	~ ELECTIONS, MEETINGS & DIRECTORS ~			
	Open Board Meetings – REQUIRED , including notice to owners (except certain matters allowed for executive sessions and other forums).	§209.0051 (HB 2761)	SF	1/1/12
	Meeting Notice – 10 to 60 day notice of owner meetings REQUIRED .	§209.0056 (HB 2761)	SF	1/1/12
	Recount Procedures – Owners may demand election recount by statutorily allowed tabulators.	§209.0057 (HB 2761)	SF	1/1/12
	No Secret Ballots – Ballots MUST be in writing and signed (electronic votes allowed).	§209.0058 (SB 472 and HB 2761)	SF	9/1/11
	Owner Voting Rights – CANNOT be suspended.	§209.0059(a) (SB 472 & HB 2761)	SF	9/1/11
	Director Qualifications – Most owner director qualifications VOID (except no felons or crimes of moral turpitude).	§209.00591 & §209.00592 (SB 472 & HB 2761)	SF	9/1/11
	Developer Director Transition – Existing developer board composition (developer to owner) reviewed to ensure compliance. Review control turnover provisions in form project documents to ensure compliance for new projects.	§209.00591 (c) (HB 2761)	SF	1/1/12

✓	SUBJECT	TEX. PROP. CODE (BILL NO.)	PROP. TYPE	EFF. DATE
	Electronic & Absentee Ballots – Allowed.	§209.00593 (SB 472) §209.00592 (HB 2761)	SF	9/1/11
	Director Appointment – NO appointment to expired terms.	§209.00593 (HB 2761)	SF	1/1/12
	Election Vote Tabulators – Candidates and their kin PROHIBITED ; access to ballots RESTRICTED .	§209.00594 (SB 472 & HB 2761)	SF	9/1/11
	Annual Meetings & Elections – Annual meetings REQUIRED ; otherwise owners right to call election meeting.	§209.014 (HB 2761)	SF	1/1/12
	~ POA RECORDS & DOCUMENTS ~			
	Recording Requirement – All POA dedicatory instruments MUST be filed of record or = “no effect”.	§202.006 (HB 1821)	SF & C	1/1/12
	Website Posting – All dedicatory instruments MUST be filed on POA or management company’s POA publicly accessible website, if any.	§207.006 (HB 1821)	SF	1/1/12
	Declaration Amendment – Only 67% owner approval required if higher % required in declaration.	§209.0041 (SB 472)	SF	9/1/11
	Open Records – MUST adopt and file of record an open records policy (includes records production, review and copying), otherwise NO charges allowed; JP court remedies for owners denied access.	§209.005(i) (HB 2761)	SF	1/1/12
	Records Retention Policy – POAs consisting of 15 lots or larger MUST adopt (and file of record).	§209.005(m) (HB 2761)	SF	1/1/12
	~ ASSESSMENTS, COLLECTIONS, LIENS, FORECLOSURE & VIOLATIONS ~			
	Military Notice – REQUIRED for certain enforcement actions.	§209.006(b) (HB 1127)	SF	1/1/12
	Payment Plan Guidelines – POAs consisting of 15 lots or larger MUST be adopted and filed of record.	§209.0062(a),(b) (HB 1228 and HB 1821)	SF	1/1/12
	Application of Payments – Owner payments MUST be applied in accordance with statutory application.	§209.0063 (HB1228)	SF	1/1/12
	Third Party Collections – 30 day certified notice prior to turnover REQUIRED ; owner not liable for fees under contingency agreements.	§209.0064(b),(c) (HB 1228)	SF	1/1/12
	Copy Charge Foreclosure – No foreclosure of debt consisting solely of fees charged for obtaining copies of POA records.	§209.009(3) (HB 2761)	SF	1/1/12
	Junior Lienholder Notice – 60 day certified notice & opportunity to cure REQUIRED .	§209.0091 (HB 1228)	SF	1/1/12
	Judicial Foreclosure – Expedited judicial foreclosure REQUIRED .	§209.0092 (HB 1228)	SF	1/1/12
	Foreclosure Amendment – 67% of owners can amend to adopt or remove foreclosure provisions.	§209.0093 (HB 1228)	SF	1/1/12
	Lien Notices – Prepared by attorneys (confirms prior law).	§209.0094 (HB 1228)	SF	1/1/12
	~ HOME SALES & RESALES ~			
	Transfer Fees – Review existing transfer fees to determine limited need for statutorily required filing. And, attorney sample restrictions reviewed to ensure compliance with new “effective date” prohibitions.	Ch. 5, Subch. G (HB 8)	SF & C	6/17/11
	Resale Certificates – New timeframes, production procedures and required information, including POA lawsuits (except tax suits) and transfer fee disclosure.	§207.003 (HB 1821)	SF	1/1/12

