



## POA ACTION IN THE 2009 LEGISLATIVE SESSION

*June 3, 2009 Update*

*The Texas Legislative Action Committee (TLAC) appreciates everyone's efforts this session. The results of this session would not have been possible without the dedication of the TLAC volunteers, our GREAT lobby team, and all of the CAI members who took action when asked and who financially contributed to these efforts. **Thank you very much!***

CAI was incredibly involved in this session's legislative process. During the course of the session, CAI helped bring in hundreds of homeowners eager to express their views and opinions on the legislation before the Texas Legislature. CAI also provided testimony in dozens of committee hearings on many of the 145 bills that CAI was tracking. In addition to this public testimony, CAI representatives participated in many private negotiations to try and come to a compromise, and ended up with the best work product at the end of the Legislative Session.

### End-of-Session Crunch Time

The 81<sup>st</sup> Legislative Session wrapped up on June 1, 2009. In the last week of the session, many bills died due to their failure to meet various House and Senate deadlines. We continued to look for any possible amendments containing the text of legislation that had an impact on POAs.

During the final days of the session, Texas House Democrats were "chubbing" or slowing the debate of local bills. This stall tactic was employed in order to avoid debate on a controversial voter ID bill that was placed on the calendar by leadership. This slowed debate on non-controversial local bills, and ended up killing hundreds of bills that were on the general state calendar in the House. Given the time crunch during the final few days and all the bills that died on the House calendar, several legislators were scrambling to attach the text of their bills onto conference committee reports. During this time, amendments were quite difficult to keep up with. CAI was able to ensure that no harmful amendments were attached to legislation.

In short, NO significant legislation passed that directly impacts property owners associations. Two bills, described below, passed; both of these bills were "agreed" bills among all industry players. Bills that would have had the largest

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**Patrick Clark**  
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**Jeff Douglas**  
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**Roy D. Hailey**  
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**William F. Hession**  
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**Connie Niemann Heyer**  
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**Sabine Holton**  
Houston

**Miles McKinney**  
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**Amy McLin**  
San Antonio

**Mark Markel**  
Houston

**Marjorie J. Meyer**  
Houston

**Sharon Murphy**  
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**Judi Phares**  
Dallas/Fort Worth

**Dean A. Riddle**  
Dallas/Fort Worth

**Fred Shapiro**  
Dallas

impact on POAs failed to pass. Below is a status update on the major pieces of legislation that TLAC was following.

For the latest action and/or bill analyses, select the [bill lookup](#) link on the Texas Legislature Online (<http://www.legis.state.tx.us/>) home page. Simply enter a bill number for current information.

**SENATE BILL 1918: Effective date 9-1-09** *This bill amends Ch 207 of the property code. It applies ONLY to resale certificates for NON-condos. Condo resale certificates are NOT affected.* It provides that an update to a resale certificate (update to a previously-issued certificate) must be issued within seven days of WRITTEN request by an owner or his title company or agent. The update need ONLY contain the following information:

- (1) Whether the restrictions have a right of first refusal, and if so whether the association is exercising the right of first refusal;
- (2) The status of any unpaid special assessment, dues, or other amounts this owner owes the association; and
- (3) Any changes to the originally-issued resale certificate [such as deed restriction violations occurring after the initial issuance of the resale cert]

The bill further provides that an update to a resale cert need ONLY be provided within the 180 day period after the initial resale cert is issued (otherwise you may decline to issue an update/require a new resale cert). It also provides that ONLY the party who originally requested the resale cert can request the update.

**SENATE BILL 1919; House Bill 2394: Effective date 9-1-09** *Again, these bills ONLY affect NON-condos: condos are NOT affected. They amend Chapter 209 of the property code, which is not applicable to condos.* The bills amend the section of Chapter 209 which, already under current law, requires a management certificate to be filed and kept updated for all associations.

