

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

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

*Condominium Sales & Resales Under the Texas Uniform Condominium Act*, 1995 State Bar of Texas Advanced Real Estate Drafting Course

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*Statutory Evolution Property Owners Associations in Texas*, 18th Annual Real Estate Law Conference, South Texas College of Law, May 2002.

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*Drafting Documents Associated with Judicial Foreclosures, Assessment Lien Foreclosures and Mechanics Lien Foreclosures*, 7th Annual Advanced Real Estate Drafting Course, State Bar of Texas, February, 1996.

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# STATUTORY EVOLUTION OF CONDOMINIUMS AND PROPERTY OWNERS ASSOCIATIONS IN TEXAS

by Sharon Reuler and Roy D. Hailey

## I. INTRODUCTION

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 Sure, there were some important public interests that limited, modified, superceded, or nullified those private rights of contract and covenant, but even with those compelling public interests, the property owner was left with a whole lot of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

**A. THREE STAGES OF OUR EVOLUTION.** Since the late 1980s, we have participated on the legislative committees of organizations of which we are members. With the hindsight of 13 years of POA legislation experience, we recognize that we are in an era of rapidly evolving statutes affecting condominiums and planned communities. During that 13-year period, our perspectives about POA legislation have also evolved through what we now recognize as 3 stages.

**Stage One - Denial.** Initially, we saw our duty - as real property lawyers - to preserve, protect, and defend the venerable legal system that had well served western civilization for centuries. We supported the rights of private property owners to decide their own fates by amending their restrictions and using the political processes of their private owners associations. Accordingly, we opposed legislative efforts to regulate private deed restricted planned communities, which are not creatures of statute, like condominiums. During stage one, we thought it was easier to kill bills than to pass them, and we thought we could outlast a bill's proponents, who (we dreamed) would weary of the march to the Capitol every 2 years.

**Stage Two - Appeasement.** The illusions of Stage One became self-evident. The POA bills kept coming - more each session. The issues were increasingly emotional and "personal." The legislators were increasingly receptive to constituent cries for legislative fixes to alleged abuses by POA boards, POA managers, and POA attorneys. During Stage Two, we hoped to preserve the basic premise of private property rights by working for passage of a few carefully drafted bills that would selectively appease the proponents of state regulation of planned communities. We discovered the difficulty of appeasing disparate heart-felt grass roots efforts that are afforded as much dignity in the legislative process as bills carried by professional lobbyists after having been honed by organizational committees. Stage Two ended with a spate of single-purpose statutes that borrow definitions from other statutes having different purposes and which are not designed to work together.

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

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

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

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

**1. Band-Aids & Patches.** Statutes can evolve as a piecemeal patchwork quilt in which legislation is adopted session by session in response to specific issues. Because each statute stands on its own, the process for linking statutes is catch as catch can. In some cases, bills refer to previously adopted statutes for definitions or for procedures, but without a consistent comprehensive framework for fitting the disparate bills together. Written in response to a particular situation or constituent's complaint, some statutes have consequences that were not anticipated or intended by the drafter, such as the "resale certificate" of Property Code Chapter 207, which some HOA managers insist applies to the developer's sale of a vacant lot to a homebuilder, and which may also apply to condominium resales (already subject to TUCA's resale certificate).

**2. Comprehensive.** The other broad method for statutory development is adoption of comprehensive statutes such as those promulgated by the National Conference of Commissioners on Uniform State Laws. Texas adopted the Uniform Condominium Act in 1994, but has never considered the Uniform Planned Community Act (for planned communities only) or the Uniform Common Interest Ownership Act (for condominiums and planned communities). (Aside: In 1999 a bill entitled the

"Planned Community Act" was filed by Senator John Carona as S.B. 699. Although broader than the current POA legislation, the bill was not sufficiently comprehensive to qualify as a "Uniform" act.)

**C. WHY THIS ARTICLE NOW? *The stakes are too high for government to be a spectator sport.*** Barbara Jordan

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

Take foreclosure law, for example. That is of broad interest to real estate lawyers. In 2001, the Texas legislature set a cap of \$2,500 for attorneys fees in a nonjudicial foreclosure sale (Prop. Code Section 209.008), created a 180-day right of redemption following a foreclosure - either judicial or nonjudicial (Section 209.011), and created a consumer notice that must be given to the foreclosed-on owner within 30 days after the sale (Section 209.010). If you are not interested in these statutory requirements because they pertain only to HOA assessment liens, consider that statutory concepts have a tendency to migrate.

Whether or not you are interested in the laws pertaining to POAs, this article gives you a front row seat on the statutory evolution of condominiums and planned communities in Texas - as it is occurring. As we are writing this article, an Interim Subcommittee of the Senate is writing a report that will likely recommend a number of POA law changes to the Property Code. Also, POA bills to amend the Property Code are being drafted now for the session that starts in January 2003 - 4 months from now. This activity is occurring *without* the participation of an organized segment of the real property bar.

**II. TERMINOLOGY - *The beginning of wisdom is the definition of terms.*** Socrates

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

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

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

2. **Condominium** is a type of real property ownership defined by and created according to Chapters 81 and 82 of the Property Code, and which combines fee simple ownership of a unit with

tenancy in common ownership of common elements. The term does not refer to a type of structure. A condominium association is a type of POA.

3. **Homeowners Association** or "**HOA**" is used in this article to refer to the association of lot owners in a planned community. An HOA is a type of POA.

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

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

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

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

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

In 1987, Chapter 202 created a statutory definition of "dedictory instrument" that equates to "each governing instrument" of a condominium or planned community. POA attorneys generally understand "governing instruments" to include bylaws, articles of incorporation, community rules, and similar documents which would not otherwise be considered "dedictory" in nature.

Between 1987 and 1999, Texas POAs gladly accepted the benefits of Chapter 202's mandate to *liberally* construe the terms of their "governing documents." For that purpose, it was okay for bylaws and rules to be "dedictory instruments." When Chapter 202 was amended in 1999 to require the public recording of all "dedictory instruments," Texas POAs had to be convinced of the necessity to record

documents that had not previously been recorded in the county records, such as bylaws amendments, articles of incorporation, pool rules, and architectural guidelines.

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

**2. What is a "Subdivision"?** A subdivision is the division of a tract of land into smaller parcels using ordinary and legally recognized methods for surveying and platting land and publicly recording the results. (Black's Law Dictionary, 7th Edition). Although "subdivision" is not a defined term in the Government Code which addresses the platting of subdivisions, it is defined in 3 POA statutes (Chs. 201, 207 + 209), and one of the definitions is incorporated by reference in 2 other POA statutes (Chs. 204 + 205).

None of the 3 definitions expressly excludes condominiums, which raises a question of whether a condominium qualifies as a subdivision under those statutes if not excluded by the statute's applicability provision. The applicability provision of Chapter 204 suggests that "subdivision" could apply to condominiums - *"This chapter applies only to a residential real estate subdivision, excluding a condominium development governed by Title 7, Property Code . . ."*

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

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

**3. What is a "Property Owners Association"?** The term "property owners association" has more than one definition in the Texas statutes and in common parlance. In its ordinary meaning, POA refers to any association of property owners - whether voluntary or mandatory and regardless of the type of property ownership - condominium, planned community, or completely fee simple. It is defined in 3 POA statutes (Chs. 202, 204 + 209), and one of the definitions is incorporated by reference in 3 other POA statutes (Chs. 205, 207 + 208). The first and most durable (to date) statutory definition is in Chapter 202 of the Property Code, which defines a POA much like the Uniform Acts define a CIC, as expressly applicable to condominiums as well as to planned communities of attached or detached single family homes with mandatory owners associations.

In the Houston area, "POA" may be acquiring a narrower meaning that excludes condominiums because of Chapter 204 of the Property Code, which is a widely used HOA statute that expressly does not apply to condominiums. The newer Chapter 209 may have the same effect statewide. Although Chapter 209's definition of "property owners association" is silent about condominiums, Chapter 209 does not apply to condominiums under its applicability provision.

### III. CURRENT CLIMATE FOR COMMON INTEREST COMMUNITIES

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

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

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

The "**new school**" view is that POAs should be kinder gentler communities that respond to the unique circumstances of individuals on a case-by-case basis, and that are open to inspection, observation, and participation by members. POAs exist to serve their members. One of the chief proponents of new school thinking is Atlanta attorney Wayne S. Hyatt, as evidenced by his seminal 1998 article *Common Interest Communities: Evolution and Reinvention*, published in the John Marshall Law Review, Winter 1998, Volume 31, No. 2. As an advisor to the Third Restatement of the Law of Property (Servitudes), published in 2000 by the American Law Institute, Mr. Hyatt had an obvious hand in the progressive new Chapter 6 - Common-Interest Communities, which contains nuggets like "the duty of the CIC to treat its members fairly" (Sec. 6.13). Mr. Hyatt personally delivered his message of kinder communities to Texas in July 2002 at the State Bar's Advanced Real Estate Law Course, under the topic *Reinventing Master Planned Communities: Legal Structure to Create "Community."*

2. **POA Baby Boom.** Texas is experiencing a period of rapid creation of condominiums and planned communities for a number of reasons. For starters, the homebuying public wants "community" - neighborhood identity, recreation amenities, covenant enforcement, and - yes - even architectural control. Local governments in growth areas are also in the market for HOAs which, they happily discovered, are vehicles for privatizing public duties. Let the HOAs maintain the rights of way

and drainage easements. When developers encounter platting or zoning problems with their traditional real estate developments, such as single family subdivisions and office parks, they are discovering that the condominium form of ownership may be a way around some of the obstacles. Hence, some projects are being created as condominiums that otherwise might not have had a mandatory POA. When these factors are coupled with low mortgage rates and long term projections for significant population growth in the urban sectors of the state, a baby boom in POAs is underway.

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

4. **Headlines.** Since the late 1990s, residents of the Houston area have been exposed to a steady stream of newspaper, radio, and television reporting about the negative aspects of HOAs. Those of us who live elsewhere cannot appreciate the effect that constant critical HOA media attention has on the minds and hearts of lawmakers and judges, as well as the general public. On the other hand, Houstonians may fail to understand why the rest of us are not as sensitive to the HOA issues that are popular news items in the Houston market. The nation did get a taste of the Houston media perspective on April 19, 2002, when ABC's *20-20* program aired a segment on the negative aspects of HOAs.

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

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

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

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

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

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

Based on its research and hearings, the Business and Industry Committee recommended new condominium housing legislation. The chair of the Subcommittee, Representative Robert Bush of Sherman, became the author of the (Texas) Uniform Condominium Act, which was first filed in the 1981 legislative session. The rest, as they say, is history.

