

POA Power Shift

Legislature Gives Property Owners More Rights

Kerri Lewis
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When people talk about their subdivision's property owners' association (POA), also referred to in Texas as a homeowners' association (HOA), handwringing or eye-rolling is usually involved. Many feel POA boards overreach, especially when determining what property owners can do with their own property. Although POAs are not licensed or regulated by any state agency, there are laws that apply to them and their dedicatory instruments.

During the 87th regular session, the Texas Legislature passed SB 1588, which amended Chapters 202-209 of the Texas Property Code (TPC) to clarify and refine certain POA powers and duties. Perhaps some members of the Legislature live in subdivisions run by overzealous HOAs, because many of these changes give more rights to the property owners and demand more accountability and transparency from the POAs.

Many of the provisions in the law limit what can or cannot be in the POA's dedicatory instruments, which Section 202.006 of the TPC defines as any document

Takeaway

Property owners, association board members, management companies, and real estate license holders should all become familiar with the changes in the law under SB 1588. It is a lengthy bill, touching on many subjects.

“governing the establishment, maintenance, or operation of a residential subdivision . . .” It includes restrictive covenants, bylaws, adopted rules and regulations of a POA, and any amendments to those documents. POAs are required by statute to file all dedicatory instruments in the real property records of the county where the property is located. This allows a prospective buyer to review existing rules and requirements on a piece of property located in a POA before buying the property.

The following summary of the provisions of SB 1588 is organized by TPC section and subject matter for easy reference to the revised statutory provisions.

202.006 TPC, Collection of Regular Assessment. A new subsection (c) was added to prohibit POAs from collecting regular assessment amounts if the dedicatory instrument authorizing the assessment is not filed in the real property records of the county in which the property is located.

202.018 TPC, Display of Religious Items. This section was amended to prohibit POAs from enacting rules, covenants, or bylaws that prohibit the display of religious items anywhere on an owner's property. Previously the prohibition applied only to an owner's dwelling, not the whole property.

However, the amended law *does* allow a POA to prohibit a religious display on an owner's property if the display:

- threatens the public's health or safety;
- violates a law other than a law prohibiting the display of religious speech;
- contains language, graphics, or any display that is patently offensive to a passerby for reasons other than its religious content;
- is installed on property:
 - owned or maintained by the POA, or
 - owned in common by POA members.
- violates any applicable building line, right-of-way, setback, or easement; or
- is attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture.

202.022 TPC, Swimming Pool Enclosures. Under this new section, a POA may not adopt or enforce a provision that prohibits or restricts a property owner from installing a swimming pool enclosure in accordance with state or local safety requirements. However, the POA *can* adopt and enforce rules related to the appearance of a swimming pool enclosure, including permissible colors, with one exception: the POA cannot prohibit a simple black transparent mesh set in metal frames as a swimming pool enclosure.

202.023 TPC, Security Measures. This is another new section. It says a POA may not adopt or enforce a restrictive covenant that prevents a homeowner from building or installing security measures such as security cameras, motion detectors, and perimeter fences. However, the POA *can* regulate the type of fencing and prohibit installation of a security camera in a place other than on the property owner's private property.

207.003(c) TPC, POA Fees for Information and Resale Certificates. This amendment established that fees

for resale certificate information must be "reasonable and necessary" and cannot exceed \$375 for assembly and delivery of the information or \$75 for an updated resale certificate.

207.004 TPC, Timeframe for Delivery of Resale Certificate Information. The deadline for the POA to deliver the requested information changed from seven days after second request to five days after second request. The judgment penalty for failure to timely deliver the information increased from \$500 to \$5,000.

207.006 TPC, Online Subdivision Information. A POA that has 60 or more lots or that has contracted with a management company must provide the association's current dedicatory instruments on a website maintained by the POA or the management company. The website must be available to association members. A management company is defined in section 209.002 (5-a) TPC as "a person or entity established or contracted to provide management or administrative services on behalf of a property owners' association."

