2018 OVERVIEW OF TEXAS POA STATUTES:

STATUTES PERTAINING TO COMMON INTEREST DEVELOPMENTS AND THEIR PROPERTY OWNERS ASSOCIATIONS

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CHAPTER 1

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Apropos the Article:

Sharon was introduced to POA statutes in 1980 when the first proposed "Texas Uniform Condominium Act" was being discussed in real estate circles. A decade later she was the reporter for an Ad Hoc TUCA Drafting Committee of POA attorneys, and ultimately became TUCA's spokesperson for the 1991 and 1993 Sessions. After decades of drafting, supporting, and opposing POA bills, Sharon evolved into a biennial blogger about POA statute-making.

This article is Sharon's 11th CLE contribution devoted to the topic of Texas POA statutes since 1994, when she introduced the Texas Real Estate Bar to the newly enacted Texas Uniform Condominium Act. Six of her 11 CLE articles were co-authored with Roy D. Hailey with whom Sharon co-presented POA Law Legislative Updates as TexasBarCLE webcasts. Their first co-production is the riveting tale titled *Statutory Evolution of Condominiums and Property Owners Associations in Texas*, presented at the 2002 Mortgage Lending Institute.

Sharon was part of the small team of POA lawyers appointed by the State Bar's Real Estate Probate and Trust Law Section in 2015 to create a new legal certification in POA Law for Texas attorneys, which the State approved in Fall 2017.

As an unpaid volunteer for all the above activities, Sharon is grateful to her wonderful developer clients who inspire her continued interest in real estate law.

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2018 OVERVIEW OF TEXAS POA STATUTES ~ SPECIFIC TO COMMON INTEREST DEVELOPMENTS AND THEIR PROPERTY OWNERS ASSOCIATIONS

I. INTRODUCTION

There are many ways to approach an Overview. May this article's approach be useful to you.

For starters, the author interprets "Texas POA Statutes" to mean state and federal statutes that are relevant to common interest developments and POAs located in Texas. "Relevant" describes a statute that is either POA-Specific or POA-Pertinent, classifications developed by the author for reporting on POA Bills during biennial sessions of the Texas Legislature.

This article uses "POA" (the acronym for property owners association) for every type of automatic mandatory owners association for every type of common interest development (other than timeshares) - condominium and non-condominium. The common feature is that conveyance of real property also conveys - automatically - membership in an association of owners in the same development, and typically an obligation to contribute financially to the association. Membership and financial obligations aren't optional. Instead, POA membership and assessment liability are appurtenance of real property ownership. When the real property is conveyed, so is the appurtenant POA membership.

POA-Specific statutes are statues that are written expressly for condominiums, townhomes, subdivisions, or any other type of common interest development, such as Texas Property Code Chapters 81, 82, 202, 204, and 209 (which are the POA Multi-Topic "Biggies" in Appendix 14). **POA-Pertinent statutes** don't expressly address POAs but are frequently used by POA lawyers, such as the Texas Business Organizations Code and Texas Property Code Chapter 51 (foreclosure).

Also, this article liberally construes "statute" to include their appurtenances - the rules, regulations, procedures, and guidelines that are authorized by statute, such as OTARD, Fair Housing Rules, and Texas PUC Rules.

Be sure to check out this article's 14 exhibits - especially the bookends. Appendix 1 is a Roadmap to the "Biggie" POA-Specific Texas Statutes. Appendix 14 is the 12-page *2018 Categorical List of POA Statutes - State & Federal*. The exhibits in between may also interest you.

Finally, please accept the author's apology for this article's many inconsistencies. For example, Texas Property Code often appears as "**TPC**," sometimes as Prop. Code, and sometimes the full name is used. Time ran out for final editing.

II. STATUTORY TOOLS

This topic is purposefully placed at the front of this article to catch your attention.