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

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

**c. 2002 Interim Report.** After the 2001 legislative session, the Senate Intergovernmental Relations Committee appointed a 3-person Interim Subcommittee on Property Owners Associations, chaired by Houston Senator Jon Lindsay. The other Subcommittee members are Dallas Senator Royce West and Houston Senator John Whitmire. In a memorandum from Senator Lindsay to "Interested Parties," Senator Lindsay states that: "The subcommittee is instructed to study the appropriateness of foreclosure and other powers granted to property owners associations to enforce covenants. With this purpose in mind, the subcommittee will soon hold a hearing in Houston to hear testimony . . . "

The first hearing was held on January 16, 2002, at the University of Houston. The hearing room was filled to capacity, as was the anteroom, with the crowd overflowing into the building's lobby. The testimony, as is typical of these hearings, was emotional. After 8 hours of taking testimony, with no break for lunch, the hearing was adjourned with promises of future hearings.

After the hearing, Senator Lindsay appointed an Attorney Task Force composed of pro-HOA attorneys and pro-homeowner attorneys. Houston attorney Michael Gainer, who had testified at the hearing, was asked by Senator Lindsay to appoint the pro-HOA attorneys. The Attorney Task Force was asked to look at the many issues that had been raised at the hearing to see if any common ground could

be found as a basis for proposed legislation in 2003. The Attorney Task Force consists of 9 Houston lawyers. The 4 pro-HOA lawyers are Mr. Gainer, Susie Rice, Roy Hailey, and Bob Alexander. The 4 pro-homeowner lawyers are David Kahne (Geneva Brooks' attorney), Marianne Rosen (Wenonah Blevins' attorney), Wendy Laubach, and David Furlow. The ninth attorney - the neutral - is Cathy Sisk of the Harris County Attorney's Office. (*Geneva Brooks and Wenonah Blevins are discussed later in this article.*)

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

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

The Subcommittee's Interim Report is expected in November 2002. Given the complaint-based testimony and the absence of testimony from a visionary with a comprehensive approach for dealing with the issues, we expect the 2002 Interim Report to follow the Band-Aid approach of recommending additional patches to the quilt of HOA laws.

**2. Which Committee?** Over the last 20 years, most POA legislation has been heard by the "business" oriented committees of the House and Senate, usually Business and Industry or State Affairs. Now that the Senate Intergovernmental Relations Committee has taken charge of POA legislation, we wonder what effect, if any, its "governmental" orientation to lawmaking will have on the bills that it receives. Will the Intergovernmental Relations Committee try to treat HOAs more like city governments and less like nonprofit corporations as regards meetings and records? It bears watching.

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

Although the Real Estate Lobby has a moniker, it does not speak as one voice. Each of its constituents speaks for itself. Of course, the Real Estate Lobby examines POA legislation to see how it affects its constituent organizations. When each organization is satisfied that it is not adversely affected by a particular bill, it loses interest in the legislation. The other industries have no reason to

evaluate proposed legislation from the perspective of POA directors, managers, attorneys, or homeowners. That is not their constituency.

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

#### **IV. PEOPLE WHO SHAPE POA LAWS**

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

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

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

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

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

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

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

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

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

**5. Frank St. Claire & POA Committee.** In 1989, Dallas attorney Frank St. Claire asked the State Bar's Real Estate Section for permission to organize a committee of Section members who were interested in POA matters. Initially named the Committee on Condominium and Common Interest Ownership, the committee was renamed in 1998 as the Committee on Property Owners Associations (nicknamed the POA Committee). One of the attorneys at the committee's 1989 organizational meeting in Dallas was Sharon Reuler, who began working on TUCA in 1979 as a Realtor. Having met a statewide group of lawyers interested in condominium legislation, Ms. Reuler invited the POA Committee members in 1990 to form an ad hoc drafting group to work on TUCA, which was laying dormant in the legislative trash bin. The drafting attorneys included Roy Hailey, Rick Butler, Mitchell Katine, Marc Markel, Bruce Schimmel, Rosemary Jackson, Richard Bartley, and Lou Burton. The group's efforts resulted in a refreshed bill that was introduced in 1991.

6. **CAI & Margey Meyer.** CAI, the acronym for the Community Associations Institute, is a national organization for people involved with common interest communities, with chapters in Houston, Dallas, San Antonio, and Austin. When TUCA was revived in 1990, CAI volunteer Margey Meyer, a Houston POA manager, was instrumental in getting Houston Representative Robert Eckels to author the TUCA bill for the 2001 and 2003 legislative sessions. CAI's role in the 1997 amendment of TUCA is described later in this article.

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

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

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

3. **Property Rights Foundation & Geneva Brooks.** The Property Rights Foundation is a Houston-based organization devoted to protecting individual homeowners from abusive practices by HOA boards, managers, and attorneys. The Foundation's motto is *In Defense of Our Vanishing Property Rights While We Still Have Them*. The Foundation was started by Houston resident Geneva Brooks, who was described in her August 2002 obituary as a tireless property rights activist, agitator, and iconoclast. Testifying at almost every legislative hearing regarding HOAs between 1999 and 2002, she piqued legislators' interest in HOA foreclosures with colorful and effective imagery. She also took aim at attorneys who represent HOAs and brought legislative attention to the issue of attorneys fees. Ms. Brooks entered the Texas legal annals as the defendant/appellant in *Geneva Brooks d/b/a Committee to Remove the Board, Diane Higgins, Pauline White, Don Yust, Virginia Yust, Aurelio Ojada, Anthony McBride, and Susan Auclair v. Northglen Association*, 76 S.W.3d 162 (Tex.App.-Texarkana, 2002, pet. filed). As a sidenote, Ms. Brooks' attorney is Houston attorney David Kahne, who serves on the HOA consumer side of the Attorney Task Force appointed in 2002 by Senator Lindsay.

4. **Wenonah Blevins.** A footnote to Chapter 209 of the Property Code recites the name of Wenonah Blevins, possibly the only citizen's name to appear in the entire Property Code. 82-year old Mrs. Blevins lost her \$150,000 Houston home in the March 2001 sheriff's sale. The order of sale

resulted from her HOA's judicial foreclosure of its assessment lien for nonpayment of \$814.50 in delinquent assessments. When the foreclosure sale buyer evicted Mrs. Blevins from her home on April 10, 2001, the national media became interested in the dispossessed widow who lost her \$150,000 home for \$814 of HOA "dues." Houston attorney Marian Rosen filed suit on behalf of Mrs. Blevins, who eventually was restored to her home. The Legislature was in session, with only weeks remaining until sine die. Houston lawmakers quickly filed "emergency" bills (the filing deadline was past) to prevent HOAs from foreclosing in situations similar to Mrs. Blevins. Although the late-filed bills did not succeed, Senator Lindsay did give Mrs. Blevins a statutory footnote under Section 209.001 of the Property Code, which says that the bill "is enacted in honor of Wenonah Blevins and may be unofficially referred to as the Wenonah Blevins Residential Property Owners Protection Act." As a sidenote, Marian Rosen serves on the HOA consumer side of the Attorney Task Force appointed in 2002 by Senator Lindsay.

**5. "Deferred Billing" & Bill Gammon.** At public hearings held in 2002 by the Interim Subcommittee of the Senate Intergovernmental Relations Committee, homeowners complained about the manner in which HOA attorneys pursue them for recovery of the HOA's large legal fees. The terms for the objectionable practices were "deferred billing," "contingency billing," and "alternative billing." Property Code Section 209.008 is the legislative Band-Aid applied to the problem of "deferred billing." Much as Wenonah Blevins became the 2001 poster child for the mistreated homeowner, Houston attorney Bill Gammon became the 2001 poster child for HOAs' allegedly extreme legal practices. Mr. Gammon's "alternative billing arrangements" for his HOA clients are described in detail on his website [www.gammonlaw.com](http://www.gammonlaw.com), as of September 1, 2002.

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

**7. Senator Jon Lindsay.** Houston Senator Jon Lindsay served as the Harris County Judge (the county's CEO) for 20 years before being elected to the Texas Senate in 1996. During the 2001 legislature, Senator Lindsay became the champion of the consumer side of the HOA bills going through the legislature, which paired him off against Senator John Carona. Following the 2001 session, the Senate's Intergovernmental Relations Committee, of which Senator Lindsay is vice-chair, appointed an interim subcommittee to study "the appropriateness of foreclosures and other powers granted to property owners associations to enforce covenants." The subcommittee is chaired by Senator Lindsay.

**8. CAI, TLAC, Margey Meyer, Larry Niemann & Connie Heyer.** The Texas Legislative Action Committee, called "Tee-Lak" after its acronym, of the Community Associations Institute (CAI) was organized in the early 1990s by Houston POA manager Margey Meyer, who was also active in Houston Proud. During her decade of TLAC leadership, Ms. Meyer has testified at almost every POA-related hearing on behalf of TLAC. Ms. Meyer is an officer of Associa, a national POA management company of which Senator John Carona is president and CEO. For the 1999 session, TLAC hired Austin attorney Larry Niemann as its lobbyist. Mr. Niemann and Connie Niemann Heyer, his daughter and colleague, have frequently testified on behalf of CAI and TLAC at legislative hearings. Although CAI's national charter requires it to speak for individual homeowners as well as HOAs, the

pro-consumer forces in Texas try to paint CAI and TLAC as the voices of POA attorneys, POA managers, and POA directors.

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

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

## **V. EVOLUTION OF TEXAS CONDOMINIUM STATUTES**

**A. 1963 CONDOMINIUM ACT - FIRST GENERATION.** Enacted in 1963, The Texas Condominium Act (initially Article 1301a V.A.C.S., now Chapter 81 Property Code) is a first generation enabling statute. First generation statutes "enable" condominium ownership, and are characterized by brevity, rigidity, and a distinct lack of consumer protections. The prototype for first generation condominium statutes is the 1962 FHA Model Act for the Creation of Apartment Ownership.

Until the adoption of TUCA in 1994, Texas had the dubious distinction of being one of the few growth states with a nearly pristine first-generation condominium statute. Since its adoption in 1963, the Condominium Act has been once codified (in 1983 as Chapter 81 Property Code), and twice amended (1984 and 1989). Not much activity for a 40-year run.

**B. THE UNIFORM ACTS.** Because TUCA is based on the model Uniform Condominium Act promulgated by the National Conference of Commissioners on Uniform State Laws, this section provides a brief introduction to the Uniform Acts for common interest communities.

**1. Second Generation.** By the late 1960s, every state had adopted a condominium enabling statute, many of which were based on the FHA model. By the early 1970s, it was apparent that first generation statutes were inadequate to deal with the variety and complexity of the emerging condominium market. Development of a second generation condominium statute fell to the National Conference of Commissioners on Uniform State Laws. The first version of the Uniform Condominium Act appeared in the Uniform Land Transactions Act ("ULTA"). The UCA was separated from ULTA in 1975, and was published in 1977 by the Uniform Law Commissioners as a free-standing Uniform Condominium Act. The UCA was revised and republished in 1980.

