



82nd Legislative Session

Operational Impacts for POA bills

The following summary on Operational Impacts is not all inclusive and the terms are generally representative of the intent of the bill; however, it is recommended all associations and management companies consult with their attorney before the effective date of these bills to make sure all are in compliance. Assuming the Governor signs these bills (has until June 19th), some of the bills are effective immediately, September 1, 2011 or January 1, 2012. Additionally, some of these bills impact condominiums too.

Foreclosure (HB 1228, SB 101, and some provisions in HB 2761)

- Expedited Judicial foreclosure required unless owner waives to agree to non-judicial foreclosure
- The supreme court shall adopt rules similar to those adopted under Section 50(r) Art XVI (home equity loans)
- New notice to certain lien holders and opportunity to cure before commencing a foreclosure
 - Notice to lien holder must be in writing, sent certified mail, return receipt requested, to address for the lien holder shown in the deed records, include total amount of delinquency and gives recipient 60 days to cure
 - Lien holder must be inferior or subordinate to the associations lien and evidenced by a deed of trust
- Owners w/ at least 10% of voting interests may petition to the association to call a special meeting to vote to remove or add the foreclosure remedy
 - 67% of total votes must approve
- SB 101 imposes a certain wording required in non-judicial foreclosures for those members of the military
- SB 2761 adds that amounts for records production cannot be subject to foreclosure

Application of Payments (HB 1228) THIS WAS WRONG IN 6/9/11 VERSION

- Association must apply payments in the following order:
 1. Any delinquent assessment
 2. Any current assessment
 3. Attorneys fees or third party collection costs solely related to assessments or provide the basis for foreclosure
 4. Any other attorneys fees
 5. Any fines assessed by the association
 6. Any other amount owed to the association
- If owner is in default under a payment plan the association does not have to follow above order
- A fine may not be given priority over any other amount owed to the association

Collections (HB 1228)

- Collection agent defined same as debt collector under debt collection laws
- POA cannot hold owner liable for fees by a collection agent unless association provides owner written notice
- Notice must be certified mail, return receipt requested, specify each delinquent amount and the total amt of payment required to make account current; describes options owner has to avoid having the account turned over to a collection agent, including the availability of a payment plan; and provides at least 30 days for owner to cure before further collection action is taken

- An owner not liable for collection agent fees if obligation for the association to pay the fees to the agent is dependent or contingent on amounts received; or the agreement between the association and agent does not require payment by the association of all fees undertaken by the collection agent
- The agreement may not prohibit the owner from contacting the association board or the association's managing agent regarding the delinquency
- A POA may not sell or other transfer account receivable for a purpose other than as collateral for a loan
- A lien, lien affidavit or other instrument evidencing the non-payment of assessments or other charges and filed in the county is a legal instrument affecting title to real property

Payment Plans (HB 1228, HB 1821)

- Associations greater than 14 units must adopt guidelines for alternative payment schedules & record them
- Must be available for owners to make partial payments for delinquent regular or special assessments or any other amount owed to the association with accruing additional monetary penalties
- Penalties do not include reasonable costs associated with administering the payment plan or interest
- Minimum term is 3 months and maximum is 18. No obligation to allow up to 18
- If owner failed to honor previous payment plan during the last 2 years no obligations to offer by association

Resale Certificates (HB 1821)

- Notice that purchaser has to receive from the seller now must clearly state that they are entitled to receive the information provided in a resale certificate (the notice actually lists all of the items in a resale certificate now)
- POA must promptly deliver a copy of the most recent resale certificate which was prepared not earlier than the 60th day before
- Purchase or seller can request; purchaser pays unless otherwise negotiated
 - POA may require the purchaser or agent to provide reasonable evidence that the purchaser has a contractual or other right to acquire property in the subdivision
- POA can require payment before beginning the process of providing the resale certificate but may NOT process the payment until the certificate is available
- The association may not charge a fee if the certificate is not provided in the time prescribed
- New items to be provided in the resale certificate package: style and cause number of any pending lawsuit in which the POA is a party, other than lawsuit relating to unpaid ad valorem taxes; a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid and the amount of each fee

