

2011 POA REFORM LAWS FOR TEXAS

Arranged by subject, in alpha order ~ Multi-Part Omnibus Bills are chopped into their constituent subjects for this report

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SUBJECT <i>(Just enough to give you a clue.)</i>	STATUTE/ CODE	PROPERTY TYPE	W	BILL NO./ EFFECTIVE
ASSESS - COLLECTIONS. <u>Note Corrected Description</u> Consumer protections against certain collection practices and fees. Owner not liable for fees that are contingent on if or how much the debt collector extracts from owner. Doesn't prevent "deferred billing" if POA pays its collector regardless of outcome. POA can't assign assessment claims, except as loan collateral.	TPC Ch 209 - adds 209.0064	SF only	W	HB 1228 1/1/12
ASSESS - FORECLOSE (AUTHORITY). Owners can amend POA docs to add or remove foreclosure power with 67% approvals.	TPC Ch 209 - adds 209.0093	SF only	W	HB 1228 1/1/12
ASSESS - FORECLOSE (COPY CHARGE). POA may not foreclose a debt consisting solely of fees charged for obtaining copies of POA records under 209.005(i).	TPC Ch 209 - adds (3) to 209.009	SF only	W	HB 2761 1/1/12
ASSESS - FORECLOSE (COURT ORDER REQUIRED). To foreclose, POAs must use "expedited foreclosure" procedures to obtain a court order before POA conduct its sale, unless owner waives. Directs Texas Supreme Court to create the procedures by 1/1/12. Expected to be similar to the process used with home equity liens.	TPC Ch 209 - adds 209.0092	SF only	W	HB 1228 1/1/12
ASSESS - FORECLOSE (LIEN). Amends the foreclosure statute - TPC Chapter 51 (not POA-specific) - to emphasize that POAs have contract liens under TPC 51.015 by borrowing definitions of "assessment" from TPC Ch 82 & 209.	51.015 - adds (1-a) to (a), amends (b)	SF & Condo	W	SB 101 9/1/11
ASSESS - FORECLOSE (LIENHOLDERS). As a prerequisite to foreclosure, POA must give notice & 60-day opportunity to cure to holders of junior liens secured by recorded deeds of trust against the delinquent lot.	TPC Ch 209 - adds 209.0091	SF only	W	HB 1228 1/1/12
ASSESS - LIEN NOTICE. Confirms that publicly recorded notices of delinquency or lien are instruments affecting title to real property. <i>(Duh! That's why they must be prepared by attorneys licensed in Texas, else unauthorized practice of law.)</i>	TPC Ch 209 - adds 209.0094	SF only	W	HB 1228 1/1/12
ASSESS - PAYMENTS (APPLICATION). Dictates order by which POA must apply owners' payments. 6 categories - starting with delinquent and current assessments, followed by attorneys fees and fines - except when owner's payment plan is in arrears.	TPC Ch 209 - adds 209.0063	SF only	W	HB 1228 1/1/12
ASSESS - PAYMENT PLANS. POA must adopt guidelines for payment plans for delinquent assessments, and must record it with county. Creates minimum procedures. Terms of 3 to 18 months. Freeze on some penalties during a payment plan. Carve-outs for small POAs and owners who defaulted on a prior payment plan. <u>Note. Same provision in two bills.</u>	TPC Ch 209 - adds 209.0062	SF only	align="center">W	HB 1821 1/1/12
				HB 1228 1/1/12