While revising the UCA, the Uniform Law Commissioners published a similar model statute for planned unit developments, the Uniform Planned Community Act ("UPCA") in 1980. In 1981 the Uniform Law Commissioners published a companion model statute for cooperatives, the Model Real

Estate Cooperative Act ("MRECA"). By 1982, there were three parallel second generation model statutes, for condominiums, planned communities, and cooperatives.

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

In 1982, the Uniform Law Commissioners rolled the three model acts (UCA, UPCA, and MRECA) into a single Uniform Common Interest Ownership Act ("UCIOA"). Instead of continuing to revise the three single-ownership acts, the Uniform Law Commissioners concentrate their efforts on UCIOA. Fortunately, revisions to UCIOA can often be easily adapted to the 3 constituent model acts.

**C. TUCA - 13 YEARS IN THE MAKING.** The model UCA was published by the Uniform Law Commissioners in 1977. By 1979, the UCA was in the hands of Austin real estate lobbyist Larry Niemann, who took the concept to the House Committee on Business & Industry. After the 1979 session, the B&I Committee appointed an interim subcommittee to study condominium housing law, chaired by Representative Robert Bush of Sherman, Texas. The 1980 *Report of the Subcommittee on Condominium Housing Laws* contains the first draft of the proposed Uniform Condominium Act proposed for Texas. Although Mr. Niemann's name does not appear in the Report, he helped conduct the statewide hearings and was instrumental in creating interest in the proposed legislation.

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

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

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

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

TUCA made more progress in 1991 than its proponents had originally expected. It helped that TUCA had "been around" for 10 years, and that the UCA or UCIOA had been adopted by 20 other states. TUCA attracted no organized opposition, possibly due to Texas' dispirited real estate industry. However, because the bill got a late start and was held in subcommittee, the 5-month biennial session ended before TUCA could clear the last hurdle to adoption.

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

Sidenote. In 1983, anticipating that TUCA would then become law, the State-sponsored broker/lawyer committee issued a condominium resale contract and certificate based on the then proposed TUCA. Even though the law did not pass until 1993, Texas real estate brokers have been using the condominium resale certificate since 1983 - a 10-year head start.

**D. THE TUCA AMENDMENTS.** Since its adoption in 1993, TUCA has weathered 4 legislative sessions with only 2 amendments. Each of the Band-Aid amendments was drafted to appease a constituent with a problem. Neither amendment came through the ad hoc TUCA drafting committee.

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

The board of directors of Mockingbird Pond Condominium in San Antonio - a pre-TUCA condominium - was having problems with Colonel Welda Smith, an owner and former director with a reputation for speaking her mind at board meetings. To conduct its business, the board of directors found it expedient to hold its meetings at times and places that prevented Colonel Smith's attendance. Having learned that TUCA requires open board meetings for condominiums created after 1993, Colonel Smith asked San Antonio Representative Leticia Van de Putte to file a bill extending the open meetings requirement of TUCA to pre-TUCA condominiums like Mockingbird Pond.

Colonel Smith's cause was championed by Larry Niemann and CAI's TLAC, which helped draft and lobby H.B. 1285. Instead of merely making TUCA's Section 82.108 applicable to pre-TUCA condominiums, the bill contained a bevy of new procedural requirements and peculiar penalties, such as allowing individual homeowners to levy monetary fines against directors who fail to provide meeting information when asked. The bill had almost cleared both houses when it came to the attention of Sharon Reuler and Rosemary Jackson, whose opposition testimony at the last committee hearing on the Senate side resulted in elimination of the most peculiar provisions.

**2. 1997 Document Amendments.** As H.B. 1285 (Rep. Van de Putte's "Open Meetings" bill) was being read on the floor of the Senate on May 24, 1997, at the end of the session, a number of Senators asked Senator Wentworth, the Senate sponsor of the House bill, to accept floor amendments. Of the 5 substantive floor amendments, one submitted by Houston Senator Rodney Ellis added a new section to TUCA - Section 82.070, entitled *Meeting at Which Amendments May be Adopted*. As a floor amendment, Section 82.070 had not been heard in committee, had not been reviewed by the Real Estate Lobby, and had no opportunity to be improved.

The easily-overlooked seemingly-innocuous troublesome new statutory requirement sounds reasonable - to give the owners advance notice of every proposed amendment to any governing document. However, this short Band-Aid is fraught with problems. For example - it requires proof of delivery of notices by signed receipts or U.S. mail postmarks in an era when many POAs communicate with owners by posting notices on doors, in mailboxes, on websites, or via email. Well, you get the idea. Section 82.070 does not apply to pre-TUCA condominiums because the applicability section of TUCA was not amended to make Section 82.070 "retroactive."

## VI. EVOLUTION OF HOA STATUTES - *Politics is the art of the passable.*

Unlike condominiums, planned communities and HOAs are not creatures of statute. Texas has no enabling or comprehensive statute for planned communities, as it does for condominiums. Therefore, HOA statutes have evolved as Band-Aids in response to specific issues and problems presented to the legislature.

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

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

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

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

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

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

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

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

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

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

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

To combat plummeting property values, Houston's mortgage bankers asked Dr. Barton Smith, an economics professor at the University of Houston, to investigate why some neighborhoods were better able than others to maintain their property values. Dr. Smith observed that neighborhoods which enforced deed restrictions and maintained common areas were able to maintain their property values better than neighborhoods that did not. Who typically performs these functions? In Houston, the answer

was HOAs and civic clubs. Dr. Smith asked 2 University of Houston employees, one of whom was Susan Hill, to help him prove his theory.

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

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

**3. Critical Mass.** The Houston area has attained a critical mass of HOAs that produces political activism. During the Houston Proud period, the citizens of Houston became self aware and developed an attitude of "If we don't help ourselves, who will?" Through networking and coalition-building Houston's HOA community realized that it is big enough to have political clout. Houston's HOA community, however, consists of 2 groups – the "pro-HOA" faction and the "anti-HOA" (or "pro-consumer") faction, both of which began making demands on city and county officials, and on state lawmakers.

By 1999, Houston's HOA factions were embroiled in political activism of a type and intensity that is unknown elsewhere in Texas. On February 6, 1999 (during the session), Houston Senator Rodney Ellis called a Townhall Meeting in Houston with the provocative title of *Homeowner Associations: Their Power, Your Rights*. Because of the huge attendance, the emotional testimony, and the media attention it attracted, the meeting was known in some circles as "The Houston Circus." No wonder that during the 1999 legislative session, busloads of Houstonians trekked to Austin to testify at legislative hearings - both for and against HOA bills. No other part of Texas fielded measurable testimony.

**4. Budget Caps.** Many of the planned communities in Houston were developed in the 1960s and 1970s with "first generation" restrictions. The drafters of that era, being unfamiliar with HOAs, sought to "protect" the homeowners from crazed boards of directors by making the documents extremely difficult to amend and by requiring incredibly high rates of approval for budget changes. As a result, many HOAs are saddled with budget caps (e.g., "not to exceed \$120 per annum") that seemed adequate 30 years ago, but which are woefully inadequate in 2002. Necessity drives the HOAs to find creative ways to purchase services and to collect every dollar of assessment from every owner.

Because a capped budget does not allow the HOA to pay the market rate for management services, some HOA managers contract with HOA boards at below-market rates with the expectation of making up the difference from individual owners. How? With a myriad of specific purpose fees, such as resale certificate fees, document fees, collection fees, inspection fees, and violation enforcement fees.

Because a capped budget also does not allow the HOA to pay the market rate for legal services to collect a delinquent assessment or to enforce a covenant violation, some HOA attorneys agree to wait

for payment until there is a recovery from the homeowner. Under a variety of arrangements - generally referred to as deferred, alternative, or contingent billing - the HOA attorney makes demand on the individual homeowner for payment of the legal fees incurred by the HOA in the collection or enforcement matter. The HOA attorney does not actually bill the HOA for the legal fees until they are collected from the homeowner. Houstonites describe this as "cash in, cash out."

When the homeowner violates a restriction (such as failing to paint a door) or defaults on his annual assessment obligation (\$120), the HOA board instructs its HOA manager to take action, which triggers the individual fees charged to the homeowner by the HOA manager. If the homeowner does not respond affirmatively to the HOA manager, the matter is referred to the HOA's attorney. In making demand on the homeowner, the HOA attorney seeks payment of the manager's fees and his own attorney's fees, in addition to the original relief sought.

By the time the homeowner responds to the situation, the fees charged by the HOA manager and attorney can exceed (sometimes greatly) the cost of the repair or the original delinquency. The fees, which are supported by the Houston area Chapter 204, are not negotiable because the HOA cannot afford to pay them if the homeowner does not. Under threat of foreclosure or costly litigation, the homeowner often capitulates and pays the fees demanded by the HOA manager and the HOA attorney, in addition to the relatively small delinquent assessment or nominal violation remedy.

Then, the homeowner complains to the legislature, seeking protection from legal fees, management fees, and foreclosure proceedings that seem so disproportionate to the homeowner's original failing - nonpayment of a small annual assessment or violation of a restriction. Houston legislators respond by proposing bills to reign in the villains in this melodrama - the HOA boards, managers, and attorneys - and by limiting the HOA's remedies, such as foreclosure.

Although some HOA boards, managers, and attorneys are guilty of excessive behavior and taking advantage of a bad situation, the true villain is the outdated concept of a budget cap in the restrictions. The co-conspirators are the masses of homeowners who do not respond affirmatively when the HOA leadership asks them to approve an assessment increase.

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

**5. Chapter 204 Powers.** In addition to the observation that HOAs in Houston have developed differently than elsewhere in the state, the authors believe there is another answer to "Why Houston?" Although the state does not have an HOA empowering statute, Harris County has Chapter 204 of the Property Code, which provides a number of statutory powers for HOAs. Some would argue that the provisions and interpretations of Chapter 204 are the true answer to "Why Houston?"

When Chapter 204 of the Property Code is mentioned at HOA public hearings, the pro-consumer faction often quotes Lord Acton's famous phrase: "Power tends to corrupt, and absolute power corrupts absolutely." Invariably, the quoter is referring to Sections 204.010 (a)(9), (11), and (12), which have been construed together to allow an HOA to levy "service fees" (a Chapter 204 concept) and to foreclose

its assessment lien against a homestead to recover attorneys fees related to a deed restriction violations, even if the "dues" are paid timely and fully.

Couple this Chapter 204 power with Houston lawyers who market their services to HOAs on the basis that the financially strapped HOA does not have to pay for the attorney's services and you have what some critics have referred to as a "racquet." Instead of collecting his fees from the HOA, the HOA's attorney will collect his fees from the rule-breaking owner who risks losing his home for failure to pay the HOA's attorney. In Houston, this is colloquially referred to as the "cash in, cash out" system. The Houston Chronicle has carried numerous stories about homeowners on the verge of losing their homes due to HOA liens for attorneys fees incurred to correct a tattered basketball net or a door that needs painting.