A. Code Construction Act

If it's been a while since you looked at the Code Construction Act (Texas Government Code Chapter 211), take a look at Appendix 7 which lists the defined terms and the Act's table of contents. It helps to be reminded periodically that every codified statute we work with relies on this Act. So sayeth the Act and an opening general provisions in each Code, such as Texas Property Code §1.002 and Business Organizations Code §1.051.

Why is the Code Construction Act especially pertinent to POA lawyers? Because the Act specifically defines "population" - a word that frequently appears in POA Statutes that are "bracketed" to certain locations in the state based on population. This article's Appendixes 7 and 8 provide more information about the importance of the Code Construction Act. Don't leave home without it.

B. Construction of Laws Act

Texas Government Code Chapter 312 - the Construction of Laws Act - may also be applicable to our work. Govt. Code §312.006 - requiring liberal construction of statutes - reads like an echo of TPC §202.003(a).

C. 8 Appendixes from the Legislature's Manual

Don't let the Manual's title fool you. The 300+ page *Texas Legislative Council Drafting Manual* is a free on-line treasure trove of tools for anyone who uses Texas statutes. Legislative Council is a State agency that works for the Texas Legislature. The Manual is updated periodically - the current edition is dated January 2017. The fastest way to find it is by Googling the 5-word title. I recommend the following 8 appendixes from the Manual as particularly useful in working with POA Statutes:

Appendix 1 - 2010 Texas Census, City Summary (population size order)
Appendix 2 - 2010 Texas Census, County Summary (population size order)
Appendix 3 - 2010 Texas Census, City Summary (alpha order)
Appendix 4 - 2010 Texas Census, County Summary (alpha order)
Appendix 5 - Code Construction Act, Chapter 311, Government Code
Appendix 6 - Construction of Laws, Chapter 312, Government Code
Appendix 7 - Memorandum dated 1/16/17 Re: Local and Special Bills, . . . , and Bracket Bills.
Appendix 9 - Memorandum dated 11/4/04 Re: Incorporation of Certain Statutes by Reference

III. BIFURCATION INTO CONDO & SUBDIVISION STATUTES

This article divides the statutory universe of common interest developments and their POAs into two categories - condominiums and subdivisions. Condominiums and condo POAs are defined by - and subject to - TPC Chapter 82. Every other type of common interest development and its POA is a "subdivision," for purposes of this article. Tip of the hat to Greg Cagle for being one of the first to use "subdivision" as the term of art based on TPC Chapter 209's use of the defined term. Where does that leave "townhomes"? They are either condominiums or subdivisions. Ditto for common interest developments that are mixed-use, large-scale, commercial, industrial, etcetera. Other CLE articles may use different naming conventions.

A. Why Bifurcate POA Law?

Good question. A lawyer who first meets the Texas POA Laws in the modern era (after 2001) has a worldview that is dramatically unlike that of her predecessors. Today's attorney takes POA Laws as a given. She may assume that the compilation of POA statutes presented in this article are the product of intelligent legislative design. She may be amused or mystified by differences in laws pertaining to condominiums, and those pertaining to subdivisions. After all, their respective owners associations are almost identical in the ways they operate, and in the issues they face.

So, why the differences? The reason POA-specific statutes are bifurcated between subdivisions and condominiums is rooted in their origins. You may not be interested in legal history. You may wish this presentation were limited to today's law - the practical stuff. However, without historical perspective we - as the real property bar - risk making a worse mess of Texas POA Statutes than exists today. Somebody has to tell the story. Trust me, this is the short version.

This explanation uses PUD (acronym for planned unit development) instead of "subdivision." PUD is the term used by the mortgage industry since 1970-ish to identify common interest developments that are not condominium in ownership. Almost 50 years of continuous use makes PUD a term worth knowing. If you own a mortgaged home in a common interest development, your deed of trust probably has a "PUD Rider" or a "Condo Rider." They've been used nationwide for eons.

