

Neighborhood Watch

New Rules for Texas POAs in 2022

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May 31, 2022

Publication 2349



The 87th Texas Legislature passed a number of new rules that may affect neighborhoods and property owners' associations (POAs). Most of these are encompassed in S.B. 1588. Here's a look at some of them.

Collecting Assessments

A POA may not collect a regular assessment unless the dedicatory instrument authorizing the collection of the regular assessment is filed for record. The Texas Property Code defines a dedicatory instrument as any document "governing the establishment, maintenance, or operation of a residential subdivision." Tex. Prop. Code § 202.006.

Display of Religious Items

Previously, a POA was prohibited, with some exceptions, from enforcing or adopting a restrictive covenant that prohibits the display of a religious item on the *entry*

to an owner's or resident's dwelling. Now, with the passage of S.B. 1588 and S.B. 581, a POA may not regulate the display of religious items *anywhere* on an owner's or resident's dwelling unless it:

- threatens public health or safety;
- violates a law other than a law prohibiting the display of religious speech;
- contains content that is patently offensive to a passerby for reasons other than its religious content;
- is installed on property that the POA owns or maintains, or in common areas;
- 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.

There are no longer size restrictions. S.B. 581 also does away with the authorization for POAs to remove items that are in violation. Tex. Prop. Code § 202.018.

Swimming Pool Enclosures

A POA may not regulate swimming pool enclosures, as defined by the new statute, as long as they conform to applicable state or local safety requirements. Some restrictions regarding appearance are allowed, but the POA may not prohibit a swimming pool enclosure that is black and consists of transparent mesh set in metal frames. A fence more than six feet in height is excluded from the definition of “swimming pool enclosure” and may be prohibited or restricted. Similarly, fences that do not consist of transparent mesh or clear panels set in metal frames may be prohibited or restricted. Tex. Prop. Code § 202.022.

Home Security Measures

Under S.B. 1588 (and H.B. 3571), a POA may not prohibit the building or installation of security measures such as security cameras, motion detectors, or perimeter fences. This change does not apply to condominium regimes or master mixed-use POAs subject to Chapter 215 of the Property Code. The POA may still prohibit the installation of a security camera in a place other than the property owner’s private property (such as a common area) and may still regulate the type of fencing that may be installed. Tex. Prop. Code § 202.023.

‘Management Company’ Defined

The new law adopts a definition of “management company” for purposes of Chapter 207. The definition is the same as that found in Chapter 209, and is exactly what one might expect: “A person or entity established or contracted to provide management of administrative services on behalf of a property owners’ association.” Tex. Prop. Code § 207.001(2-a).

Resale Certificates

Resale certificate fees are capped at \$375 (\$75 for updated certificates). Tex. Prop. Code § 207.003(c).

The deadline to deliver a resale certificate after a second request by an owner has decreased from seven to five days. If that deadline is missed, the cap on the monetary penalty has been raised to \$5,000 (previously \$500), plus court costs and reasonable attorney fees.

Online Information

A POA that has at least 60 lots, or that has contracted with a management company, must make current versions of its dedicatory instruments available online. The website, or parts of it, may be password protected to

allow compliance with other disclosure requirements. Tex. Prop. Code § 207.006.

Management Certificates

The new bill also revises requirements relating to management certificates. A recorded management certificate must include the recording data for the declaration and any amendments to the declaration, the phone number and email address of the person managing the POA or the POA’s designated representative, the website where the dedicatory instruments are available, and the amount and description of fees charged by the POA relating to a property transfer in the subdivision.

Management certificates must be filed electronically with the Texas Real Estate Commission (TREC) within seven days of filing it with the county. If a management certificate or amended management certificate is already recorded on or before Dec. 1, 2021, the most recent version must be electronically filed with TREC no later than June 1, 2022. If a management certificate is not properly recorded or electronically filed with TREC, an owner is not liable for attorney fees relating to the collection of a delinquent assessment. Tex. Prop. Code § 209.004.

Architectural Review

The bill sets out procedures for appeal to the board of directors in the event of an architectural review authority’s decision denying an application or request by an owner for the construction of improvements. Current board members, their spouses, and members of their household are disqualified from serving on an architectural review authority for a POA with more than 40 lots. These provisions do not apply during the development period. Tex. Prop. Code § 209.00505.

POA Board Meetings

Notice requirements for open POA board meetings have been revised. If mailed, notice still must be given at least ten but not more than 60 days prior to the meeting. If posted or provided electronically, notice must be given at least 144 hours before regular board meetings (previously 72 hours) and at least 72 hours before special board meetings. As before, a posted notice also requires an email notice to each owner who has registered an email address with the association. Tex. Prop. Code § 209.0051(e).