Consider Geneva Brooks' story, which is reported on the website of her Property Rights Foundation ([www.propertyrightstexas.com](http://www.propertyrightstexas.com)) and is the basis of a lawsuit. According to Ms. Brooks, her HOA sued her because her door needed painting. She said she was singled out because she was a "senior and rents her house to Hispanics." She claimed that the POA lawyer threatened that \$30,000 in legal fees would mount to \$80,000.00 or more if the matter went to court over her door that needed painting and that, upon prevailing, the HOA would foreclose on the house. While there are always 2 sides to a story, the bottom line is that an elderly woman was being threatened with losing her property for a "door that needs painting." The underlying lawsuit is currently on appeal to the Texas Supreme Court. *Geneva Brooks d/b/a Committee to Remove the Board, Diane Higgins, Pauline White, Don Yust, Virginia Yust, Aurelio Ojada, Anthony McBride, and Susan Auclair v. Northglen Association*, 76 S.W.3d 162 (Tex.App.-Texarkana, 2002, pet. filed).

**6. The Dallas Comparison.** For starters, the Dallas area is not subject to the Property Code's bracketed Chapter 204. Also, most of its planned communities are newer and have more flexible restrictions that lack budget caps and are easier to amend. For oversimplified and overgeneralized comparison purposes only, here is a thumbnail sketch of how HOAs developed in North Texas.

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

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

**C. STORIES BEHIND SOME HOA STATUTES - *What seems so necessary today may not even be desirable tomorrow.***

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

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

Houston Representative Kevin Bailey, the bill's author, also wanted to address a concern raised by the voters in his district, which had few planned communities with HOAs but many older neighborhoods that were beginning to show their age. Thinking that HOAs could breathe new life into the older neighborhoods of his district, Representative Bailey initiated Section 204.006 which contains a mechanism for creating a grassroots HOA. Also drafted by Mr. Gainer, Section 204.006 allows a deed restricted neighborhood to create an HOA with the consent of 60% of the owners, regardless of the amendment clause in the existing restrictions, or even in absence of one.

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

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

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

**3. Chapter 206 Property Code.** Friendswood Development Company began developing the Clear Lake Area near Houston in the 1960s, starting with Clear Lake City. Although named "City," Clear Lake City is a large private mixed-use planned community. Friendswood imposed

on the Clear Lake City acreage a Service Charge Agreement that required all future owners to be members of the Clear Lake City Community Association and to pay an annual "mill" assessment. The Service Charge Agreement had a termination "drop dead" date of 2003 and no provision for amending or extending the restriction. As 2003 neared, Clear Lake City Community Association was facing an economic and legal crisis.

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

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

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

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

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

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

By the first week in May 2001, in response to the heavy media coverage Mrs. Blevins was receiving, Houston lawmakers tried to file several bills that would have crippled all HOAs in Texas as

punishment for the perceived wrong to Mrs. Blevins. Because the bill filing deadline had expired, the rules were suspended so the Houston legislators could file "emergency bills," which they valiantly tried to push through the legislature during its waning weeks. Refer to this article's Appendix B, which lists the HOA bills filed in 2001.

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

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

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

## **VII. CURRENT ISSUES - *If there isn't a law, there will be.* Gates' Law**

During the Spring 2002 POA hearings held by the Interim Subcommittee of the Senate Intergovernmental Relations Committee, at least 50 POA-related issues were presented to the Subcommittee as being worthy of legislative attention. We expect many of those issues to appear in the Subcommittee's Report due in November 2002, and will not try to second-guess the Report in this space. However, because the subject of foreclosure is particularly near and dear to the hearts of real estate attorneys, it is addressed here. We then highlight some issues and perspectives that were not much in evidence at the Subcommittee hearings.

**A. THE FORECLOSURE ISSUE.** The right of an HOA to foreclose its assessment lien has been a legislative lightning rod for several years. The foreclosure issue has 2 main components. First, whether to permit an HOA to foreclose the assessment lien created in its recorded restrictions. Second, if so, whether to limit the HOA to judicial foreclosures if the HOA's restrictions provide a private power of sale and expressly permit *nonjudicial* foreclosure. In other words:

**Should the State of Texas take away or limit an assessment lien right created by private covenant and recorded in the public records before any homeowner acquired his property?**

The courts of Texas answered "No." The Supreme Court of Texas recognized the importance of HOAs and their right to foreclose in the 1987 case of *Inwood North Homeowners Association, Inc. v. Harris*, 736 S.W.2d 632 (Tex. 1987), which held:

The concept of community association and mandatory membership is an inherent property interest... The obligation to pay association dues and the corresponding right to demand that maximum services be provided within the association's budget are characteristics of that property interest... That no owner has to pay more than a pro rata share is an essential characteristic of the property interest... The remedy of foreclosure is an inherent characteristic of the property right. It is generally the *only* method by which other owners will not be forced to pay more than their fair share or be forced to accept reduced services... *(Emphasis added.)*

In its closing comments, the Texas Supreme Court acknowledged that the remedy of foreclosure is harsh, especially in light of the small amount typically due, but recognized the importance of honoring the agreement between the homeowner and the HOA, in the form of restrictions that require the payment of the assessments and provide the HOA with a lien to secure payment thereof.

Getting back to the legislature, in its 1998 Interim Report, the Senate State Affairs Committee impliedly supported the HOA's right to foreclose, subject to a 90-day right of redemption (similar to TUCA's). In 2001, the legislature enacted Chapter 209 of the Property Code, which creates an absolute *180-day* right of redemption following HOA assessment lien foreclosures. This is twice as long as the redemption right for condominiums, and applies to any kind of purchaser at the foreclosure sale. (TUCA's 90-day right of redemption applies only if the POA purchases the unit.) It bears repeating that no Texas statute, including Chapter 209, creates an assessment lien or a foreclosure power for HOAs. The lien and the foreclosure power must be contained in the recorded restrictions of the planned community.

Because HOA foreclosures received considerable attention at the 2002 public hearings held by the Interim Subcommittee of the Senate Intergovernmental Relations Committee, we expect it to be one of many issues addressed in the 2002 Interim Report, to be published in November 2002. The issue was recently analyzed by Kellie Dworaczyk in the July 23, 2002 issue of *Interim News*, published by the House Research Organization of the Texas House of Representatives.

The authors of this article expect the 2003 legislature to focus on private powers of sale for nonjudicial foreclosures of HOA assessment liens, rather than general right of foreclosure. The argument against nonjudicial foreclosure in the HOA context seems to be the lack of judicial oversight which is perceived as protective of homeowners facing the loss of valuable property for relatively small debts. Our experience with HOA foreclosures - judicial and nonjudicial - compels us to paint another picture. A homeowner who loses his property under an HOA's assessment lien foreclosure is often better treated by nonjudicial foreclosure, or is at least no worse off. Why? Consider the following points.

>> The homeowner has a statutory right of redemption for 180 days following the foreclosure sale in which to redeem his property, under Property Code Chapter 209, whether the foreclosure sale is judicial or nonjudicial.

>> The legal fees for nonjudicial foreclosure are considerably less, on average, than attorneys fees, court costs, and sheriff's sale expenses for judicial foreclosure. Do the math. It costs the homeowner less to redeem his property after a nonjudicial foreclosure sale than it does after a judicial foreclosure sale. A judicial foreclosure starts with a lawsuit which, like any other lawsuit, requires filing fees, service of process fees, and all the other costs, expenses, and attorneys fees associated with litigation.

>> Time is money, for the homeowner as well as the HOA. Judicial foreclosures take considerably longer than nonjudicial foreclosures. How much longer? A typical nonjudicial foreclosure takes a few months. On the judicial side, it is not uncommon for a lawsuit to last over a year. Once the judgment is obtained, the HOA must wait 30 days for the judgment to become final. Then, the HOA must still jump through all the procedural hoops required by the Texas Rules of Civil Procedure for a constable's sale, which steps typically require 2 to 3 more months. During the interim (3 months for nonjudicials, 18 months for judicials), it is not uncommon for the homeowner to stop paying assessments. To stop the lawsuit or foreclosure sale, or to redeem following the foreclosure sale, the homeowner must catch up on his assessment obligation. Again, do the math - 3 months versus 18 months of "dues." On the HOA side, the lack of income for 18 months can financially cripple an HOA with several delinquencies, particularly in a high maintenance planned community.

>> Why postpone the inevitable? In some cases, the homeowner is broke or gone. Perhaps he has also stopped paying property taxes or his mortgage. In these instances, the HOA may have no hopes of collecting a dime from the homeowner, and looks to the property as its only chance of getting paid. Pursuing judicial foreclosure or a personal judgment under these circumstances is throwing good money after bad. Without nonjudicial foreclosure, the HOA may have to wait for another lienholder to take action against the property before it can hope to start receiving the property's share of the accruing common expenses.

Again, the HOA's right to nonjudicially foreclose its assessment lien must be established in the restrictions, which Texas case law has held to be contract. By purchasing his home the homeowner has tacitly agreed to be bound by the "contract" that empowers the HOA to nonjudicially foreclose its assessment lien. Why should the legislature abrogate that contract?

In summary, the authors believe the HOA's right to nonjudicially foreclose benefits not only the HOA, but also ultimately the redeeming homeowner. Prior to abolishing a HOA's contractual right to nonjudicially foreclose, we suggest the legislature give the statutory right of redemption time to work. In time, the legislature may conclude, as we have, that the statutory right of redemption coupled with the reduced costs and time savings of nonjudicial foreclosures is a benefit to both HOAs and homeowners.

**B. THE INVISIBLE ISSUES.** There are several issues lurking in the POA shadows which are not much discussed in any forum, but which should be considered by lawmakers.

**1. Owners' Duties versus HOA's duties.** The attention of the legislature and the public is entirely on the HOA, with no regard to the duties of the individual homeowner. The bottom line is that if homeowners fulfilled their duties to pay assessments and abide by restrictions, there would be no enforcement or collection actions of which to complain. If we are writing laws, "there ought to be

a law" requiring homeowners to read their mail and to respond to communications from their HOAs. It is not helpful when a homeowner plays hide-and-go-seek with the HOA.

2. **Nonresidential POA versus residential POA.** This article, like most of the statutes, assumes all POAs are residential in character because residential issues are the ones reaching the legislature. Who is looking at the bills with an eye to the effect on the variety of non-residential POAs - the developments that are commercial, industrial, recreational, or mixed-use in nature?

3. **Large scale POA versus "Normal".** By a number of measures, large scale mixed-use POAs are different than typical single-purpose POAs. Imagine being required to postmark 5,000 mailed notices in a planned community that maintains a cable television channel for that purpose. Conversely, a Band Aid bill that a large-scale POA could financially afford to implement might bankrupt a smaller POA. We would like to believe that the really large scale POAs can afford to watch their backsides during the legislative sessions. However, we should all keep in mind that the needs and perspectives of large scale developments may warrant special legislative attention.