OVERVIEW OF 2011 LEGISLATION FOR TEXAS POAS

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SUBJECT	TEX. PROP. CODE (BILL NO.)	PROP. TYPE	EFF. DATE
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1.0 PROPERTY USE

1.1 Rain Barrels	§202.007(d) (HB 3391)	SF & C	9/1/11
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Description: POAs must permit owners to install and use rain-harvesting devices if they meet certain architectural requirements.

Specifics: POAs may, however, still:

- prohibit owners from installing a rainwater harvesting system on (1) property owned by the POA, (2) common elements, or (3) an owner's property between the front building line and the street;
- prevent owners from installing devices that are a different color than or inconsistent with the home's color scheme;
- prohibit devices that display language or other content that is not typically displayed as manufactured; and
- regulate the size, type, shielding of, and materials used in the construction and/or installation of the device(s) if located on side of house or visible from the street, another lot or common area. However, the regulations cannot make it economically impossible to install the device(s) and there is reasonably sufficient area on the owner's property to install the device.

Action Item: Review existing POA dedicatory instruments and POA's geographics (e.g. location of condo units, size of lots, setbacks, etc.) to determine need for rules. Absent any existing restrictions/rules, owners may have absolute right to install any number, anywhere. In most cases, rain barrel rules are recommended.

1.2 Solar Panels	§202.010 (HB 362)	SF & C	6/20/11
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Description: POAs must permit owners to install solar panels with certain permissible limitations.

Specifics:

- The dedicatory instruments may still prevent an owner from installing a device that:
 - (1) as adjudicated by a court, threaten public health or safety or violate a law;
 - (2) is located on property owned or maintained by the POA;
 - (3) is located in common elements;
 - (4) is located anywhere but on the owner's roof (on home or other allowed structure) or in owner's fenced yard or patio;
 - (5) if mounted on the roof:
 - (i) extends beyond the roofline,
 - (ii) has an edge that is not parallel to the roofline,
 - (iii) does not conform to the slope of the roof, or
 - (iv) is located in an area other than as designated by the POA, unless the alternate location desired by the owner would increase the estimated annual energy production by more than 10%;
 - (6) has a frame, support bracket or visible piping or wiring that is not a silver, bronze or black tone commonly available in the marketplace;
 - (7) is taller than the fence line;
 - (8) is installed in a manner that voids material warranties;

(9) is installed without prior approval by the POA or its designated architectural committee; or
 (10) if the device would "substantially interfere with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities." Owners can overcome this argument, however, by getting all adjoining owners' written approval.

- There is an exception for the development period during which the declarant can prohibit or restrict the installation.

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

1.3	Storm Shingles	§202.011 (HB 362)	SF & C	6/20/11
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Description: POAs must allow owners to install shingles of certain materials made to resist wind and hail, provide heating/cooling efficiency, or generate solar energy.

Specifics:

- The shingles will be allowed, as long as they:
 - (1) resemble other approved shingles in the subdivision,
 - (2) are more durable or of better quality than "normal" shingles, and
 - (3) they match the aesthetics of the property surrounding the owner's property.
- Restrictions that prohibit or restrict such installation are void.

Action Item: Review dedicatory instruments, polices and procedures to ensure compliance. The provisions of this section are absolute; there are no provisions for rules, but we believe guidelines consistent with this section would be permissible.

1.4	Flags	§202.011 (HB 2779)	SF & C	6/20/11
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Description: POAs must permit owner to display the US, Texas, or military branch flag, with permissible limitations.