B. Legislative Approaches

Texas legislation for POAs is generally divisible by subject matter, having flowed down two main tributaries, one for condominiums, the other for planned communities, with an occasional cross-over creek. Also, there are two broad approaches to statutory development in Texas - Band-Aid and comprehensive. The Band-Aid approach to POA legislation is like the disease and curative model in medicine. Identify a problem, and fix it. See a "boo boo," apply a bandage. The comprehensive approach compares to the holistic, preventative, health maintenance medical model. Prevention rather than cure. Texas PUD legislation has been developed in a Band-Aid manner. Texas condominium legislation has, from its inception, been comprehensive in nature.

C. Subdivision/PUD Statutes

Getting back to origins. Condominium law is statutory in origin. PUD law arises out of common law that evolved over centuries.

1. Ancient History

Before 2001, Texas had no statewide PUD statute. No "subdivision POA statute," to use our current parlance. NONE. For a century, tens of thousands of PUDs were created in Texas (mostly in the Houston area) under old school law pertaining to covenants, conditions, restrictions, easements, and liens. In that era, only the declaration was recorded and it was the "law" of the subdivision. That may be worth remembering when you work with a PUD created before Y2K.

In Texas, the vast majority of early PUDs were in Houston - the only large city in the USA to have no zoning. PUD restrictions became a popular and effective form of private zoning. What became the norm in Houston quickly spread to Houston's surrounds. For that reason, the Houston area has always had the largest number of PUD everything - lawyers, managers, HOA news coverage, anti-HOA homeowners, and bracketed State laws. Houston was - and is - the tail that wags the Texas POA statutory dog.

Outside the Houston area, PUDs were unusual - until the 1990s when residential developers in urban markets saw benefits in creating neighborhoods with swimming pools. Then big cities discovered the benefits of PUDs and began requiring them for all new subdivisions, so the HOA (not the city) would maintain rights of way and drainage easements, as well as adding HOA-maintained common areas to the city's quality-of-life ranking for parks. Nevertheless, even today, many parts of Texas (and their attorneys) have little if any experience with PUDs.

2. PUD Band-Aids

Because PUD concepts and PUD common law were old and well developed, many PUD-specific bills were drafted and filed in the mid to late 1990s as band-aid solutions to specific problems that busloads of complaining homeowners raised every two years at legislative hearings. Why then? The Houston area was saddled with huge numbers of antiquated declarations that capped assessments (like $100 per year, which may have been big bucks in 1970) and were nearly impossible to amend. To provide relief, TPC Chapter 204 was enacted in 1995 - bracketed to only Harris County. (More about TPC Chapter 204 and its bracketing elsewhere in this article.)

3. No Comprehensive PUD Statute

Because PUDs and PUD law existed in Texas for a century before the Legislature enacted the first Band-Aid statute for PUDs, there is no comprehensive statewide PUD statute. Current Texas PUD statutes don't address the creation or termination of PUDs, as a comprehensive statute would. TPC Chapter 209, which is the primary PUD statute, is actually a composite of issue-based spot bills that were stitched together to form a patchwork quilt of one-size-fits-all legislative solutions to problems presented at the Capitol, plus a few "industry protections" that slipped in. From a bird's-eye view, Texas PUD statutes represent rigid State micro-management of some of the most mundane aspects of POA governance, depriving POA members from tailoring their governing documents to their unique needs.

4. Future

One size does not fit all. For that reason, Texas may be on the verge of an era of increased bill bracketing. The Las Colinas Association in Irving provided the most recent roadmap by first getting carve-outs from certain sections of TPC Chapter 209, and then exempting itself from TPC Chapter 209 altogether by creating its own bracketed chapter TPC Chapter 215. Who's next? Where will it end?

D. Condominium Statutes

Whereas PUDs have a long history as common law developments, and a relatively short recent history of statutory regulation, in Texas condominiums derive their authority from a state "enabling" statute. Unlike band-aid PUD statutes, the condominium statute is comprehensive - written at one time, as a whole, to address the creation, operation, and termination of condominium regimes.