Key amendments:

- (1) Require the name of the association to be on the management certificate;
- (2) Require the association's "designated representative" or managing agent be listed on the management certificate [right now the requirement is that the "managing agent" be listed];
- (3) Provide that if a POA does not file a management certificate or keep it updated, the purchaser, lender, or title company is not liable for amounts owed to the association as of the date of closing (amounts accruing before the date of closing); and

(4) Provide that if a POA fails to file a management certificate, its POA lien is effective ONLY for amounts coming due after the effective date of a sale of a home to a new owner. [The POA does NOT lose its lien, “just” loses the right to enforce its lien for amounts coming due prior to the date of sale.]

Both of these bills were an effort by the title industry to ensure “clean” title can be passed. For all associations already following the law and recording management certificates with the County Clerk in the Official Public Records of the county (or counties) in which the property is located, Senate Bill 1919 should have little if any ramification. However, there are a number of associations in Texas from which it is virtually impossible for title companies to obtain information at closing because no management certificate is filed, the association has dissolved or gone inactive, or other such reasons. The Texas Land Title Association was mindful of attempting to fix these legitimate title problems without causing undue harm or burden on associations and their management professionals. Three trade associations (Community Associations Institute, Texas Association of Community Management Companies, and the Texas Land Title Association) worked together in reaching agreed language, and supported the language of the above-described bills.

**HOUSE BILL 1976; HOUSE BILL 1977; HOUSE JOINT RESOLUTION 76:** HB 1976, the omnibus POA bill, did NOT pass. Neither did HJR 76, the proposed amendment to the Texas Constitution and its enabling legislation (HB 1977) that would have effectively done away with the right of a POA to enforce a lien for nonpayment of assessments.

**HOUSE BILL 3025: Regulation of religious displays** *This bill, if passed, would have applied to all POAs, including condominiums.* This bill would have given an owner the absolute right to place an item in his “entry” as long as the item “reflects a tenet of” the owner’s religion. *CAI worked with the author of the bill to address some practical concerns associated with the bill. However, HB 3025 did NOT pass.*

**HOUSE BILL 4299: No restrictions on rain barrels** *This bill would have applied to all POAs, including condominiums.* This bill as filed, would have prohibited any POA restriction on rain barrels. Rain barrels could have been placed in the front yard, painted purple, 20 feet tall, etc. *CAI worked with the author of this bill to ensure that POAs could continue to place reasonable restrictions on the placement of rain barrels. However, HB 4299 did NOT pass. This bill was also amended onto the conference committee report for HB 3526, which also failed to pass.*

**HOUSE BILL 4637: Ham Radio Antennas, Flags/Flag Poles** *This bill applied to all POAs, including condominiums.* This bill would have prohibited POAs from placing any meaningful restrictions on ham radios or other amateur radio installations. As filed, there were *no* height or style restrictions, there could have been a 60-foot antenna in your neighbor’s yard, or on his roof, supported by guy wires. The bill also prohibited POAs from restricting the flying of US, Texas, or Armed Services flags, and also provided that if an owner wanted to erect a flag pole, the POA must allow it. The bill also limited the ability of POAs to place restrictions on an owner’s installation of a generator at his or her home. *CAI offered amendments to address concerns with this bill. However, HB 4637 did NOT pass.*

**SENATE BILL 236; HOUSE BILL 25; SENATE BILL 545: Solar panels** *These bills applied to all POAs, including condominiums. They prohibited restrictions on solar panels in POAs, with the exception that restrictions were allowed for panels that are unsafe, in common areas, or located other than on the roof or in a fenced yard. The solar language was “agreed” language, but did not pass.*

**SENATE BILL 237: Voting/Bylaws** *As filed, this was a bill to which CAI could not agree, and actively worked with the bill’s author to amend to an agreeable form. The version of SB 237 that passed the Senate was indeed an agreed form, thanks to CAI’s efforts. As filed, for example, this bill required that if a physical polling place is open for association members to vote, the polling must remain open (members must be allowed to vote) from 7 a.m. to 7 p.m. This would require renting a facility for 12 hours, and paying to staff it for 12 hours, for each POA election. CAI helped draft amended language, but SB 237 did NOT pass.*