Specifics:

- The only permissible dedicatory instrument restrictions a POA can impose and enforce regarding US, Texas, and military flag displays are:
 - (1) requirements that U.S. and Texas flags be displayed in accordance with the US/Texas flag code;
 - (2) requirement that a flagpole (freestanding or attached to a dwelling) be constructed of permanent, long-lasting materials, with an appropriate finish that is harmonious with the dwelling;
 - (3) requirement that the display comply with all applicable zoning ordinances, easements, and setback requirements;
 - (4) requirement that the flag and flagpole be maintained in good condition and any deteriorated flag or structurally unsafe flagpole be repaired, replaced, or removed;
 - (5) regulation of the size, number, and location of flagpoles displayed (except the regulation must allow a minimum of at least one flagpole per property that is not more than 20 feet in height);
 - (6) regulation of the size of a flag;
 - (7) regulation of the size, location, and intensity of any lights used to illuminate a flag;
 - (8) reasonable restrictions on noise caused by an external halyard (hoisting rope) or flagpole; and
 - (9) prohibition against owners locating flags or flagpoles on common areas or common elements.

Action Item: Review existing POA dedicatory instruments and POA's geographics (e.g. location of condo units, size of lots, setbacks, etc.) to determine need for rules. Unless POA has rules that comply with the new law, POA may not be able to dictate any aspect of newly permitted flags. In most cases, flag rules are recommended.

1.5	Religious Display	§202.018 (HB 1278)	SF & C	6/20/11
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Description: POAs must allow an owner to display religious items on his front door or doorframe, with certain permissible limitations.

Specifics:

- The religious display may not:
 - o contain language or graphics patently offensive to a passerby;
 - o be larger than 25 cumulative square inches in size or
 - o use a material or color for an entry door that is prohibited by the governing documents.
- POAs have the right to "self help" under this law, i.e., they may remove an item that violates deed restrictions, provided the deed restrictions don't conflict with this statute.

Action Item: Review existing POA dedicatory instruments and POA's geographics (e.g. location of condo units, size of lots, setbacks, etc.) to determine need for rules. The parameters of this law are so narrowly drawn rules may not be necessary, but guidelines in compliance with this section would be permissible .

2.0 ELECTIONS, MEETINGS & DIRECTORS

2.1	Open Board Meetings	§209.0051 (HB 2761)	SF	1/1/12
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Description: Board meetings (regular and special) must be open to owners, with some exceptions.

Specifics:

- The board has the right to adjourn an open board meeting and reconvene in a closed executive session for certain issues as follows: personnel matters; litigation; contract negotiations; enforcement actions; confidential attorney communications; matters involving the invasion of owners' privacy; or; matters involving parties who have requested confidentiality and the board has agreed to honor that request.
- Decisions made in executive sessions must be summarized orally in general terms, including any expenditures approved, and recorded in the minutes.
- Boards must keep written minutes as record of each regular and special meeting and give owners access to approved minutes.
- Boards must give members notice of upcoming board meetings (regular and special), including the date, hour, place, and general subject of issues to be brought up in executive sessions.
- The Board's notice of meeting must be either:
 - o (1) mailed to owners at least 10 days beforehand; or
 - o (2) provided at least 72 hours before meeting by: (a) being posted notice in a conspicuous location, either in a common area or on a POA website; and (b) being emailed to all owners who have registered their email address to the POA.
- An owner has a duty to register and keep his email address updated with the POA.
- Allowances are made for certain recessed board meetings to be continued to the next day without notice.
- Board meeting notice is not required if:
 - o The board meets by telephone or electronically in any alternate manner whereby all directors may speak and be heard by all other directors or by unanimous written consent on:
 - (1) routine or administrative matters, or
 - (2) an action is necessary to address an urgent or emergency situation that requires immediate action.

- o The right of a board to meet and vote without prior notice to the members does not apply to the following matters:
 - (1) fines;
 - (2) damage assessments;
 - (3) initiation of foreclosure actions or enforcement actions;
 - (4) increases in assessments;
 - (5) levying special assessments;
 - (6) appeals from denials of architectural control approval; or
 - (7) suspending rights of an owner before the owner has an opportunity to appear before the board.
- o Actions taken without prior meeting notice must be summarized orally, including any actual or estimated expenditures approved, and documented in the minutes of the next regular or special noticed meeting.
- o Board meetings during the development period are excluded from the open meeting requirement, but not for meetings conducted for the purposes of:
 - (1) adopting or amending the governing documents, including declarations, bylaws, rules, and regulations of the POA;
 - (2) increasing the amount of regular assessments of the POA or adopting or increasing a special assessment;
 - (3) electing non-developer board members of the POA or establishing a process by which those members are elected; or
 - (4) changing the voting rights of members of the POA.

Action Item: Review policies and procedures to ensure compliance.