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SUBJECT <i>(Just enough to give you a clue.)</i>	STATUTE/ CODE	PROPERTY TYPE	W	BILL NO./ EFFECTIVE
DOCUMENTS - AMEND (DECLARATION). A declaration may be amended by 67% of votes, or any lower % stated in declaration. Should help POAs with declarations that lack amendment provisions, or which require approvals higher than 67%. May help communities of owners "fix" the problems in their declarations. Can't amend bylaws to conflict with declaration. Excludes amendments during "development period".	TPC Ch 209 - adds 209.0041	SF only	W	SB 472 9/1/11
DOCUMENTS - AVAILABILITY. Dedicatory instruments must be available on a website IF (1) the POA has one, or (2) the POA manager maintains a publicly accessible website on behalf of the POA. <i>(A baby step in the right direction - one byte at a time!)</i>	TPC Ch 207 - adds 207.006	SF (intent)	W	HB 1821 1/1/12
DOCUMENTS - DEFINITIONS. Minor changes to definition of "dedicatory instrument".	TPC Ch 202 - amends (1) of 202.001	SF+condo	W	HB 1821 1/1/12
DOCUMENTS - RECORDING. Since 1999, State law requires that all "dedicatory instruments" (defined as "governing instruments") be recorded with the county. Often misunderstood by people (even attorneys) who insist that a POA's bylaws, articles, rules, and guidelines are not "dedicatory instruments" that require recording. Unfortunately, this bill doesn't go far enough to make the meaning more clear, but does re-emphasize the duty to record. The essence of the bill is "A dedicatory instrument has no effect until the instrument is filed in accordance with this section." POAs have til 1/1/12 to comply.	TPC Ch 202 - 202.006, amends (a) and adds (b)	SF+condo	W	HB 1821 1/1/12
GOVERN - BOARD QUALIFICATIONS. When a director's term expires, he must stand for re-election. Vacancies may be filled by appointment, but only for the remainder of the term. After that, he must be elected to the board. Carve-outs for directors appointed during "development period" (better if "declarant control period"), and for boards of some master POAs. Strange authorization for board to amend bylaws to conform to this one law change.	TPC Ch 209 - adds 209.00593	SF only	W	HB 2761 1/1/12
GOVERN - BOARD QUALIFICATIONS. Opens the path to power. Voids provisions in POA documents that restrict owner's right to run for the board. May overturn popular restrictions, such as term limits or not allowing spouses to serve at the same time. May jeopardize proportional representation, such as directors from each phase of the project. <u>[Note. Same provision in two bills with different effective dates and different section numbers.]</u>	TPC Ch209 - adds 209.00592 (a)	SF only	W	SB 472 9/1/11
	TPC Ch 209 - adds 209.00591, Sub (a)	SF only	W	HB 2761 1/1/12
GOVERN - BOARD QUALIFICATIONS. If board gets governmental evidence that a director has been convicted of certain crimes, the director is automatically removed and ineligible to serve again. <i>(Oddly, it doesn't prohibit an ex-con from running for board or serving, and doesn't require the POA to do background checks on candidates. POA version of "Don't ask, don't tell"?)</i> <u>[Note. Same provision in two bills with different effective dates and different section numbers.]</u>	TPC Ch209 - adds 209.00592 (b)	SF only	W	SB 472 9/1/11
	TPC Ch 209 - adds 209.00591, Sub (b)	SF only	W	HB 2761 1/1/12

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SUBJECT (<i>Just enough to give you a clue.</i>)	STATUTE/ CODE	PROPERTY TYPE	W	BILL NO./ EFFECTIVE
GOVERN - DECLARANT CONTROL. <u>Developers & Builders - The camel's nose is under the tent!</u> When developer sells 75% of the lots, one-third of the board must be elected by owners (not Declarant). Doesn't address effect of 100% of lot sales, such as when developers sells all vacant lots to builders. Max of 10 yrs for Declarant Control unless declaration states maximum number of lots to be created. Bill doesn't distinguish vacant lot sales to builders from homes sales to consumers. Retroactive?	TPC Ch 209 - adds 209.00591, Sub (c)	SF only	W	HB 2761 1/1/12
GOVERN - MEETINGS (MEMBERS). POA board must call an annual meeting of members. If the board doesn't, a committee of owners may call a special meeting (not an annual meeting) to elect directors. Lots of issues emanate from the requirements and silences in this DIY section.	TPC Ch 209 - adds 209.014	SF only	W	HB 2761 1/1/12
GOVERN - MEETINGS (NOTICE). Requires POA to give owners 10 to 60 days notice of elections and votes.	TPC Ch 209 - adds 209.0056	SF only	W	HB 2761 1/1/12
GOVERN - OPEN MEETINGS (BOARD). Requires open board meetings (<i>hurrah!</i>) with 4+ pages of State micro-management (<i>sigh</i>). <u>Lots</u> of Dos & Don'ts - too much for thumbnail summary. Must give owners notice of board meetings. Defines "board meeting." Allows for electronic & telephonic board meetings. Executive sessions are allowed under certain circumstances. Peculiar application during "development period" (should be "declarant control period").	TPC Ch 209 - adds 209.0051	SF only	W	HB 2761 1/1/12
GOVERN - OPEN RECORDS. Requires open records (<i>hurrah!</i>) with 6+ pages of State micro-management (<i>groan</i>). Again, lots of Dos & Don'ts - too much for thumbnail summary. POA must adopt and record <u>two</u> policies (1) one for requesting, producing, and charging for records, (2) other for records retention. Cap on copy charges. POA can't hide records with its attorney. Owner denied access to records may sue in JP court. Loser may have to pay winners legal fees. No carve-out for declarants.	TPC Ch 209 - rewrites 209.005	SF only	W	HB 2761 1/1/12
GOVERN - VOTING. No secret ballots. Ballots must be signed by owners unless uncontested election or electronic balloting. <u>[Note. Same provision in two bills with different effective dates.]</u>	TPC Ch 209 - adds 209.0058	SF only	W	SB 472 9/1/11
				HB 2761 1/1/12
GOVERN - VOTING. Recognizes multiple ways of voting. Preserves voting in person or by proxy. Specifies procedures for voting by "absentee" or "electronic" ballot. Limits use of absentee ballot. Recognizes delegate voting. <u>[Note. Same provision in two bills with different effective dates and different section numbers.]</u>	TPC Ch 209 - adds 209.00593	SF only	W	SB 472 9/1/11
	TPC Ch 209 - adds 209.00592	SF only	W	HB 2761 1/1/12