**SENATE BILL 238: Relating to the availability of a property owners' association's books and records** *This bill contained some of the most meaningful reform for property owners, representing a potentially sweeping change in the law. This bill paralleled the requirements of the governmental Open Records Act (Public Information Act), including a 10-day deadline to produce records, limited exceptions, harsh penalties (\$1,500 fine, etc.) for failure to comply, but importantly, does not go so far as to bring POAs under the Act itself. CAI worked with the author to address concerns, however SB 238 did NOT pass.*

**SENATE BILL 240: Mandatory payment plans and application of payments** *A property owners’ association would be required to adopt guidelines requiring delinquent owners to be offered payment plans. All owners’ payments would have to be applied first to assessments and then to other amounts for which the association has a lien. This requirement would likely have had the unintended consequence of creating a greater financial burden on rule-abiding, dues-paying owners. SB 240 did NOT pass.*

**SENATE BILL 241: Mandatory judicial foreclosure** *This bill’s language would have “trumped” any declaration provision that allows for non-judicial foreclosure (foreclosure by sending two certified mail notices and auctioning a property at the courthouse, just like a mortgage company would do). Judicial foreclosure would have been required, meaning a lawsuit being filed and tried. Judicial foreclosure is much (thousands of dollars) more expensive than non-judicial, and the financial difference would have made it harder if not impossible for owners to redeem their homes (buy their homes back in the six-month buyback period after a POA foreclosure). SB 241 did NOT pass.*

#### **LEGISLATION CAI WAS SUPPORTING/MONITORING/AMENDING:**

- **HB 396 Hartnett/Carona:** Relating to expunction of a notice of lis pendens.  
Bill History: 05-26-09 G Sent to the Governor
- **HB 406 Rodriguez/Carona:** Relating to claims for excess proceeds of a tax sale of real property.  
Bill History: 09-01-09 G Earliest effective date

- **HB 655 Solomons/Seliger:** Relating to payment to a trustee or substitute trustee after the public sale of foreclosed property.  
 Bill History: 05-26-09 G Sent to the Governor
- **HB 1063 Farias/Wentworth:** Relating to emergency vehicle access to certain gated communities and multi-unit housing projects.  
 Bill History: 05-31-09 G Sent to the Governor
- **HB 1407 Geren/Davis, Wendy:** Relating to the redemption of real property sold at an ad valorem tax sale.  
 Bill History: 05-26-09 G Sent to the Governor
- **HB 1473 Geren/Nelson:** Relating to the application of certain requirements affecting certain subdivision golf courses.  
 Bill History: 05-31-09 G Sent to the Governor
- **HB 3128 Turner, Sylvester/Ellis:** Relating to service of process or notices by a municipality with a population of more than 1.9 million on certain condominiums.  
 Bill History: 05-31-09 G Sent to the Governor
- **HB 3857 Herrero/Hinojosa:** Relating to foreclosure of liens on real or personal property owned by members of the military.  
 Bill History: 05-31-09 G Sent to the Governor
- **SB 968 West/Truitt:** Relating to interactive water features and fountains.  
 Bill History: 06-03-09 G Sent to the Governor
- **SB 1672 Nichols/Berman:** Relating to extension or modification of restrictive covenants in certain residential real estate subdivisions.  
 Bill History: 06-01-09 G Sent to the Governor
- **SB 1715 West/Giddings:** Relating to the requirements for a smoke detector in multifamily residential units.  
 Bill History: 06-01-09 G Sent to the Governor
- **SB 1945 West/Deshotel:** Relating to the personal liability of, and acceptance of service of citation by, an employee of the owner of real property or of a company that manages real property.  
 Bill History: 06-01-09 G Sent to the Governor
- **SB 2126 Estes/Miller, Doug:** Relating to the authority of owners and managers of apartment houses to assess a service charge for the sub metering of water and wastewater services.  
 Bill History: 09-01-09 G Earliest effective date