2.2	Meeting Notice	§209.0056 (HB 2761)	SF	1/1/12
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Description: POAs must give owners notice of a POA-wide election or vote.

Specifics:

- The notice must be given at least 10 to 60 days before meeting occurs, regardless of any provision in the declaration or bylaws to the contrary.

Action Item: Review policies and procedures to ensure compliance.

2.3	Recount Procedures	§209.0057 (HB 2761)	SF	1/1/12
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Description: POAs must conduct a recount of an election vote if requested by an owner.

Specifics:

- The request must be in writing by certified mail, return receipt requested, or other USPS confirmation service or in person to the POA's managing agent within 15 days after the date of the election.
- The request must be either:
 - (1) mailed to the POA's mailing address as listed on the latest management certificate; or
 - (2) delivered in person to the managing agent or the address designated for return of absentee ballots.
- Costs of the recount will be borne by the requesting owner, including the required cost to hire a qualified non-member to do the recount, unless the recount changes the results of the election.
- The recount must be conducted by
 - (1) a current or former:

- (a) county judge;
- (b) county elections administrator;
- (c) justice of the peace;
- (d) county voter registrar; or

(2) a person agreed on by the POA and persons requesting the recount.

- Recounts must be completed within 30 days of the owner's request. The board may continue to act in the meantime.

Action Item: Review policies and procedures to ensure compliance.

2.4	<u>No Secret Ballots</u>	§209.0058 (SB 472 and HB 2761)	SF	9/1/11
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Description: Secret ballots are prohibited.

Specifics:

- A member's vote in a POA-wide vote must be in writing and signed by the member, except for uncontested elections (e.g., one candidate to fill one open director seat).
- An electronic ballot is deemed to be in writing and signed.

Action Item: Review policies and procedures to ensure compliance.

2.5	<u>Owner Voting Rights</u>	§209.0059 (SB 472 & HB 2761)	SF	9/1/11
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Description: Owners may not be disqualified from voting for any reason.

Specifics:

- Provisions in dedicatory instruments that disqualify an owner's right to vote are void.

Action Item: Review policies and procedures to ensure compliance.

2.6	<u>Director Qualifications</u>	§209.00591 & §209.00592 (SB 472 & HB 2761)	SF	9/1/11
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Description: Owner director qualifications are void; all owners may run for the Board.

Specifics:

- Provisions in a dedicatory instrument that prevent owners from running for a position on the POAs board are void.
- An exception is present when the board is presented with written, documented evidence that a director has been convicted of a felony or crime involving "moral turpitude." Any such evidence against a sitting director results in that director immediately removed from the board and prohibited from future service.

Action Item: Review dedicatory instruments, policies and procedures to ensure compliance.

2.7	<u>Developer Director Transition</u>	§209.00591 (c) (HB 2761)	SF	1/1/12
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Description: Establishes timeframe when non-declarant owners must be elected to the Board.

Specifics:

- A declarant may appoint and remove board members during the declarant control period.
- Regardless of what the declaration states, 120 days after 75% of the lots that may be created have been sold to non-declarant owners or 10 years if declaration does not include the number of lots that may be created, at least one-third of board members must be elected by the owners, not the declarant.

Action Item: Review dedicatory instruments and existing developer board composition (developer to owner) to ensure compliance. Elections may be mandated.

2.8	<u>Electronic & Absentee Ballots</u>	§209.00593 (SB 472) §209.00592 (HB 2761)	SF	9/1/11
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Description: Electronic and absentee votes are valid if the ballots meet certain requirements.

Specifics:

- Regardless of any provision in the declaration or bylaws to the contrary, members may vote electronically or by means of absentee ballots.
- Additional restrictions and required language are established for electronic ballots.
- Electronic and absentee ballots count toward the quorum only on matters listed on the ballot, and do not count at all if the ballot item is modified at the meeting prior to the vote.

Action Item: Review needs of POA to determine if procedures allowing electronic or absentee ballots are in order. We believe this provision only applies to a POA exercising this right, not an owner.

2.9	<u>Director Appointment</u>	§209.00593 (HB 2761)	SF	1/1/12
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Description: Directors may not be appointed to positions whose terms have expired.

Specifics:

- Directors may only be appointed to fill a vacancy created by a resignation, death or disability and only for the unexpired term.
- This law does not apply during the development period or to a representative board.
- POA board may amend POA bylaws to provide for elections to be held so as to be in compliance.