All budget changes now must be voted on in an open meeting, even if the budget does not increase. Tex. Prop.

Code § 209.0051(h). A POA proposing to contract for services that will cost more than \$50,000 must solicit bids or proposals using a bid process. Tex. Prop. Code § 209.0052(c).

Payment Delinquencies

Written notice is required by Section 209.006(a) of the Property Code prior to taking certain enforcement actions. Under S.B. 1588, such notice is now required before reporting any delinquency to a credit reporting service. A POA must give 30 days written notice to an owner before making the report. The notice must provide to the owner a detailed report of all delinquent charges owed and an opportunity to enter into a payment plan. Tex. Prop. Code § 209.0065(b). A POA may not charge an owner a fee for reporting delinquent charges to a credit reporting service. 209.0065(c). A POA may not report delinquent fines, fees, or assessments that are the subject of a pending dispute. 209.0065(a).

Additionally, before a POA may hold an owner liable for fees of a collection agent, the POA must provide written notice by certified mail, specifying each delinquent amount and the total amount of the payment required to make the account current. This notice must provide a period of at least 45 days (previously 30) for the owner to cure the delinquency before the POA may take further collection action. Some other provisions may apply for certain associations. Tex. Prop. Code § 209.0064(b).

A hearing to resolve an owner's violation must be held in front of the board itself, and not a board-appointed committee. The POA must provide the owner with the information the POA intends to introduce at the hearing. The owner is entitled to an automatic postponement of the hearing if the information is not timely provided. During the hearing, the POA presents its case first, then the owner may present his case. Exceptions to these rules may apply if the POA files a suit seeking temporary injunctive relief or foreclosure. Tex. Prop. Code § 209.007.

Leasing Property

If a property is being leased, POAs may request a tenant's contact information, including the name, mailing address, phone number, and email address for each resident, and the commencement date and term of the lease. The law does not prohibit the adoption or enforcement of a provision in a dedicatory instrument establishing a restriction relating to occupancy or leasing. Tex. Prop. Code § 209.016.

Violations of Texas Residential Property Owners Protection Act

A property owner is authorized to bring an action for a violation of the Texas Residential Property Owners Protection Act against a POA in an applicable justice court. Tex. Prop. Code § 209.017.

Records Production, Copying Policy for Condominium Owners' Associations

S.B. 318 amends Section 82.114(b) of the Property Code and adds Section 82.1141, which governs the keeping and production of the records of condominium unit owners' associations. The provisions are similar to those governing property owners' associations under Section 209.005 of the Property Code. An association board is required to adopt a records production and copying policy that prescribes charges for the requested information. Certain items are exempted from inspection and release. Associations with eight or more units must adopt a document retention policy that meets certain minimum requirements. A member who is denied access to the requested books or records may petition the justice court for relief. Tex. Prop. Code § 82.1141.

Amendment to Property Owners' Voting Rights

The Texas Residential Property Owners Protection Act (Chapter 209, Texas Property Code) provides a way for property owners in a residential subdivision to amend the subdivision's declaration (that is, the instrument that includes its restrictive covenants) by a vote of the property owners. H.B. 1659 adds Section 209.0041(d-1), which makes that provision inapplicable if the amendment would affect a portion of a subdivision that is zoned for or that contains, or previously contained as specifically allowed under the declaration, a commercial structure, an industrial structure, an apartment complex, or a condominium. For purposes of subsection (d-1), "apartment complex" means two or more dwellings in one or more buildings that are owned by the same owner, located on the same lot or tract, and managed by the same owner, agent, or management company.

License Plate Requirement for Golf Cart

Finally, H.B. 1281 was passed to deal with an unintended consequence of H.B. 1548 from the 86th Legislature (2019), which required golf carts and other off-road vehicles to obtain license plates in order legally to operate on public roads, and was in response to increasing

accidents, mainly on highways in coastal towns.

Although H.B. 1548 remains in effect, the new law removes an unintentional burden by allowing the operation of golf carts without license plates in master planned communities that are residential subdivisions as defined by Tex. Prop. Code § 209.002(9). The rationale for the new rule, which is effective immediately, is that many master planned communities were planned and built to accommodate golf cart drivers; therefore, the use of golf carts does not involve the same risks. Tex. Transp. Code § 551.403.

Municipalities, counties, or the Texas Department of Transportation may prohibit golf carts if they determine that the prohibition is necessary in the interest of safety. Tex. Transp. Code § 551.4031. Municipalities and certain counties may allow golf carts on certain highways if they choose. Tex. Transp. Code § 551.404. 📌

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