Open Meetings/Records (HB 2761 & 1821)

Meetings

- Defines board meeting
 - "...a deliberation between quorums of the voting board...or between a quorum of the voting board and another person, during which POA business is conducted and the board takes formal action..."
 - A board meeting is NOT a quorum of the board at a social function, at a regional, state or national convention, ceremonial event or press conference as long as formal action is not taken
- All POA regular and special board meetings must be open to members
- Board meeting must be held in county of association, or adjacent county, unless telephonic or electronic meeting
- Written minutes must be kept and made available for member inspection
- Executive session meetings defined
 - Can only include actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications w/ association's attorney, confidential matters
 - Executive session decisions must be summarized orally in regular meeting; and place in the minutes in general terms, including any expenditures approved
- Telephonic & Electronic meetings permitted; or unanimous consent
 - Topics permitted routine & administrative matters; reasonably unforeseen emergency or urgent necessity

- Topics NOT permitted fines, damage assessments, initiation of foreclosure & enforcement actions (excluding TRO), increases in assessments, special assessments, ACC appeals or suspension of owners rights
- Must report at next regular meeting and include in the minutes
- POAs have to give all members notice of regular and special meetings
 - Notice must be provided in one of the following ways: mailed to each property owner 10-60 days before the meeting; or provide 72 hours notice before the meeting in a place located on association's common property, or an owner's property if permitted; or on website. AND email notice to anyone who has registered an email address with the POA
 - Notice must include the date, hour, place and general subject including a general description of any executive session matter

Records

- Must be open and available for examination by an owner, a person designated in writing by an owner as the owners agent, attorney, or certified public accountant
 - Owner or agent must send written request for access by certified mail, with details, to associations agent on the most recently filed management certificate
 - POA must respond within 10 business days and if can't have ready must advise owner (or agent) and advise when it will be available
 - Inspection location to be agreed upon during normal business hours
- Attorneys records and files are not considered association records
- POA must adopt a records production and copying policy, and record it, outlining charges for compilation, production and reproduction of information
 - Charges cannot exceed costs applicable for an item under 1 TAC Section 70.3 POA may not charge any fees absent a written recorded policy
 - POA may require advance payment of the estimated amount of the costs and then reconcile within 30 business days to actual
- POA is not required to provide violation history of any individual, owners personal financial information or contact info (except address), employee information. Information may be provided in a summary format.
- POA over 14 lots shall adopt a records retention policy which has the minimum criteria as outlined in HB 2761
- Member denied access can file a petition in JP court
- All dedicatory instruments must be filed in county and have no effect until filed
- POA shall make dedicatory instruments relating to the association or subdivision and filed in the county available on a website if the association has, or a management co. has on behalf, maintains a publicly accessible website

Mandatory Annual Meeting (HB 2761)

- If Board fails to notice an annual meeting owner can send demand to do so within 30 days
 - Send notice to all members at address on management certificate
 - If not done, Elections Committee can be formed
 - Must file with County Clerk
 - Sole purpose to elect directors
 - Must abide by declaration and bylaws

Voting Rights (HB 472 & HB 2761)

- POA shall give written notice of election of association vote not later than the 10th day or earlier than the 60th day before the date of the election or vote
- Voting rights may be cast or given in person, by proxy, by absentee ballot, by electronic ballot, by any method of representative or delegate voting provided by the dedicatory instrument
- Absentee or electronic ballots
 - May be counted as an owner present and voting for the purposes of establishing a quorum only for items appearing on the ballot