Action Item: Review bylaws to determine need for board amendment to accommodate new requirement. For example, if obtaining a quorum to hold an election is an issue, a POA may want to make provisions for elections by mail and/or at a polling place.

2.10	<u>Election Vote Tabulators</u>	§209.00594 (SB 472 & HB 2761)	SF	9/1/11
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Description: Only election vote tabulators allowed access to ballots.

Specifics:

- A person who is running for election or is the subject of a vote (and that person's close relatives) cannot have access to ballots for that election or vote.
- Only the vote tabulators (or those allowed to recount under §209.0057) can have access to ballots.

Action Item: Review policies and procedures to ensure compliance. Consider including as an exception to open records in the §209.005(i) open records rules.

2.11	Annual Meetings & Elections	§209.014 (HB 2761)	SF	1/1/12
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Description: POAs must hold annual meetings or owners may themselves call an election meeting.

Specifics:

- The board must call an annual meeting of the members.
- If the board fails to call an annual meeting, an owner may demand an election meeting and, if the board again fails to call the meeting, three or more owners may form an election committee and, subject to certain procedural requirements, cause an election meeting to be held.

Action Item: Review policies and procedures to ensure compliance.

3.0

POA RECORDS & DOCUMENTS

3.1	Recording Requirement	§202.006 (HB 1821)	SF & C	1/1/12
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Description: Unrecorded POA dedicatory instruments are of "no effect."

Specifics:

- POAs must record in the county real property records (where property located) all "dedicatory instruments" (e.g., all governing documents - declaration, bylaws, articles, rules, etc.) or they are unenforceable.

Action Item: Ensure all POA dedicatory instruments are filed of record in all counties where the property is located.

3.2	Website Posting	§207.006 (HB 1821)	SF	1/1/12
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Description: A POA's dedicatory instruments must be posted on a POA "publicly accessible" website, if one is maintained by the POA.

Specifics:

- If a POA or its management company maintains a "publicly accessible" POA website, that website must include copies of all governing documents of the POA (e.g. declaration, bylaws, rules, articles and all amendments to same).

Action Item: Ensure all dedicatory instruments are filed on POA or management company's POA's publicly accessible website, if any.

3.3	Declaration Amendment	§209.0041 (SB 472)	SF	9/1/11
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Description: Declarations may be amended by 67% of the Owners (or less stated in the declaration).

Specifics:

- Regardless of language in the declaration to the contrary, all declaration amendments may be passed by 67% of the total votes allocated to owners, unless the declaration itself states a lower percentage, in which case the lower percentage controls.

Action Item: Be aware of lower % when amending declaration, if applicable.

3.4 Open Records	§209.005 (HB 2761)	SF	1/1/12
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Description: POAs must adopt and file open records policy; open records procedures established.

Specifics:

- Owners (or their agents designated in writing) may have access to POA records, but they must submit written requests to the POA or its representative by certified mail to the mailing address of the POA or authorized representative as listed in the current management certificate.
- The request must identify the records requested and indicate whether the requesting owner wants to inspect the records or have the POA forward copies.
- The POA then has 10 business days from receipt of the request to, as appropriate to:
 - (1) provide written notice of dates on which records may be inspected, or
 - (2) provide the requested copies, or
 - (3) provide the owner written notice that it is unable to produce the records within the 10-day period and provide a date, within an additional 15 business days, by which the records will be sent or made available to the owner for inspection.
- General exceptions are made for attorney's files.
- Inspection must take place at mutually agreed time during normal business hours.
- Records can be produced in hard copy, electronic or other format reasonably available.
- POAs must adopt and record rules regarding production and copying of POA records, including a fee schedule for copy charges; otherwise the owner is not responsible for the costs.
- These costs cannot exceed those listed under the Texas Administrative Code's charges for providing copies of public information (1 TAC Section 70.3).
- POAs may require the owner to pay in advance.
- If estimated costs are lesser or greater than the actual costs, the POA shall submit a final invoice to owner before the 30th business day after information is delivered.
- If the final invoice includes additional amounts due not reimbursed to POA before 30th business day after date invoice sent to owner, the amounts may be added to the owner's account as an assessment.
- If estimated costs exceed the final invoice amount, the owner is entitled to a refund that shall be issued not later than the 30th business day after the date the invoice is sent to the owner.
- POAs may keep certain records confidential and decline to make them available (e.g., violation histories of owners, owners' personal financial information, owners' contact information other than address, and POA personnel files) unless the owner gives written approval or a court orders the POA to release the information.
- Owners denied access to records are given JP court remedies, after certified demand; prevailing party is entitled to attorneys' fees.