4. **Supersmall POA versus "Normal".** We feel certain that no one is watching out for the very small POAs - with 4, 8, or 12 lots or units. The costs of complying with a statute can be disproportionately expensive for a very small CIC, such as the cost of an annual audit required for every condominium in Texas.

5. **High Maintenance versus Low Maintenance.** The cost of legal or management services typically bears no relationship to the size of the HOA's assessments or "dues." Homeowners with relatively low HOA maintenance fees are most likely to complain about the dramatic disparity between their debts and the amount of collection fees the HOA tries to recover from them. If the legislature is inclined to address that disparity, a distinction should be made for HOAs with higher maintenance fees. For example, a 50 lot subdivision with private streets and a 24/7 manned gatehouse will have much higher assessments than a 500 lot subdivision with public streets and no gatekeeper. Default by one owner in the 50-lot subdivision with high maintenance needs has significantly more impact on the HOA (and the other owners) than default by one owner in the 500-lot example. We should all keep in mind that the needs and perspectives of small developments with high maintenance needs differ from those of large developments with low maintenance needs.

6. **High Density versus Low Density.** Typically, the higher a property's density (units per acre), the greater the services provided by the POA, and the higher the periodic assessment or "dues" paid by the homeowners. The exceptions to this general rule are numerous. Although this compares to the High Maintenance versus Low Maintenance factor mentioned above, it is a different factor and not always meaningful. Townhome developments typically have higher density than patio home or detached single-family subdivisions. In some townhome developments, the POA provides a high level of maintenance and services, for which the homeowners pay high assessments. In other townhome developments of the same density the POA may provide no services for the individual townhomes, in which case the homeowners pay low assessments. The legislature should avoid the tar pit of trying to distinguish properties based on densities or types of structures (highrises, midrises, gardens, townhomes, fourplexes, triplexes, duplexes, patio homes, traditional detached single family houses). Generally, what is good (or bad) for one type of development is good (or bad) for the others.

7. **Condominium versus Non-Condominium.** Mindful that condominiums are POAs, the legislature should carefully distinguish POA laws that apply to condominiums from those that do not. Where possible, bills affecting condominiums should be considered within the context of TUCA. Any amendment to TUCA should be carefully drafted to work with the fabric and concepts of that act, and to preserve the status of TUCA as a "Uniform Act." As a general rule, Band-Aid amendments to flexible comprehensive statute like TUCA should be a "no no."

8. **Can the POA afford to comply with the statute?** Every statute that imposes a duty on POAs should be examined for the "fiscal note" effect on POAs. The costs to the POA may be indirect or consequential, instead of direct. For example, a POA may not be able to consistently rely on volunteers to fulfill a statutory duty to send specifically worded notices by a certain method and within a particular time frame. Although the cost of the paper and postage may not be great, the POA may need to hire someone to perform the service. If the POA has documents that cap the assessments and prevent budget increases, the HOA may have to choose between complying with the statute and fulfilling some other legal duty under the documents. Are these the choices the legislature wants for the POAs?

C. **CAUTIONS.** Just as Texans outside the Houston area would like to dismiss POA legislation as "just a Houston problem," many interest groups mistakenly think the POA bills do not affect them. Be forewarned, if you do not take an interest in what is happening to POAs - even to POAs in the Houston area - you and your interest group may get caught in the back tow.

1. **To Policy Makers.** The economic prosperity of our great State of Texas increasingly depends on the financial strength of POAs. It is in the best interests of the State of Texas and its citizens to encourage the financial and operational stability of POAs by giving the POAs enough flexibility to respond appropriately to a variety of situations over time in different contexts and in diverse parts of the state. It is also in the best interests of this state and its citizens to encourage POAs to communicate effectively with their members and to try to resolve disputes with members without the use of attorneys or litigation. Please think broadly about the complex and interrelated issues.

2. **To Local Governments.** The trend in Texas is for local governments to require the creation of mandatory HOAs as a means of shifting maintenance responsibilities from the public sector to the private sector. The economic failure of HOAs will create a financial burden for local governments as property values plummet and maintenance responsibilities default to the cities and counties. Please take an interest in the effect of proposed legislation on the financial viability of HOAs.

3. **To Mortgage Lenders.** The value of your collateral depends greatly on the ability of the POA to maintain the condition of the property, the appearance of the neighborhood, and the desirability of the planned community. Please take an interest in all POA legislation and project the consequences, both direct and indirect, to your collateral.

4. **To Real Estate Developers.** The POAs you create do not exist in a vacuum. They must operate under the laws of this state for decades to come. During the years you control the POAs you create, you wear the "POA" hat and are as affected by the changing laws the same as any homeowner-controlled POA. The project documents you sign may become increasingly irrelevant as statutes override the provisions you crafted so carefully to protect your interests as well as those of the POA. The Band-Aid bills that respond to grievances in established HOAs with particular document

problems may have unintended consequences for your developments and the development rights you intend to preserve for yourself. The POA issues are your issues. Please watch them carefully.

**5. To Landscapers & Pool Companies.** You are among the many service providers and maintenance contractors who will feel the financial pinch if your POA customers collect less money from owners or divert more money to administrative and legal functions in response to legislation. Sure, the POAs have legal duties to maintain property. But, they may be compelled to reduce the number of mowings, or to hire less expensive (and less skilled) contractors. Please support POA legislation that contributes to the financial strength of POAs.

**6. To Courtesy Patrol Companies & Other Discretionary Service Providers.** POAs purchase a number of discretionary services that are desired by their members, but are not necessarily required by the governing documents. A courtesy patrol (including "contract deputies" in Harris County) is the kind of discretionary service that may be eliminated as POA budgets adjust to legislative requirements and limitations. Please support POA legislation that contributes to the financial strength of POAs.

**7. To Insurance Companies.** As Texas increases the statutory duties of POA leaders, we likely will see an increase in claims against POA officers and directors alleging violations of those duties. POAs may have to eliminate discretionary insurance or increase insurance deductibles to fund the increased duties required by statutes. Please support POA legislation that contributes to the financial strength of POAs.

**8. To Texans Outside the Houston Area.** It is tempting to ask the legislature to bracket all POA bills to the Houston area, and then turn to other pressing statewide matters. Beware. As Houston goes, so may go all of Texas. With our history of turning bracketed statutes into statewide statutes, we must pay full attention to the laws that affect only the Houston area.

**9. To Those in the Houston Area.** Do not be offended if POA statutes are bracketed to the Houston area. There are controversies and issues that are either unique to the Houston area or are not sufficiently significant in other parts of the state to warrant legislative attention. In some ways, Houston has become our testing grounds for POA statutes.

**10. To Real Estate Attorneys.** Because this entire article is addressed to real estate attorneys, we are not expounding here on the 101 reasons why every real estate lawyer in Texas should get involved with POA legislation. As should be obvious, the POA statutes in the Property Code are becoming a "full employment act" for real estate lawyers. Property managers and volunteer directors cannot be expected to know which statutes apply to which situations in what locations. To avoid litigation and perform responsibly, POAs will be compelled to seek legal counsel. The demand for expertise in this rapidly changing area of the law is increasing. The dilemma is whether POAs can afford to pay for it. We urge real estate lawyers of every persuasion to work for less complicated and more flexible POA laws

**11. To "Silent Majority" POA Homeowners.** If you are a member of the "silent majority" of dues-paying rules-abiding POA members, you will be left holding the bag in the lawmaking process. Expect your POA to pay more for legal, insurance, and management services in response to legislative mandates. If your POA does not (or cannot) increase your "dues" to cover these increased

costs, your POA's budget may be balanced by less maintenance, less insurance, fewer services, and lower reserves, which will adversely affect your property's value. That is the price you pay to "keep the dues low" or to stay within the budget caps of your POA. Expect your POA to decide that some debts are not "worth" collecting, and some violations not "worth" enforcing, even though it seems unfair to you and the others who play by the POA's rules. When you get fed up, complain to your lawmakers. By then it may be time for the pendulum to swing the other way. Better yet, do not wait. Get involved now.

## VIII. AUTHORS' RECOMMENDATIONS

**A. USE BAND-AIDS SPARINGLY.** Although each statute has an "effective date," it takes considerably more time for the effectiveness of a new statute to be felt. During the lag period, lawmakers must expect the generations of homeowners who acquired properties before the laws changed to continue complaining about the "wrongs" they experienced. Thankfully, our Senators and Representatives are eager to respond affirmatively to constituents' cries for relief. However, we urge lawmakers to exercise restraint in reaching for the Band-Aids, and to consider whether the wound has already been treated.

Because of the confusing patchwork of POA laws, both consumers and lawmakers may be unaware that an existing statute addresses the issue. Appendix D of this article is one tool to help identify statutes that pertain to categories of issues. For example, 4 state statutes are identified under the category of "Records-Open," the often-mentioned issue of homeowners' right to inspect POA records. The following paragraph describes another issue that has received repeated legislative attention.

One of the recurring themes raised by homeowners is "If I had known there was an HOA, I never would have bought that property." That complaint was voiced as recently as May 28, 2002, at the hearing of the Senate Interim Subcommittee on HOA issues. In response to that persistent complaint, since 1993 the Texas legislature has enacted no less than 4 statutes requiring sellers to disclose to purchasers the existence of the HOA and the obligation for assessments. Which statutes? Property Code Section 5.008, enacted in 1993 and entitled *Seller's Disclosure of Property Condition*, requires a statement about the existence of a POA and assessments in connection with the sale of used homes in condominiums or planned communities. Also enacted in 1993, Section 82.157 of TUCA requires a *Condominium Resale Certificate* in connection with homes resold by unit owners, and Section 82.152 requires a *Condominium Information Statement* in connection with initial sales by developers. In 1999, the legislature enacted Property Code Section 5.012, entitled *Notice of Obligations Related to Membership in Property Owners Association*, which requires a statutory notice in connection with a sales contract for homes in planned communities. Another 1999 statute, Property Code Chapter 207, entitled *Disclosure of Information by Property Owners Associations*, requires a resale certificate when requested by sellers of units or lots. How many more bills of this nature will be introduced by lawmakers trying to appease their constituents?

**B. A UNIFORM ACT FOR TEXAS' PLANNED COMMUNITIES?** Having experienced the consequences of Band-Aid bills and patchwork laws, we are of the opinion that Texas needs one modern, comprehensive, flexible statute for its planned communities. The obvious choice is one of the Uniform Acts promulgated by the National Conference of Commissioners on State Laws. States that have adopted Uniform Acts for their planned communities have a roadmap rather than a labyrinth. To "naysayers" who question the need for Texas to have a Uniform Act for its HOAs we say (again) look

at the stew at the back of the Property Code (Title 11) and then look at a Uniform Act. You do not have far to go - Title 7, Chapter 82, (Texas) Uniform Condominium Act is a good example of a Uniform Act.