209.004 TPC, Management Certificate. There were two important amendments to this section.

First, the statute was amended to require more information be included in Management Certificates, which have historically been required to be recorded in the county where the subdivision is located. In addition to the basic information previously required (name and address of the association and the person managing the association), POAs must now include a telephone number, email address, web address where dedicatory instruments can be found, and the amount of fees charged by the POA relating to a property transfer.

The second change involves filing the Management Certificates and any amended Management Certificates with the Texas Real Estate Commission (TREC), which will maintain an online database of all Management Certificates for public access. POAs are required to file their Management Certificates and any amendments with TREC no later than the seventh day after it is filed with the county. The only exception to this rule is for Management Certificates that were filed with the county prior to Dec. 1, 2021. Those POAs have until June 1, 2022, to electronically file them with TREC.

TREC's new website dedicated to POA Management Certificates is at <https://www.hoa.texas.gov/>. This website allows POAs to upload their Management Certificates to a central database that can be searched by the general public. Although TREC is responsible for

maintaining the website and database, it was not given any regulatory authority over POAs. This means TREC does not have jurisdiction to hear complaints against POAs or take action against a POA that violates the statute.

A property owner is not liable for attorney fees incurred by the POA relating to collection of a delinquent assessment if the fees were incurred during a period where a Management Certificate was not recorded with the county clerk or uploaded to TREC's website.

209.00505 TPC, Architectural Review Authority (ARA). This new section sets out the process for hearing and appeal of a POA architectural review committee's decisions when property owners want to make property improvements. The process applies to POAs with 40 or more lots. Board members and anyone in their household cannot serve on the ARA, as the board holds the hearing if there is a disagreement. Specific timeframes and notices must be followed.

209.0051(e) and (h) TPC, Notice of Regular and Special Board Meetings. These amendments increase the minimum number of hours notice that must be given prior to a regular meeting of the board from 72 to 144 hours and add a minimum notice of 72 hours to owners prior to holding a special meeting of the board.

209.0052 (c) TPC, Contracts Over \$50,000. This new subsection provides that a POA board must solicit bids using a bid process established by the association for any contract for services proposed to be more than \$50,000.

209.064(b) TPC, Collection Action. The amount of time a property owner has to cure a delinquency before a POA can begin collection action was increased from 30 to 45 days.

209.0065 TPC, Report Delinquency to Credit Bureaus. Under this new section, a POA cannot report any delinquency to a credit reporting service unless prior

written notice is given to the property owner by certified mail. Notice must be given at least 30 days prior to POA sending a report to the credit reporting service, and the property owner must be given an opportunity to enter into a payment plan to cure the delinquency. A POA or collection agency may not report a delinquent fee or fine to a credit reporting service while there is a pending dispute about the delinquency between the property owner and the POA.

209.007 TPC, Right to Hearing on Curing Violation.

If a property owner who is entitled to an opportunity to cure a violation requests a hearing, the association must provide one. No later than ten days prior to the hearing, the POA must give the property owner all documents, photographs, and communications relating to the matter. The property owner is allowed an automatic 15-day postponement of the hearing if the POA does not send all documents on time. At the hearing, the POA presents its case first, followed by the property owner.

209.016 TPC, Leasing. Amendments to this section confirm that POAs can establish restrictions regarding occupancy or leasing of property within the POA. It also adds new subsection (e), which allows a POA to request information be submitted to the association regarding a lease or rental application, including the name, mailing address, phone number, and email address of each person who will reside at the property under a lease, along with the start and end date of the lease. Rent is not set out in the statute as one of the items a POA can request.

209.017 TPC, Jurisdiction for Violations. A new section gives the justice court of a precinct in which all or part of the subdivision is located jurisdiction over any Chapter 209 violation by the POA. ➡

Lewis (kerri@2oldchicks.com) is a member of the State Bar of Texas and former general counsel for the Texas Real Estate Commission.