Action Item: All POAs must adopt and file of record an open records policy.

3.5 Records Retention Policy	§209.005(m) (HB 2761)	SF	1/1/12
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Description: POAs must adopt a records retention policy; certain statutory timeframes established.

Specifics:

- POAs with more than 14 lots must adopt a records retention policy that includes, at minimum, the following categories and retention periods:
 - (1) Financial records (7 years);
 - (2) Account records of current owners (5 years);
 - (3) Contracts for terms of at least one year or more (4 years after expiration of contract);

- (4) Minutes of owner meetings and board meetings (7 years);
- (5) Tax returns and audits (7 years); and
- (6) Governing documents (permanently).

Action Item: POAs consisting of 15 lots or larger must adopt and file of record a records retention policy.

4.0

ASSESSMENTS, COLLECTIONS, LIENS, FORECLOSURE & VIOLATIONS

4.1	Military Notice	§209.006(b) (HB 1127)	SF	1/1/12
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Description: Mandatory inclusion of military notice established.

Specifics:

- All §209.006 notices must include a provision notifying owners that they may have special rights or relief if they are in active military duty.

Action Item: Review 209 letters to ensure compliance.

4.2	Payment Plan Guidelines	§209.0062 (HB 1228 and HB 1821)	SF	1/1/12
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Description: Payment plans required and guidelines are mandated.

Specifics:

- POAs with more than 14 lots must offer payment plans for a minimum of 3 months and can (at the POA's discretion) allow payment plans up to a maximum of 18 months.
- POAs must adopt and record reasonable payment plan guidelines/rules. Owners making payments pursuant to an approved payment plan must not be charged "monetary penalties." However, the POA may charge reasonable administration costs and interest.
- POAs aren't required to offer a payment plan if an owner has defaulted on a payment plan in the last 2 years.

Action Item: POAs consisting of 15 lots or larger must adopt and file of record payment plan guidelines.

4.3	Application of Payments	§209.0063 (HB1228)	SF	1/1/12
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Description: Mandatory application of payments schedule established.

Specifics:

- POAs must apply owners' payments in the following order:
 - (1) delinquent assessments;
 - (2) current assessments;
 - (3) attorney fees or third party collection costs incurred by the POA associated with assessments and any other charge that could provide the basis for foreclosure;
 - (4) other attorney fees;
 - (5) fines;
 - (6) other amounts.
- If at the time an owner submits a payment, he/she is in default under a payment plan, the POA does not have to follow the above-described application schedule. However, fines cannot be given priority over any other amount owed under any circumstances.

Action Item: Review policies and procedures to ensure compliance.

4.4	Third Party Collections	§209.0064 (HB 1228)	SF	1/1/12
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Description: Required notice to owner prior to turning delinquent accounts over to a third party collection agent and certain contingency fee arrangements made unenforceable against an owner.

Specifics:

- Before turning an owner's account over to a debt collector (attorney or other collection agent), the POA must provide 30-day notice of the delinquency via certified mail return receipt requested and advise the owner of payment plan alternatives to avoid collection efforts.
- Owners not responsible for fees under contingency fee arrangements between the POA and its attorney or collection agent. The POA's collections contract with its attorney or other collection agent must require payment (the collection contract may not be contingent, and must hold the POA responsible for paying costs incurred under the contract).

Action Item: Ensure 30 day certified notice is given prior to turning a matter over to a third party debt collector and the third party debt collector's agreement is in compliance.

4.5	Copy Charge Foreclosure	§209.009(3) (HB 2761)	SF	1/1/12
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Description: No POA foreclosure for copy charges related to books and records.

Specifics:

- Amounts added to an owners account as an assessment for POA books and records copies under §209.005(i) cannot be foreclosed on by the POA if the owners debt consists solely of these charges.

Action Item: Be aware no POA foreclosure of debt consisting solely of fees charged for obtaining copies of POA records.

4.6	Junior Lienholder Notice	§209.0091 (HB 1228)	SF	1/1/12
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Description: Prior notice of POA foreclosure must be sent to junior lienholders.