**1. Roots.** To appreciate the Uniform Acts, it helps to know something about the uniform law movement that began in the latter half of the 19th century. In 1881, the Alabama State Bar Association became the first state bar to formally recognize the need for uniformity in state laws. Not until 1889 did the American Bar Association decide, at its 12th Annual Meeting, to work for “uniformity of the laws” in the then 44 states. Within a year, the New York legislature authorized the governor to appoint 3 commissioners to explore the best way to effect uniformity of law between increasingly inter-dependent states. The ABA endorsed New York’s action. The result was the first meeting of the Conference of State Boards of Commissioners on Promoting Uniformity of Law in the U.S. Seven states sent commissioners to that first meeting of the Conference in 1892. By 1912, every state had appointed Uniform Law Commissioners. Today, the organization is known as the National Conference of Commissioners on Uniform State Laws.

The Uniform Law Commissioners have drafted more than 200 Uniform Acts on numerous subjects and in various fields of law. The most significant is the Uniform Commercial Code, which the Uniform Law Commissioners drafted in partnership with the American Law Institute.

There are more than 300 Uniform Law Commissioners, all of whom are members of the bar. Some commissioners serve as state legislators, but most are practitioners, judges, and law professors. The Uniform Law Commissioners promote the principle of uniformity in state laws by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable.

**2. Texas Experience with Uniform Acts.** According to the website of the Uniform Law Commissioners ([www.nccusl.org](http://www.nccusl.org)), Texas likes Uniform Acts, having adopted 68 Uniform Acts since 1913. In the 2001 legislative session, Texas adopted 3 Uniform Acts - the Uniform Parentage Act, the Uniform Electronic Transactions Act, and the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act. Probably the best known Uniform Act in Texas is the Uniform Commercial Code. Our favorite is TUCA - the Uniform Condominium Act.

**3. Which Uniform Act?** As described earlier in this article, originally there were 3 Uniform Acts for CICs - the Uniform Condominium Act, the Uniform Planned Community Act, and the Model Real Estate Cooperative Act - all of which the Uniform Law Commissioners folded into the Uniform Common Interest Ownership Act (UCIOA). Although the 3 earlier Uniform Acts still exist, the Uniform Law Commissioners currently update and promote only UCIOA.

The Uniform Condominium Act has been working well in Texas since 1994. Because condominiums have not been under the legislative microscope in recent years, we are inclined to "let them be." That is one reason for not recommending UCIOA, which would effectively replace our Uniform Condominium Act. Instead, we think the Uniform Planned Community Act is a better fit for Texas in this period of heightened interest in single-family subdivisions.

The Uniform Law Commissioners have acquired 25 years of experience with common interest communities since adopting the first condominium act in 1977. All the Uniform Acts for common interest communities address the creation, operation, and termination of CICs, as well as providing

certain consumer protections. We have available to us a well-conceived comprehensive blueprint for planned communities in Texas.

A sidenote on the topic of consumer protections. Some comments in the Third Restatement of the Law of Property (Servitudes), published in 2000 by the American Law Institute, criticize the Uniform Law Commissioners for not putting more consumer protections in UCIOA, last updated in 1994. On the other hand, the Uniform Law Commissioners removed Colorado from their list of states that have adopted UCIOA because the Colorado Common Interest Ownership Act does not have enough consumer protections to satisfy the Uniform Law Commissioners.

## **IX. CONCLUSION**

*History teaches us the mistakes we are going to repeat.* If the past predicts the future, the Band Aid approach to POA legislation is our destiny as well as our legacy. During the last 2 legislative sessions, approximately 50 Band-Aid bills were filed targeted directly at Texas POAs. All indications point to more of the same for the 2003 legislative session.

Texas is too important and dynamic a state to have its HOAs saddled with a perplexing patchwork of property laws, no matter how well intended. The time is ripe for the Texas Real Estate Lobby and Texas real property lawyers to support a major legislative initiative to replace the hodgepodge of existing HOA laws with a well conceived, carefully drafted, comprehensive statute that brings Texas into the family of Uniform Act states for planned communities, as we have for condominiums with the Uniform Condominium Act. We urge everyone interested in the planned communities of Texas to join in the effort to convince Texas lawmakers to take the bold step away from piecemeal HOA legislation towards a comprehensive statutory framework for HOAs.

## **X. AUTHORS' DISCLOSURES**

Like the proverbial blind men trying to describe the elephant from only one oddly shaped part of the animal, our statutory story telling reflects our personal and professional experiences and perspectives. Therefore, we are disclosing our respective affiliations which undeniably color our points of view.

Sharon Reuler currently chairs the State Bar's Committee on Property Owners Associations and serves on the Governmental Relations Committee of the Greater Dallas Home Builders Association. She is also a member of the Dallas/Ft. Worth Chapter of the Community Associations Institute, of which she is a founding director (1981). In the mid-1990s (1993-1996) she chaired the Dallas Delegation to the Texas Legislative Action Committee of the Community Associations Institute. In the early 1990s (1990-1993) she chaired the ad hoc TUCA drafting committee and was the spokesperson for the Texas Uniform Condominium Act. During the 1987 legislative session, while completing her law degree, Sharon worked as legislative aide to Representative Gwyn Clarkston Shea of Irving, Texas. In the early 1980s Sharon was an active member of the Greater Dallas and Texas Associations of Realtors, with whom she worked on the Texas Uniform Condominium Act. She has been a condominium owner and resident since 1977, represented buyers and sellers of condominiums and townhomes in the early 1980s as a real estate broker, has represented over 200 POAs as an attorney since 1987, and now represents developers of new POAs.

Roy D. Hailey currently serves on the Attorney Task Force appointed in January 2002 by the Interim Subcommittee of the Senate Intergovernmental Relations Committee, the State Bar's Committee on Property Owners Associations, and the Texas Legislative Action Committee of the Community Associations Institute. Roy is an active member of the Greater Houston Chapter of the Community Associations Institute, of which he was president in 1998. He has chaired the Chapter's Legal Committee. Roy was a member of the ad hoc TUCA drafting committee that formed 1990-1993. During the 1980s, he was an active member of Houston Proud's Neighborhood Program, which he co-chaired for a period. Roy has been an HOA owner and resident since 1985. He and his law firm represent over 450 POAs in and around Harris County.

## Appendix A

### Chronology of Texas Statutes That Directly Address Planned Communities or Condominiums

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

**B/H** = Statutes that are bracketed to the Houston area, although specific brackets vary by statute.

YEAR ENACTED	STATUTE	APPLIES TO		
		Bracketed	STATEWIDE	
			Planned C. and/or Condo.	Planned Communities
1963	<b>(NEW) Art. 1301a Tex. Rev. Civ. Stat.</b> - Condominium Act [Codified in 1983 as Chapter 81 Property Code]			✓
1979	<b>(NEW) Sec. 25.09 Tax Code (Property)</b> - Condominiums and Planned Unit Developments		✓	✓
1981	<b>(NEW) Sec. 23.18 Tax Code (Property)</b> - Property Owned by a Nonprofit Homeowners' Organization for the Benefit of its Members		✓	✓
	Amends Sec. 25.09 Tax Code (Property) - Condominiums and Planned Unit Developments		✓	✓
	<b>(NEW) Sec. 171.082 Tax Code (Franchise Tax)</b> - Exemption - Certain Homeowners Associations		✓	✓
1983	Codification of Property Code, Art. 1301a TRCS became Chapter 81 Property Code - Condominium Act			✓
	<b>(NEW) Sec. 5.006 Property Code</b> - Attorney's Fees in Breach of Restrictive Covenant Action		✓	✓
1984	<b>(NEW) Sec. 81.111 Property Code</b> - Amendment of Condominium Declaration, and corresponding change to Sec. 81.102 - Contents of Declaration) ["Sondock Amendment"] (Chapter 81 is Condominium Act)			✓
1985	<b>(NEW) Chapter 201 Property Code</b> - Restrictive Covenants Applicable to Certain Subdivisions [Bracketed 1985 - Bracket expanded 1997]	B/H		
	<b>(NEW) Chapter 202 Property Code</b> - Construction and Enforcement of Restrictive Covenants		✓	✓

**B** = "Bracketed" statutes that apply to certain counties or cities based on a population bracket, hence not statewide.  
**B/H** = Statutes that are bracketed to the Houston area, although specific brackets vary by statute.

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

**B** = "Bracketed" statutes that apply to certain counties or cities based on a population bracket, hence not statewide.  
**B/H** = Statutes that are bracketed to the Houston area, although specific brackets vary by statute.

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

**B** = "Bracketed" statutes that apply to certain counties or cities based on a population bracket, hence not statewide.  
**B/H** = Statutes that are bracketed to the Houston area, although specific brackets vary by statute.

YEAR ENACTED	STATUTE	APPLIES TO		
		Bracketed	STATEWIDE	
			Planned C. and/or Condo.	Planned Commu-nities
(continued) <b>1997</b>	<b>(NEW) Chapter 206 Property Code</b> - Extension of Restrictions Imposing Regular Assessments in Certain Subdivisions [Bracketed - Clear Lake Forest]	B/H		
	Amends Sec. 27.034 Government Code - Deed Restriction Jurisdiction (Justice Courts) [Became statewide]		✓	✓
	<b>(NEW) Sec. 545.307 Transportation Code</b> - Overnight Parking of Commercial Motor Vehicle in Residential Subdivision [Bracketed to 220,000+ counties]	B		
<b>1999</b> (continues)	<b>(NEW) Sec. 5.012 Property Code</b> - Notice of Obligations Related to Membership in Property Owners' Association		✓	x
	Amends Chapter 201 Property Code - Restrictive Covenants Applicable to Certain Subdivisions [Expands bracket to 100,000+ cities + ETJs]	B		
	<b>(NEW) Sec. 202.006 Property Code</b> - Public Records (Ch. 202 - Construction and Enforcement of Restrictive Covenants)		✓	✓
	<b>(NEW) Chapter 207 Property Code</b> - Disclosure of Information by Property Owners Associations		✓	✓ (?)
	Amends Sec. 27.034 Government Code - Deed Restriction Jurisdiction (Justice Courts)		✓	✓
	<b>(NEW) Secs 551.0015 + 552.035 Gov. Code</b> - Certain Property Owners' Associations Subject to Law (Open Meetings) [Bracketed for The Woodlands]	B/H		
	Amends Sec. 32.05 Tax Code (Property) - - Priority of Tax Liens Over Other Property Interests		✓	✓
	Amends Sec. 34.21 Tax Code (Property) - Right of Redemption		✓	✓

**B** = "Bracketed" statutes that apply to certain counties or cities based on a population bracket, hence not statewide.  
**B/H** = Statutes that are bracketed to the Houston area, although specific brackets vary by statute.