- May not be counted if owner attends meeting to vote in person
- Any vote cast at a meeting supersedes any vote submitted by absentee or electronic ballot
- May not be counted on the final vote of a proposal if the motion was amended at the meeting to be different than the exact language on the absentee or electronic ballot
- Absentee ballot must include each proposed action and provides an opportunity to vote for or against; instructions for delivery of the completed absentee ballot, including delivery location; and specific language outlined in the bill advising you can attend meeting to change your vote
- Electronic ballot means given by email, facsimile or posting on a website; for which the owner can be confirmed, owner may receive a receipt of the owners ballot; and if posted on website, a notice must be sent to each owner that contains access to the posting on the website
- Ballots must be in writing & signed by the member – electronic votes constitute written and signed ballots
- Ballots are not required for uncontested races
- POA cannot prohibit any owner from voting
- POA cannot prohibit any owner from running for a board position
 - If board is presented with written documented evidencing that a board member has been convicted of a felony or crime involving moral turpitude, the board member is immediately ineligible to serve, automatically considered removed from the board and prohibited from future service on the board
- Owner may request a recount not later than 15 days after the date of the meeting at which the election was held
 - Recount demand must be in writing by certified mail, return receipt requested, to address as reflected on the latest management certificate or in person to the POA's managing agent as reflected in the latest management certificate or to the address to which absentee and proxy ballots are mailed
 - Owner pays for any cost of recount
 - POA must contract with someone for the recount who:
 - Is not a member of the association or related to a member of the board; and
 - Is a current or former county judge, county elections administrator, JP, or county voter registrar; or
 - A person agreed on by the POA and the person requesting the recount
 - POA provides results of recount to each owner who requested the recount
 - Any action taken by the board between the initial election & recount is not affected by any recounts
- Homeowner board members required
 - On or before 120th day after the date 75% of lots that may be created and made subject to the declaration are conveyed to owners (other than declarant), 1/3 of board members must be elected by owners
 - If the declaration does not include the number of lots, 1/3 of board members must be elected not later than the 10th anniversary of the date the declaration was recorded
- Any board member whose term has expired must be elected by members of POA
- A board member may be appointed by the board only to fill vacancy caused by a resignation, death or disability; and their term shall only be the unexpired term
 - Does not apply during development period
 - Does not apply to representative board or delegate voting
- POA may amend the bylaws to provide for elections as required above
- Access to ballots and tabulating
 - Board candidate or a person related to them may not tabulate or otherwise be given access to the ballots cast in that election, other than in a recount situation
 - Anyone tabulating votes may not disclose to any other person how an individual voted

Amendments and Recording of Dedicatory Instruments (SB 472)

- 67% can vote to amend restrictions
 - Unless lower amount permitted by documents
- Bylaws cannot be amended to conflict with the declaration

Solar Panels & Shingles (HB 362)

- Solar energy device has meaning assigned by Section 171.107, TAX CODE
- POA may not enforce a provision that prohibits or restricts an owner from installing a solar energy device
- POA may enforce a provision that prohibits a solar energy device that:
 - as adjudicated by a court threatens the public health or safety; or violates a law
 - is located on a property owned or maintained by the POA
 - is located on property owned in common by the members of the POA
 - is located in an area on the owner's property other than on the roof or another permitted structure
 - or in a fenced yard or patio owned and maintained by the owner
- If mounted on the roof of home, extends higher than or beyond the roofline; is in a different area designated by the POA unless the alternate location increases the annual energy production of the device (as determined by public info provided by National Renewable Energy Lab) by more than 10%; does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; frame, support bracket or visible piping or wiring that is not in a silver, bronze, or black tone
- If in fenced yard or patio, is taller than the fence line
- As installed voids material warranties
- Or was installed without prior approval by the POA
- The ARC may not withhold approval if met or exceed those items listed unless the ARC determines in writing that placement of the device constitutes a condition that substantially interferes with the use and enjoyment of the land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities
 - Written approval of the proposed placement of the device by adjoining property owners constitutes evidence that such a condition does not exist
- Declarant may prohibit during development period
- POA cannot prohibit or restrict an owner from installing shingles that:
 - Are designed primarily to be wind and hail resistant; provide heating & cooling efficiencies greater than those provided by customary composite shingles; or provide solar generation capabilities; and
 - When installed resemble the shingles used or otherwise authorized for use on the property in the subdivision; are more durable than and are of equal or superior quality to the shingles described by prior statement; and match the aesthetics of the property surrounding the owner's property

Religious Displays (HB 1278)

- POA cannot prevent an owner from maintaining certain religious items
 - Can be on entry to their dwelling
 - Limits size to 25 square inches
 - Must be motivated by the owner's or residents sincere religious belief
- Some exceptions – public safety, offensive language, etc.