Specifics:

- POAs must notify inferior/subordinate lien holders evidenced by a deed of trust of the debt owed and give them an opportunity to cure before the 61st day after notice received before proceeding with foreclosure.

Action Item: Ensure third party debt collectors are aware of the requirement to notify junior lienholders.

4.7	Judicial Foreclosure	§209.0092 (HB 1228)	SF	1/1/12
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Description: Non-judicial POA foreclosures prohibited.

Specifics:

- POAs pursuing foreclosure must go through an expedited judicial foreclosure process and receive a court order granting the POA the right to foreclose.
- Any other foreclosure method allowed by the POA's documents is prohibited unless an owner specifically agrees to it in writing.
- Supreme Court of Texas has until 1/1/12 to adopt rules, which will hopefully answer some of the currently

unanswered questions.

Action Item: Ensure third party debt collectors are aware of the expedited judicial foreclosure requirement.

4.8	Foreclosure Amendment	§209.0093 (HB 1228)	SF	1/1/12
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Description: Foreclosure provisions can be added or removed by owners from declaration.

Specifics:

- Members can vote to add or remove foreclosure provisions in the governing documents by a vote of 67% of all votes. To trigger a meeting for a vote on the issue, owners representing at least 10% of all voting interests may request the POA hold a special meeting.

Action Item: Be aware of provision, in case a situation arises.

4.9	Lien Notices	§209.0094 (HB 1228)	SF	1/1/12
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Description: Confirms prior law that POA lien notices and similar instruments affect title to property.

Specifics:

- Existing law requiring attorneys to draft any instrument that affects title to real property applies to a POA's lien, notice of claim of lien, or similar document.

Action Item: Review policies and procedures to ensure compliance.

5.0

HOME SALES & REALES

5.1	Transfer Fees	Ch. 5, Subch. G (HB 8)	SF & C	6/17/11
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Description: Certain types of transfer fees are prohibited with general exceptions for most POA transfer fees.

Specifics:

- This new law targets "private" transfer fees that provide a perpetual income stream to developers who use restrictive covenants to require payment every time a lot is sold (or resold) and makes them void.
- Existing transfer fees are grandfathered, but made subject to strict reporting and notice requirements.
- There are, however, 10 categories of exemptions two of which generally apply to the POA industry.
- Subsection (7) exempts dues, fees, charges, assessments, contributions, or other types of payment under a declaration or other covenant or under law, including resale certificates, provided they are not paid to third parties other than the POA or a POA's managing agent stated in the POA's management certificate.
- Subsection (9) exempts dues, fees, charges, assessments, fines or other types of payments made to an organization exempt from federal taxation under Section 501(c)(3) or 501(c)(4) Internal Revenue Code but only if the organization uses the payments to directly benefit the encumbered property by:

- (A) supporting or maintaining only the encumbered property;
- (B) constructing or repairing improvements only to the encumbered property; or
- (C) providing activities or infrastructure to support quality of life, including cultural, educational, charitable, recreational, environmental, and conservation activities and infrastructure, that directly benefit the encumbered property.

Action Item: Review existing transfer fees to determine if in compliance and/or limited need for statutorily required filings.

Description: New requirements and timeframes for resale certificates are established.

Specifics:

- Either the purchaser, seller or their agent or a title company may request a resale certificate.
- The purchaser pays for the resale certificate fee unless otherwise agreed by the purchase and seller.
- POAs may require payment before beginning the process to issue a resale certificate but may not process payment until the certificate is available for delivery.
- In addition to the other laundry list of required inclusions, there are new requirements regarding:
 - (1) the purpose of special assessments,
 - (2) disclosure of all lawsuits the POA is a party, except ad valorem tax suits against a member of the POA, and
 - (3) statement of all fees, including description, amount and to whom paid.
- A resale certificate may be requested by an owner, prospective purchaser, the agent of either, or the title company. A resale certificate must have been prepared no more than 60 days before the date of delivery. (An owner will have to request a new one if a sale falls through and more than 60 days elapse.)
- If the party requesting the information is a purchaser or purchaser's agent, the POA may require him to provide the POA with reasonable evidence that the purchaser has entered into a contract to purchase property in the subdivision or otherwise has a right to acquire property in the subdivision.
- POAs may require payment before beginning the process to issue a resale certificate but may not process payment until the certificate is available for delivery.

Action Item: Review policies and procedures to ensure compliance with new timeframes, production procedures and required information.