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TEXAS POA LEGISLATIVE UPDATE
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The 86th Regular Session of the Texas Legislature ended on Monday, May 27, 2019. The session was characterized by cooperation and bipartisan support for several key issues affecting the State of Texas. This update summarizes some of the bills that passed that affect both HOAs and condominium associations (collectively “POAs”) along with bills that were not passed but would have affected them too. All bills passed are now in effect.

Action items related to the new laws are noted in the boxes below.

IMPORTANT bills that PASSED this session:

Lemonade Stands

HB 234 adds Section 202.020 to the Texas Property Code concerning lemonade stands operated by minors. Under Section 202.020, a property owners’ association of a residential subdivision may not prohibit, regulate, or require a permit from a minor who *occasionally* sells lemonade or non-alcoholic beverages from a stand located on property within the subdivision when the minor has permission from a property owner. Furthermore, property owners’ associations are not liable for any injuries suffered by individuals who participate in the beverage sale, except for willful or wanton acts or gross negligence of the association. It appears that property owners’ associations may still prohibit these types of sales on common areas owned by the associations since the bill requires the permission of the property owner. TCAA worked very hard and was successful in including the liability language and the owner permission portion.

Regulation of Political Signage

HB 2554 slightly modifies the content of what was Section 202.009 of the Texas Property Code concerning political signs and transfers the entire section to a newly created Section 259.002 of the Election Code. This bill now protects signs which are “measures” whereas prior law protected signs considered to be “ballot items.” Property owners’ associations may still adopt and enforce certain restrictions limiting a property owner from displaying on the owner’s property political signs and now “measures.” None of the existing and allowed restrictions which could be adopted or enforced by a property owners’ association were modified.

Action item: POAs should consult with their legal counsel in adopting guidelines for political sign display that complies with the law. For instance, some homeowners have been reported spray painting their lawns with political display signs, and this could be prohibited if a proper guideline is adopted and recorded.

Board Eligibility

HB 1025 amends Section 209.0051 of the Texas Property Code regarding board eligibility. Now, a property owners' association with multiple sections may designate "in an association instrument" that board members must be elected from specific sections and may require that such members reside in the section he or she will represent. In addition, only one individual per household is allowed to serve on the board at the same time. Exceptions exist for associations of ten or fewer lots and during the period of developer control. TCAA, with the help of Rep. Harless and Sen. Whitmore, worked very hard on this cohabitation limitation language.

Firearms

Action item: POAs should consult with their legal counsel regarding whether to amend their documents to comply with this law, particularly the cohabitation limitation on serving on the board.

Under SB 741, a POA may not enforce any restriction that prohibits, restricts, or has the effect of prohibiting or restricting any person from the lawful possession, transportation, or storing of a firearm, any part of a firearm, or firearm ammunition as well as the otherwise lawful discharge of a firearm. Strong support for the bill by the NRA, as written, did not allow an opportunity for any **meaningful negotiation on the matter**. It should be noted that property owners' associations may still post signs at the entry way of amenity centers prohibiting access by individuals with a firearm. This would apply to open carry and concealed firearms.

Defective Corporate Acts

SB 1969 amends Chapter 22 of the Business Organizations Code and allows corporations, including non-profit corporations such as POAs, the ability to ratify corporate acts that are defective due to a "failure of authorization", meaning the failure to comply with the provisions of the corporate statute, the governing documents of the corporation, a corporate resolution, or any plan or agreement to which the corporation is a party, if and to the extent the failure would render the act or transaction void or voidable; or the failure of the board of directors or an officer of the corporation to authorize or approve an act or transaction taken by or on behalf of the corporation that required the prior authorization or approval of the board of directors or the officer. The ratification would either occur by way of proper resolution, notice and vote by the appropriate party or by the filing of a lawsuit in the district court of the county where the corporation is located, applying for ratification by the court of the defective corporate act.

Off-Highway Vehicles

HB 1548 enacted by the 86th Legislature provides for the titling and operation of certain off-highway vehicles. The bill was effective June 14, 2019, and requires utility vehicles (UTVs) to be titled and provides limited on-road operation of certain off-highway vehicles if authorized by counties or municipalities and issued a license plate. Off-highway vehicles are defined as UTVs, recreational off-highway vehicles, and all-terrain vehicles. HB 1548 requires the department to adopt administrative rules for the issuance of a license plate for off-highway vehicles and the associated fee. Programming of the department's automated systems and the design of a new license plate will also be required.