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SUBJECT <i>(Just enough to give you a clue.)</i>	STATUTE/ CODE	PROPERTY TYPE	W	BILL NO./ EFFECTIVE
GOVERN - VOTING. Protects an owner's right to vote by voiding provisions in POA documents that disqualify owner from voting on board elections or matters affecting his rights & responsibilities. <u>[Note. Same provision in two bills with different effective dates.]</u>	TPC Ch 209 - adds 209.0059	SF only	W	SB 472 9/1/11
				HB 2761 1/1/12
GOVERN - VOTING. Owners have right to demand a recount of a POA election within 15 days after the election, but must pay the cost of the recount.	TPC Ch 209 - adds 209.0057	SF only	W	HB 2761 1/1/12
GOVERN - VOTING. Tries to make ballots confidential by limiting access to vote tabulators & recounters. Candidates & their kin can't tabulate. [NEW - added by Conference Committee 5/28]	TPC Ch 209 - adds 209.00594	SF only		SB 472 9/1/11
SALES - CONTRACT + RESALE CERTIFICATES. Amends section of Property Code that requires home seller (including homebuilders) to put a specified notice about the POA in the sales contract. Greatly expands the wording and style of the required contract notice to "pull in" Chapter 207's resale certificate. Oddly, new subparagraphs (f) & (g) of 5.012 address delivery and cost of resale certificates, which more properly belong in Chapter 207 of Property Code.	TPC 5.012 - amends (a) and adds (a-1), (f) & (g)	SF+condo		HB 1821 1/1/12
SALES - RESALE CERTIFICATE. Tinkers with contents of resale certificate - adds disclosure of all transfer-related fees. POA has more time to issue the resale certificate. Purchasers who request resale certificates must provide proof of contract. Resale certificate good for 60 days max. Gives POA right to collect fees from home purchasers (who are not yet members of POA). POA can require prepayment, but can't process the payment until certificate is prepared timely and ready for delivery. The home-buying public is most affected by this issue.	TPC Ch 207 - 207.003 - amends (a), (b) & (f), and adds (a-1) and (c-1)	SF (intent)	W	HB 1821 1/1/12
SALES - TRANSFER FEES. In this context, "transfer fee" is charge on the land that must be paid every time each lot is bought and sold . . . and resold . . because a deed restriction says so. Public policy frowns on developers using transfer fees as perpetual income stream to the developer, which was the impetus behind Property Code Sec. 5.017 enacted in 2007. In repealing and replacing Sec. 5.017, this bill exempts 10 types of transfer fees from the general prohibition on such covenant-based charges. Exemptions from HB 8 are coveted because non-exempt transfer fees are subject to so many legal requirements as to make them unsustainable. Exemption #7 for POAs, and #9 for 501(c)(3) & 501(c)(4) entities.	Repeals TPC Sec. 5.017, adds TPC Sec. 5.201 et seq.	SF & Condo		HB 8 6/17/11 (Signed)
USES - FLAGS. Subject to some limitations, POA may regulate but can't prevent owner from flying flags of US, Texas, or military. POA may require compliance with federal & state recommended guidelines for flag displays.	TPC Ch 202 - adds 202.012	SF & Condo		HB 2779 6/20/11

