

SUMMARY OF 2013 POA LEGISLATION
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The Texas Legislature has adjourned for the 2013 session! There were more than 50 bills filed regarding property owners associations and their members.

This update will summarize some of the more important bills that passed that affect POAs. *Action items are in red below.*

Please feel free to call or email me with any questions at connieheyer@niemannlaw.com. “HB” denotes a House Bill, and “SB” denotes a Senate Bill.

XERISCAPE / LANDSCAPE:

SB 198 – (Sen. Kirk Watson; Rep. Dawna Dukes): *Applicable to condos and HOAs.* This bill prohibits an association from restricting an owner from using “drought-resistant landscaping or water-conserving natural turf”. But it still allows for meaningful controls by the HOA. Bottom line under this new law:

*all communities need to adopt xeriscaping rules to ensure that controls can be maintained (e.g. no artificial turf)

*rules may restrict installation of rock, gravel, and cacti (e.g. they may prohibit certain rock, prohibit more than x% of area being covered with rock, etc.)

*rules may require plan submittal and prior architectural approval, and aesthetic compatibility with other landscaping to the extent “practicable”

Talk to your POA attorney and get your xeriscaping rules in the works! The bill becomes effective September 1.

HB 680 (Rep. Cindy Burkett, Sen. Dan Patrick). *Applicable to condos and HOAs.* This bill further restricts a POA’s ability to control flag placement (major flag legislation passed in the 2011 session.) It gives owners the express right to have a flag pole in their front yard if the yard has at least a 15’ setback from the road. In the alternative owners may install a

flag stand attached to the front of their home. But, your rules may still regulate the location of the front yard flag pole or flag stand. *Review your flag rules to make sure no changes warranted. This bill becomes effective immediately.*

HOA CONTRACTS WITH BOARD MEMBERS:

HB 503 – (Rep. Hernandez) n/a to condos: applicable to HOAs only. This bill prohibits HOA boards from entering into a contract with a board member, relative of a board member, or entity in which a board member owns more than a 51% interest unless: (1) the HOA gets at least 2 other competing bids if reasonably available; (2) the relationship of the board member to the company are disclosed or known to the board and the contract is approved by majority vote of disinterested directors (3) the interested board members is not given access to other bids, does not participate in discussion, and does not vote on the contract; and (4) the board approves a resolution by a majority of disinterested directors confirming that all the requirements of this law have been followed. *Make sure for any HOA contracts with board members, or relatives or companies of board members, these requirements are followed. This law becomes effective September 1.*

BOARD VACANCIES:

HB 3176 (Rep. Bohac): HOA only, n/a to condos. The existing law permits the board to fill an

unexpired term in the event the vacancy is created by death, disability or resignation. This bill removes the limitations. *This law becomes effective immediately.*

LAND USE:

HB 35 (Rep. Menendez; Sen. Deuell): HOA only, n/a to condos. Prohibits an HOA from "adopting or enforcing" a provision in a dedicatory instrument that "prohibits or restricts" an owner from using an "adjacent lot" for "residential purposes". Basically, this bill allows an owner to build on a contiguous lot, either (i) that fronts on the same street, or (ii) as to a corner lot either by the side or back property line. It still allows for approval by the HOA or ACC, to the extent a dedicatory instrument imposes "reasonable restrictions". This bill appears aimed at allowing owners to put swimming pools, playscapes, fences, etc. on a vacant lot they own next door to their home. But there is still express ability for ACC oversight.

If you have a number of two-lot owners in your subdivision, talk with your HOA attorney about adopting rules regarding improvements on adjacent lots. The bill becomes effective immediately.

HOA MANAGEMENT CERTIFICATES

HB 3800 (Rep. Coleman): *n/a to condos, applicable to HOAs only. The bill requires a new management certificate to be filed for all homeowners associations. The new certificate must be filed between the dates of September 1, 2013 and January 1, 2014 due to a new county clerk indexing system. HB 2075, below, adopted an identical requirement for condo associations.*

CONDOMINIUM LAWS:

HB 2075 (Rep. Rafael Anchia) and SB 1231 (Sen. Royce West): This bill addresses lingering issues in condo statutes by giving condo associations more flexibility in dealing with insurance deductibles and in obtaining loans, among other items.

For loans, you either must follow any vote requirement in the governing documents to take out a loan, or, if the documents are silent, the board may take out a loan for the POA by board vote (and pledge assessments as collateral.)

For insurance deductibles, the bill makes clear:

*if the repair cost is less than the deductible, the person who has maintenance responsibility for the item is responsible for the repair

*if an insured loss exceeds the POA's deductible, the documents may dictate who is responsible for the deductible. If the documents are silent (most are), the board by resolution may determine who is responsible for the deductible. If the board does not, the default law is that the deductible is a common expense.

Talk to your POA attorney about adopting rules regarding the deductible – I recommend rules be adopted to address this issue.

For foreclosures, the bill makes clear that the owner being foreclosed on has a right of redemption no matter who buys the property (under previous law, there was no right of redemption unless the association bought the unit). It provides detail on what must be paid by the owner in order to redeem the unit.

The bill requires a new condo management certificate to be filed for all condo associations. The new certificate must be filed between the dates of September 1, 2013 and January 1, 2014 due to a new county clerk indexing system. This bill becomes law effective September 1.

OTHER

HB 2978 (Rep. Parker). This bill authorizes a court in a court's discretion to order parties in an expedited foreclosure proceeding, including HOAs and delinquent owners, to mediation prior to a hearing.