IMPORTANT bills that DID NOT PASS this session:

Chicken Cultivation

SB 86 sought to prohibit municipalities from enacting ordinances which would have the effect of not allowing individuals from raising chickens within the political subdivision. Under SB 86, municipalities would not be permitted to impose restrictions on breeding or keeping roosters, limiting the number of chickens to 6 (per individual), and establishing a minimum distance between chickens and residential structures.

SB 86 did not specifically apply to property owners' associations and farm animal restrictions would have still been enforceable; however, it also did not specifically exclude POAs from the bill's enforcement, which could have led to confusion in the courts. Similar versions of the same bill in earlier sessions were amended to include POAs. This bill did not pass and will not become law.

Religious Display

In 2011, Section 202.018(a) of the Texas Property Code was enacted limiting certain restrictions prohibiting an item or religious display at an owner's property. That law, however, allowed restrictions containing the religious display to the entry door or door frame and to 25 square inches or less. HB 2302 sought to amend Section 202.018, Property Code. The proposed legislation would amend Subsections (a) and (b) of the current code to remove the size restriction and location restriction limiting the display of religious items to the entry of the owner's property and would allow the owner to display such items anywhere on their property, and arguably into perpetuity. At a minimum, property owners' associations would be unable to restrict whatever display of religious items "motivated by the owner's or resident's sincere religious belief" installed for at least 30 days, unless it could prove the display:

- 1) threatens the public health or safety;
- 2) violates a law other than a law prohibiting the display of religious speech;
- 3) contains language, graphics, or any display that is patently offensive to a passerby for reasons other than its religious content; or

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4) is installed on property owned or maintained by the POA or in common by members of the POA.

Although the bill would allow a POA to prohibit the display of religious items for a religious event or holiday earlier than the 30th day before the holiday/event or later than the 14th day after that date on which the religious event/holiday ends, it seems as though the 30 day safe harbor could actually extend this period. The bill is further confusing in that it seemingly allowed owners the right to display religious items anywhere on their property into perpetuity so long as they can prove that it is not related to a holiday/event, is motivated by their sincere religious belief, is not patently offensive and does not violate any law, and does not violate the 30 day safe harbor. This bill did not pass and will not become law.

Property Owners' Association Fines

HB 660 would have required all property owners' associations to adopt a fining policy listing all possible violations that could result in fines, set forth fines associated with each such violation, and publish such policy to all owners on an annual basis. All fines levied pursuant to such policy would have to be "reasonable." Furthermore, POAs would be required to record the policy in the real property records. This law could have created confusion and more disputes regarding fines and fining authority and whether such fines were "reasonable." This bill did not pass and will not become law.

Declarant Control

In 2011, Section 209.00591 was added to the Texas Property Code mandating that at least 1/3 of the board must be elected by the members of the association, other than the developer: (i) 10 years after the declaration was filed with the County; or (ii) if the declaration set forth the maximum amount of lots that may be created and made subject to the declaration, once a developer has sold 75% of the lots in a residential development to homeowners. SB 2204 and HB 3445 sought to accelerate the time-period for which owners are entitled to elect directors.

Under HB 3445, if the declaration did set forth the number of lots in the development, then members would be entitled to elect a majority of the directors (instead of 1/3) once 75% of the lots have been sold. If the declaration did not provide for the number of lots in the development, members would be entitled to elect a majority of the board on the 5th anniversary (instead of 10th) of the date the declaration was recorded.

SB 2204 similarly accelerated the time period for owner members being elected to the board. Under SB 2204, once a majority of the lots were conveyed, 1/3 of the board would have to be owner elected and once 75% of the lots were conveyed, a majority of the board would have to be owner elected. SB 2204 also required all board meetings during the developer control period to be conducted within 10 miles of the subdivision. This bill did not pass and will not become law.

Operation and Management of Condominiums

SB 639 called for an extensive overhaul of Chapter 82 (Texas Uniform Condominium Act) concerning issues such as meetings, records, and elections of board members. The goal was to

provide similar protections that were enacted for single family and town home property owner's associations with the 2011 legislation. For a variety of reasons, applying portions of Chapter 209 to Chapter 82 would lead to numerous unintended consequences. This bill did not pass and will not become law.

Mechanics and Materialman's Liens

HB 589 sought to allow a contractor's lien to extend to owners' individual units if the condominium association failed to pay for work in the common areas. There were many concerns about this bill, including the general rule that a lien cannot extend to property where a contract is not signed by all owners. This bill did not pass and will not become law.

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