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USES - RAIN BARRELS. SECTION 6 of bill pertains to POAs. Substantially dilutes the POA's regulation of rain harvesting devices, by removing rain barrels from the POA's affirmative regulatory powers under 202.007(d)(1), and creating a veneer of regulatory authority in a new 202.007(d)(6)&(7).	TPC Ch 202 - amends 202.007(d)	SF & Condo		HB 3391 9/1/11
USES - RELIGIOUS. POA can't stop residents from installing certain religious items on front door of unit/home. Max size of 25 sq. inches. The item must be a "display motivated by a resident's sincere religious belief".	TPC Ch 202 - adds 202.018	SF & Condo		HB 1278 6/20/11
USES - ROOFS. Owner may install roof shingles that are wind & hail resistant, energy efficient, or solar generating, if quality and appearance are comparable to the subdivision standard.	TPC Ch 202 - adds 202.011	SF & Condo		HB 362 6/20/11
USES - SOLAR. Owner may install a "solar energy device" in certain locations on his lot. Some oversight by POA. Detailed specs for roof installations. Developer may prohibit installs during development period.	TPC Ch 202 - adds 202.010	SF & Condo	W	HB 362 6/20/11
USES - TRAFFIC. POA may install speed feedback signs under certain circumstances. Bill borrows definition of POA from TPC Ch 204, which is bracketed to Houston area. Does that limit its applicability?	Trans.Code, adds 430.002	SF & Condo		HB 1737 6/20/11
USES - WILDLIFE. Amends existing law that allows POA to trap and transport surplus white tail deer.	Parks&Wild. Code - amends 43.0612	Rural		SB 498 9/1/11
VIOLATIONS - NOTICE (MILITARY). Protects military by requiring statement of federal rights in certain types of notices. <u>SECTION 3 of bill is specific to POAs</u> - adds to content of POA's required violation notice to owner. <i>(Signed by Guv 6/17/11)</i>	TPC Ch 209, amends 209.006(b)	SF only		HB 1127 1/1/12

~ 'BRACKETED' LAWS CHANGES ARE ON NEXT PAGE ~

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POA-SPECIFIC LAWS THAT ARE "BRACKETED" (NOT STATE-WIDE IN APPLICABILITY)				
BRACKET CREEP. This huge omnibus bill updates population brackets in existing law to conform to the 2010 federal census. Sections 109 - 111 of the bill make changes to the applicability of Property Code chapters 201, 204, and 210.	TPC - Chs 201, 204 & 210			HB 2702 9/1/11
CONDO - HOUSTON ONLY. <u>[Bracketed for Houston]</u> Requires disclosures by developers and owners. City of Houston may use eminent domain on blighted condo if construction stops one year.	TPC Ch 82 & Local Govt Code Ch 214	Condo only		HB 364 9/1/11
DOCUMENTS - AMEND (APPLICABILITY OF CHAPTER 211). Redefines "subdivision" & changes the applicability bracket of Chapter 211.	TPC Ch 211 -amends 211.001 & 211.002	SF only Bracketed		HB 232 6/20/11
DOCUMENTS - AMEND + RENEW. <u>[Bracketed for Houston]</u> If Restrictions authorize only one extension of term, creates process by which owners of a majority of lots may approve successive extensions, so Restrictions don't expire.	TPC - adds Chapter 212	SF only		HB 1071 6/20/11
GOVERN - MIXED USE. Dramatic new law for a particular mixed-use development (Las Colinas) to override some governance requirements that apply to other POAs.	TPC - adds Ch. 215	mixed-use bracket		HB 2869 6/20/11
GOVERN - APPLICABILITY CARVE-OUT. Exempts a particular mixed-use development (Las Colinas) from Sec. 209.0062 [Payment Plans].	TPC Ch 209 - add (e) to 209.003	mixed-use bracket	W	HB 1228 1/1/12
GOVERN - APPLICABILITY CARVE-OUT. Exempts a particular mixed-use development (Las Colinas) from Sec. 209.0062 [Payment Plans].	TPC Ch 209 - add (e) to 209.003	mixed-use bracket	W	HB 1821 1/1/12
GOVERN - APPLICABILITY CARVE-OUT. Exempts a particular mixed-use development (Las Colinas) from Secs. 209.0058 [Ballots] and 209.00593 [Voting].	TPC Ch 209 - add (e) to 209.003	mixed-use bracket	W	SB 472 9/1/11
GOVERN - APPLICABILITY CARVE-OUT. Exempts a particular mixed-use development (Las Colinas) from 5 sections of TPC Chapter 209: 209.005(c) [Open Records], 209.0056 [Election Notices], 209.0057 [Recounts], 209.0058 [Ballots], and 209.00592 [Voting].	TPC Ch 209 - add (e) to 209.003	mixed-use bracket	W	HB 2761 1/1/12
LAND USE - GOLF COURSES. <u>[Note: This was not on earlier reports.]</u> Expands the bracket of a law that regulates redevelopment of golf course + country club land - originally in Houston area, then extended to Ft. Worth, now extends further.	Local Govt Code - amends 212.0155			SB 1789 6/20/11