YEAR ENACTED	STATUTE	APPLIES TO		
		Bracketed	STATEWIDE	
			Planned C. and/or Condo.	Planned Communities
(continued) <b>1999</b>	Amends Sec 542.006 Transportation Code - Speed Restrictions on Private Roads [Bracketed]	<b>B</b>		
	Amends Sec. 542.007 Transportation Code - Traffic Regulations: Private Subdivision in Certain Counties [Bracketed]	<b>B</b>		
	Amends Sec. 545.307 Transportation Code - Overnight Parking of Commercial Motor Vehicle in Residential Subdivision [Bracketed to 220,000+ counties]	<b>B</b>		
<b>2001</b>	Amends Sec. 206.002 Property Code - Extension of Restrictions Imposing Regular Assessments in Certain Subdivisions [Bracketed for Clear Lake Forest]	<b>B/H</b>		
	<b>(NEW) Chapter 209 Property Code</b> - Texas Residential Property Owners Protection Act		✓	✗
	<b>(NEW) Sec. 352.111 Local Gov. Code</b> - Gated Multi-Unit Housing Projects [Bracketed to certain unincorporated areas]	<b>B</b>		
	Amends Sec. 542.007 Transportation Code - Traffic Regulations: Private Subdivision in Certain Counties [Bracket size increased]	<b>B</b>		
<b>2003</b>	<b>WATCH FOR COMING ATTRACTIONS</b>			

# POA BILLS FILED IN 2001 (77th) TEXAS LEGISLATURE

Bills By Subject: Property Interests - Property Owners Association

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

## Appendix B

### FILED BILLS THAT BECAME LAW

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

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

### FILED BILLS THAT WERE NOT ENACTED:

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

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

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

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

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

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

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

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

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

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

**HB 3479** AUTHOR: Eiland **H**  
Relating to the applicability of provisions governing the powers of property owner's associations concerning restrictive covenants in certain subdivisions.

## **POA BILLS FILED IN 2001 (77th) TEXAS LEGISLATURE**

**Bills By Subject: Property Interests - Property Owners Association**

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

**HB 3517** AUTHOR: Turner, Bob

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

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

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

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

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

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

Relating to encumbrances that may be fixed on homestead property.

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

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

Texas Legislature Online

Revised: 08/22/2001

## Appendix C

### DOCUMENT DEFINITIONS

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

TX. PROP. CODE SECTION	DEFINITION
201.003.(1)	<b>"Restrictions"</b> means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records, or deed records.
202.001.(1)	<b>"Dedicator instrument"</b> means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, or to all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.
202.001.(4)	<b>"Restrictive covenant"</b> means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.
203.002.	<b>"Restriction"</b> means a limitation that affects the use to which real property may be put, fixes the distance at which buildings or other structures must be set back from property, street, or lot lines, affects the size of lots, or affects the size, type, or number of buildings or other structures that may be built on the property.
204.001.(1)	<b>"Restrictions"</b> has the meaning assigned by Sec. 201.003.
204.001.(2)	<b>"Dedicator instrument"</b> and <b>"restrictive covenant"</b> have the meanings assigned by §202.001.
205.001.(1)	<b>"Restrictions"</b> has the meaning assigned by Sec. 201.003.
206.001.(2)	<b>"Dedicator instrument"</b> and <b>"restrictive covenant"</b> have the meanings assigned by Sec. 202.001.
207.001.(1)	<b>"Restrictions"</b> has the meaning assigned by Sec. 201.003.
207.001.(2)	<b>"Dedicator instrument"</b> and <b>"restrictive covenant"</b> have the meanings assigned by Sec. 202.001.
208.001.(2)	<b>"Dedicator instrument"</b> and <b>"restrictive covenant"</b> have the meanings assigned by Sec. 202.001.
209.002.(3)	<b>"Declaration"</b> means an instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision.

TX. PROP. CODE SECTION	DEFINITION
209.002.(4)	<b>"Dedictory instrument"</b> means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or similar instruments subjecting property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, and to all lawful amendments to the covenants, bylaws, rules, or regulations.
209.002.(10)	<b>"Restrictions"</b> means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.
209.002.(11)	<b>"Restrictive covenant"</b> means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.
221.002.(15)	<b>"Project instrument"</b> means one or more recordable documents, by whatever name denominated, applying to the whole of a timeshare project and containing restrictions or covenants regulating the use, occupancy, or disposition of units in a project, including a master deed, master lease, declaration, or bylaws for a condominium.
81.002.(5)	<b>"Declaration"</b> means the instrument that establishes property under a condominium regime.
81.002.(8)	<b>"Master deed"</b> means a deed that establishes property under a condominium regime.
82.003.(a)(11)	<b>"Declaration"</b> means a recorded instrument, however denominated, that creates a condominium, and any recorded amendment to that instrument.

## ASSOCIATION DEFINITIONS

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

TX. PROP. CODE SECTION	DEFINITION
202.001.(2)	" <b>Property owners' association</b> " means an incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by the dedicatory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the residential subdivision, planned unit development, condominium or townhouse regime, or similar planned development.
204.004.(a)	A <b>property owners' association</b> is a designated representative of the owners of property in a subdivision and may be referred to as a "homeowners association," "community association," "civic association," "civic club," "association," "committee," or similar term contained in the restrictions. The membership of the association consists of the owners of property within the subdivision.
205.001.(2)	" <b>Property owners' association</b> " has the meaning assigned by Sec. 202.001.
206.001.(1)	" <b>Community association</b> " means an incorporated association created to enforce restrictions.
207.001.(2)	" <b>property owners' association</b> " has the meaning assigned by Sec. 202.001.
208.001.(2)	" <b>property owners' association</b> " has the meaning assigned by Sec. 202.001.
209.002.(2)	" <b>Board</b> " means the governing body of a property owners' association.
209.002.(7)	" <b>Property owners' association</b> " or " <b>association</b> " means an incorporated or unincorporated association that: (A) is designated as the representative of the owners of property in a residential subdivision; (B) has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; and (C) manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision.
81.002.(4)	" <b>Council of owners</b> " means all the apartment owners in a condominium project.
82.003.(a)(3)	" <b>Association</b> " means the unit owners' association organized under Sec. 82.101.
82.003.(a)(4)	" <b>Board</b> " means the board of directors or the body, regardless of name, designated to act on behalf of the association.

**PROPERTY DEFINITIONS**

**TEXAS PROPERTY CODE DEFINITIONS PERTAINING TO  
COMMON INTEREST COMMUNITY**

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

## Appendix D

### LIST OF STATUTES USEFUL IN WORKING WITH TEXAS PROPERTY OWNERS ASSOCIATIONS

Updated September 2001

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

#### **SOME PERTINENT FEDERAL LAW**

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

#### **SOME PERTINENT TEXAS STATUTES & RULES** (alphabetical by topic)

1. **ASSOCIATIONS** - Incorporated or Not
  - a. Associations - Incorporated. *Texas Non-Profit Corporation Act*, Article 1396, Texas Revised Civil Statutes.
  - b. Associations - Incorporated. All corporations - business and nonprofit - are subject to *Texas Miscellaneous Corporation Act*, Article 1302, Texas Revised Civil Statutes.
  - c. Associations - Unincorporated. *Texas Uniform Unincorporated Nonprofit Association Act*, Article 1396-70.01, Texas Revised Civil Statutes. Enacted 1995.
2. **ATTORNEYS FEES**
  - a. Attorney's Fees in Breach of Restrictive Covenant Action, Sec. 5.006, Texas Property Code.
  - b. Recovery of Attorney's Fees, Sec. 38.001 *et seq*, Texas Civil Practice & Remedies Code (for use in breach of contract case).
  - c. Attorney's Fees with Declaratory Judgment. Uniform Declaratory Judgments Act, Sec. 37.009, *et seq*, Texas Civil Practice & Remedies Code.
  - d. Non-Condo POAs. Sec. 209.008, Texas Property Code, applicable to all mandatory POAs except condos. Enacted 2001 as S.B. 507, effective January 1, 2002.
3. **BAD CHECKS.** You may not charge more than \$25 as a processing fee for a bounced check, according to *Processing Fee by Holder of Dishonored Check*, Article 9022, Texas Revised Civil Statutes. See also: *Issuance of Bad Check*, Texas Penal Code Sec. 32.41; *Fee for Collecting and Processing Sight Order*, Texas Criminal Procedures Code Sec. 102.007; *Justice Court Dishonored Check*, Texas Criminal Procedures Code Sec. 102.0071.

4. **COMMUNITY HOMES.** *Community Homes for Disabled Persons Location Act*, Chapter 123, Texas Human Resources Code. Restrictions may not prohibit qualified community homes. Enacted 1991, Amended 1999.

5. **CONDOMINIUMS**

a. Condominiums created after 1993 are subject to the *Texas Uniform Condominium Act (TUCA)*, Chapter 82, Texas Property Code. Enacted 1993, Effective 1/1/94, Amended 1997.

b. Pre-TUCA Condominiums - created before 1994 - are subject to the *Texas Condominium Act*, Chapter 81, Texas Property Code, which was enacted in 1963. Since January 1, 1994, pre-TUCA condominiums are ALSO subject to 14 sections of the Texas Uniform Condominium Act (**TUCA**), Chapter 82, Texas Property Code.

>> *Which 14 sections of TUCA? The ones listed in Sec. 82.002(c), which are:*

Secs. 82.005, 82.006, 82.007, 82.053, 82.054, 82.102(a)(1)-(7) and (12)-(22), 82.108, 82.111, 82.113, 82.114, 82.116, 82.157, and 82.161. The definitions prescribed by Section 82.003 apply to a condominium in this state for which the declaration was recorded before January 1, 1994, to the extent the definitions do not conflict with the declaration. The sections listed above apply only with respect to events and circumstances occurring on or after January 1, 1994, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of a condominium for which the declaration was recorded before January 1, 1994.

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

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

6. **CONSTRUCTION & CONTRACTORS**

a. Residential Construction Liability Act (aka RECLA), Chapter 27, Texas Property Code. Enacted 1989, Amended 1993 & 1999.

b. Prompt Payment to Contractors and Subcontractors, Chapter 28, Texas Property Code. Enacted 1993, Amended 1999.

c. Mechanics & Materialman's Liens. There are 2 authorities for M&M liens in Texas. The constitutional lien is found in Art. XVI, Sec. 37 of the Texas Constitution. The statutory lien is found in Chapter 53 of the Texas Property Code, which is entitled *Mechanic's, Contractor's, or Materialman's Lien*. The M&M statute was enacted in 1983, substantially amended in 1997, and amended again in 1999.

7. **COOPERATIVES.** *Cooperative Association Act*, Article 1396-50.01, Texas Revised Civil Statutes. Enacted 1975, Amended 1977-1997.