Flags & Flagpoles (HB 2779)

- POA cannot deny an owner's right to install flags or flagpoles
 - U.S. , State or Armed Forces flag
 - Must be 20' or less
 - Placement and noise restrictions permitted

Rain Water Harvesting Devices (HB 3391)

- POA cannot deny an owner's right to install rain water harvesting devices
 - If they meet certain architectural requirements
 - Must be factory color
 - Some screening requirements permitted

Developer/Declarant Control (various bills see below)

Exemptions during development period

- Amendment provision in SB 472
- Director appointments in HB 2761
- Some exemptions in open meetings in HB 2761
- Developer may prohibit solar panels from being installed in HB 362

New Obligations

- Homeowners on boards in HB 2761
- Some open meetings requirements in HB 2761

Transfer Fees (HB 8)

- Protects POA, Foundations and other 501c entities existing foundation fees provided the payments directly benefit the encumbered property
- Clarifies that the administrative transfer fee typically collected, either by the association or management co., is not in violation of the prohibited fees in this bill
- Applies to contracts for sale after 1/1/12
- Restrictions on who can receive
- Fines for violating

Bills with Chapter Reference & Effective Date

SB 101 (Chapter 51)

- Effective 9/1/11
- Military notice for non-judicial foreclosures

SB 472 (Chapter 209)

- Effective 9/1/11
- Amendment provisions
- Signed ballots
- Right to vote and right to run
- Voting methods
- Access to ballot if on ballot (except in recount)

HB 8 (Chapters 5, 82, 202, 207, 209)

- Effective 9/1/11 or immediately except for contract for sale (Chapter 5), effective 1/1/12
- Protects transfer fees for POAs, Foundations
- Protects management fee and association administrative transfer fees

HB362 (Chapter 202)

- Effective immediately
- Right to install solar panels and shingles within certain provisions

HB 1228 (Chapter 209)

- Various effective dates dependant on section – 9/1/11 or 1/1/12
- Mandatory payment plans
- Priority of payment
- Third party collections
- Notice to certain lien holders to cure before foreclosure

- Prohibits non-judicial foreclosure unless owner specifically agrees to it
- Members can vote to add or remove foreclosure provision

HB 1278 (Chapter 202)

- Effective immediately or 9/1/11
- Associations can't prohibit display of certain religious items on their door less than 25 sq. in.

HB 1821 (Chapters 5, 202, 207 & 209)

- Effective 1/1/12
- Resale certificate information changed
- Purchase or seller can request and pay
- Further define fees, purpose and to whom paid
- Online subdivision information
- Mandatory Payment plan

HB 2761 (Chapter 209)

- Effective 1/1/12
- Access to records
- Records retention
- Remedy in JP court for not providing records
- Board meeting notice and agenda to members 72 hours in advance
- Executive session topics
- Notices of election/vote
- Recount provisions
- Voting methods
- Declarant transition of board
- No foreclosure on fines or cost of records
- Mandatory annual meeting if board fails to do so
- Developer protections

HB 2779 (Chapter 202)

- Effective immediately
- Flags & Flagpoles permitted within certain criteria

HB 3391 (Various chapters, but Chapter 202 applicable to POAs)

- Effective 9/1/11
- Rain harvesting devices permitted within certain criteria

Bracketed Bills

- HB 232 (Chapter 211)
- HB 364 (Chapters 82, 214 & 2206)
- HB 1071 (Chapters 210 & 212)
- HB 2702 – population updates for bracketed bills (various Chapters)
- HB 2869 – Las Colinas (Chapter 215)
- SB 1789 – platting for golf courses in certain counties (Chapter 212)