8. **DEBT COLLECTION ACT**, Chapter 392, Texas Finance Code.

9. **DECLARATORY JUDGMENTS.** *Uniform Declaratory Judgments Act*, Sec. 37.001, *et seq*, Texas Civil Practice & Remedies Code.

10. **DIRECTORS & OFFICERS** - Liability

a. Limitation of Liability, Article 1302-7.06, Texas Miscellaneous Corporation Laws Act, Texas Revised Civil Statutes. Enacted 1987, Amended 1989-1999.

- b. Charitable Immunity & Liability Act of 1987, Chapter 84, Texas Civil Practice & Remedies Code. Covers "a homeowners association as defined by Section 528(c) of the Internal Revenue Code of 1986." Enacted 1987, Amended 1997 & 1999.
11. **DOCUMENTS** - Project Documents, Governing Documents, Restrictions
- a. Recording. Public Records, Sec. 202.006, Texas Property Code, requires every mandatory property owners association (condo & non-condo) to file each of its governing documents in the county's real property records. Enacted 1999.
  - b. Amendment of Restrictions. Restrictive Covenants Applicable to Certain Subdivisions, Chapter 201, Texas Property Code. Provides a petition process for amending otherwise-impossible-to-amend restrictions. For subdivisions in cities of 100,000+ or in unincorporated areas in and around Harris County. Enacted 1985, Amended 1987-1997, Amended 1999 - statewide applicability.
  - c. Amend for FHA or VA. Sec. 205.004, Texas Property Code, allows a majority of owners to amend the declaration to comply with HUD/FHA or VA requirements. Owners must sign the amendment. Applies to counties with at least 65,000 people. Enacted 1997.
  - d. Interpretation. Requires "liberal" construction of restrictive covenants, thus reversing common law of "strict" or "narrow" construction. Sec. 202.003, Texas Property Code. Enacted 1987.
  - e. Preparation of Documents Affecting Title to Real Property. Only Texas attorneys and brokers may be compensated for preparing documents affecting title to real property (such as lien notices). *Certain Unauthorized Practice of Law, Chapter 83, Texas Government Code*. Enacted 1989.
  - f. Recording Requirements. Chapters 11, 12, and 13, Texas Property Code, particularly:  
 Sec. 11.001 - *Place of Recording* (record in county where property located)  
 Sec. 12.001 - *Instruments Concerning Property* (signature & acknowledgment)  
 Sec. 13.002 - *Effect of Recorded Instrument* (notice to the world)
13. **EMPLOYEES**. This list does not address the body of state and federal law dealing with employees and labor relations. If a POA has employees, be mindful of those bodies of laws.
14. **ENFORCEMENT OF RESTRICTIONS**
- a. Enforcement by Owners Association. Construction and Enforcement of Restrictive Covenants, Chapter 202, Texas Property Code. Authorizes court-awarded civil damages up to \$200 per day of violation. Enacted 1987.
  - b. Enforcement by Justice Court. Deed Restriction Jurisdiction, Sec. 27.034, Texas Government Code. Adopted 1995 (bracketed for Houston area). Amended 1997 (expanded statewide) & 1999 (prohibits injunctive relief).
  - c. Enforcement by County Attorney. Enforcement of Land Use Restrictions in Certain Counties (population 200,000+), Chapter 203, Texas Property Code. Enacted 1987, Amended 1997.
15. **EXEMPT PROPERTY**. Title 5, Chapters 41 (Homestead) and 42 (Personal Property), Texas Property Code.
16. **FAIR HOUSING**. *Texas Fair Housing Act*, Title 15, Chapter 301, Texas Property Code.
17. **FORECLOSURE OF REAL PROPERTY**
- a. Nonjudicial. Provisions Generally Applicable to Liens, Chapter 51, particularly Sec. 51.002, Texas Property Code.
  - b. Condominiums. Sec. 82.113 of TUCA, Chapter 82, Texas Property Code, applicable to condominiums only. Enacted 1993. Applies to all condominiums (pre-TUCA & post-TUCA).

- c. Non-Condo POAs. Sec. 209.009-011, Texas Property Code, applicable to all mandatory POAs except condos. Enacted 2001 as S.B. 507, to be effective January 1, 2002.
18. **GATED Multi-Unit Housing Projects**, Sec. 352.111 et. seq., Subchapter E, Chapter 352, Local Government Code. Enacted 2001 as S.B. 1147, to be effective September 1, 2001.
19. **HARRIS COUNTY**
- Chapter 204, Texas Property Code, *Powers of Property Owners' Association Relating to Restrictive Covenants in Certain Subdivisions*. Enacted 1995.
  - Chapter 206, Texas Property Code, *Extension of Restrictions Imposing Regular Assessments in Certain Subdivisions*. Enacted 1997, Amended 2001 by S.B. 620.
  - Chapter 207, Texas Property Code, *Restrictive Covenants Applicable to Certain Nonresidential Property*. Enacted 1999.
  - Chapter 208, Texas Property Code, *Amendment and Termination of Restrictive Covenants in Historic Neighborhoods*. Enacted 1999 as Chapter 207, renumbered in 2001 by H.B. 2812.
20. **HOMESTEAD**. See Exempt Property.
21. **INTEREST**, Title 4, Subtitle A, Sec. 301 et seq, Texas Finance Code.
22. **JURISDICTION** of Justice Court and Small Claims Court, Texas Government Code: Sec. 27.031 (Justice Court) and Sec. 28.003 (Small Claims Court).
23. **MANAGEMENT CERTIFICATE**
- a. Condominiums. Sec. 82.116 of TUCA, Chapter 82, Texas Property Code, applicable to condominiums only. Enacted 1993. Applies to all condominiums (pre-TUCA & post-TUCA).
  - b. Non-Condo POAs. Sec. 209.004, Texas Property Code, applicable to all mandatory POAs except condos. Enacted 2001 as S.B. 507, to be effective January 1, 2002.
24. **MEETINGS**
- a. Condominiums. Board meetings and association meetings must be open to members. However, the board may go into closed executive session for certain limited purposes. Sec. 82.108 of TUCA, Chapter 82, Texas Property Code. Enacted 1993, Amended 1997. The 1997 amendment became effective January 1, 1998, and applies to all condominiums (pre-TUCA & post-TUCA).
  - b. Select POAs. A limited category of mandatory property owners association are subject to government open meeting laws and open records laws. Bracketed to Harris County and surrounding counties, and limited to POAs with assessments based on tax values. Secs. 551.0015 + 552.0035, Texas Government Code. Enacted 1999.
25. **NON-CONDOMINIUMS - POAs, PDs, PUDs, MUDs, PIDs**
- a. Powers of Property Owners Association Relating to Restrictive Covenants in Certain Subdivisions, Chapter 204, Texas Property Code. Bracketed for Harris County. Enacted 1995.
  - b. PUD District. Designation of a Planned Unit Development District in Extraterritorial Jurisdiction, Sec. 42.046, Texas Local Government Code.
  - c. MUDs. Municipal Utility Districts, Chapter 54, Texas Water Code. Enacted 1971.
  - d. PIDs. Public Improvement Districts, Subchapter A, Chapter 372, Texas Local Government Code. Enacted 1987.

26. **RECORDS - OPEN**

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

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

28. **SALES OF UNITS OR LOTS**

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

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

30. **STREETS - Public & Private**

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

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

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

33. **TAXES**

- a. Appraisal for Property Taxes. Condominium and Planned Unit Developments, Sec. 25.09, Texas Tax Code. Enacted 1979, Amended 1981.
  - b. Nominal Property Tax. Property Owned by a Nonprofit Homeowners' Organization for the Benefit of Its Members, Sec. 23.18, Texas Tax Code. Enacted 1981.
  - c. Franchise Tax. Incorporated associations are liable for the annual State franchise tax - unless granted an *Exemption - Certain Homeowners' Associations*, Sec. 171.082, Texas Tax Code. Enacted 1981, Amended 1995.
  - d. Priority of Tax Liens Over Other Property Interests. Sec. 32.05, Texas Tax Code. Amended 1999.
  - e. Obligation for POA Assessments when owner redeems after property tax foreclosure. Sec. 34.21, Texas Tax Code. Enacted 1979, Amended 1989-1999.
34. **TENANT/LANDLORD LAW**. This list does not address the body of State law dealing with tenant/landlord, which applies to POAs that own and lease units or homes. TAA's Redbook has a good compilation of tenant/landlord laws.
35. **TIMESHARING**. *Texas Timeshare Act*, Chapter 221, Texas Property Code. Enacted 1987, Amended.
36. **TOWING**
- a. Abandoned Motor Vehicles, Chapter 683, Texas Transportation Code. Enacted 1995, Amended 1999.
  - b. Removal of Unauthorized Vehicle from Parking Facility or Public Roadway, Title 7, Chapter 684, Texas Transportation Code. Enacted 1995, Amended 1997.
37. **UTILITIES**
- a. Cutoff (Any Utility). Landlord Liability to Tenant for Utility Cutoff, Sec. 92.301, Texas Property Code. Enacted 1989, Amended 1995.
  - b. Cutoff (Any Utility). Interruption of Utilities, Sec. 92.008, Texas Property Code. Enacted 1983, Amended 1985-1995.
  - c. Electric Cutoff. Central System or Nonsubmetered Master Metered Utilities, Sec. 25.141, Texas Administrative Code (Title 16, Part 2 [PUC], Chapter 25).
  - d. Electric Submetering. Submetering for Apartments, Condominiums, and Mobile Home Parks, Sec. 25.142, Texas Administrative Code (Title 16, Part 2 [PUC], Chapter 25).
  - e. Water Cutoff. Discontinuance of Service, Sec. 291.88, Texas Administrative Code (Title 30, Part 1 [TNRCC], Chapter 291).
  - f. Water Submetering. Submetering and Plumbing Fixtures, Secs. 13.502 + 13.506, Chapter 13, Texas Water Code, amended 2001 by H.B. 2404 to require individual or submetering of water for condominium units built after January 1, 2003.
  - g. Gas Submetering. Gas Distribution in Mobile Home Parks, Apartment Houses, and Apartment Units, Sec. 7.46, Texas Administrative Code (Title 16, Part 1 [RR Comm.], Chapter 7).
38. **VIOLATIONS**
- a. Condominiums. Sec. 82.102(a)(12), (c) + (d) of TUCA, Chapter 82, Texas Property Code, applicable to condominiums only. Enacted 1993. Applies to all condominiums (pre-TUCA & post-TUCA).
  - b. Non-Condo POAs. Sec. 209.006-008, Texas Property Code, applicable to all mandatory POAs except condos. Enacted 2001 as S.B. 507, to be effective January 1, 2002.

- c. Harris County. Sec. 204.010(a)(11), Texas Property Code. Applies only to non-condo POAs in Harris County.