1. 1963 Condominium Act - First Generation

Enacted in 1963, The Texas Condominium Act (initially Article 1301a V.A.C.S., now Chapter 81 Property Code) is a typical first generation enabling statute, characterized by brevity, rigidity, and a distinct lack of consumer protections. The prototype for first generation condominium statutes is the 1962 FHA Model Act for the Creation of Apartment Ownership, published in 1962 by the Federal Housing Administration, based on Puerto Rico's 1958 Horizontal Property Act. *(USA is a late bloomer condo-wise. Europe and Latin American have had enabling condo statutes "forever" ~ allegedly back to Ancient Rome.)*

Between 1963 and 1993 (when TUCA was adopted), Texas had the dubious distinction of being one of the few growth states with a nearly pristine first-generation condominium statute. During that period, the Condominium Act was once codified (in 1983 as Chapter 81 Property Code), and twice amended (1984 and 1989). Not much activity for a 30-year period.

2. Model Uniform Act

By the late 1960s, every state had adopted a condominium enabling statute, many of which were based on the FHA model. By the early 1970s, it was apparent that first generation statutes were inadequate to deal with the variety and complexity of the emerging condominium market. Development of a second generation condominium statute fell to the National Conference of Commissioners on Uniform State Laws. The first version of the model Uniform Condominium Act appeared in the Uniform Land Transactions Act. The UCA was separated from ULTA in 1975, and was published in 1977 by the Uniform Law Commissioners as a free-standing Uniform Condominium Act. The UCA was revised and republished in 1980.

3. 1993 - Uniform Condominium Act - Second Generation

By 1979, the UCA was in the hands of Austin real estate lobbyist Larry Niemann, who took the concept to the House Committee on Business & Industry and emerged with a proposed bill. The proposed UCA bill was in play for more than a decade before it was enacted in 1993, to be effective January 1, 1994, as Chapter 82 of the Property Code. The Act is affectionately referred to as "TUCA" for Texas Uniform Condominium Act. (The Act's official name lacks "Texas".)

The version of TUCA enacted in 1993 was substantially customized for use in Texas. At the time, the Uniform Law Commissioners evaluated whether to allow the modified statute to retain the "Uniform Act" label. They decided it had enough of the hallmarks of the model UCA to call itself "Uniform".

Both Texas condominium acts, as originally written, "worked." Condominiums were created and flourished statewide since 1993 with very few complaints voiced at the Capitol. Angry condominium unit owners did not fill committee hearings in Austin. They were under a statutory scheme that - for the most part - worked well. The condominium statutes were successful in large part because they do not try to micro-manage the condo POAs.

Because of the huge variety of condominium environments, it's imperative that the condominium statute remain flexible and adaptable for every possible use. However, TUCA has no champions - no ongoing drafting committee - no one to protect it from bracket bills and well-intentioned but misguided efforts to make TUCA more like TPC Chapter 209.

E. Cross-Pollution

It's understandable that the work of POA managers and POA attorneys may be made easier if condos and subdivisions used the same statutes. In the beginning, PUD statutes borrowed from condo statutes. For example, in 1995 part of TUCA were copied for use in a subdivision POA statute bracketed for Harris County - TPC Chapter 204. After a few years of experience with TUCA's condominium resale certificate, the Texas Association of Realtors supported a bill mandating similar resale certificates for subdivision home resale, which was enacted in 1999 as TPC Chapter 207.

The resale certificate statute is a wonderful example of the unintended consequences of a band-aid statute. TUCA provides two types of unit sale disclosures. One is provided by the declarant when he sells units, for which there is no charge to the homebuyer. The other disclosure is provided by the HOA upon request of a unit owner when he prepares to re-sell the unit, for which the HOA (or its manager) may charge.

The Realtors did not pay attention to TUCA's distinction between disclosures, which is built into TUCA's structure. They assumed that everyone knows "resale" applies to used homes only. TREC promulgates new home contracts and resale contracts. Duh! So, the Realtors did not think it necessary to define "resale" in TPC Chapter 207. Soon after TPC Chapter 207's adoption, the POA managers of Texas convinced title companies and developers that new home sales require resale certificates, for which they could charge a fee with each home closing. Some also claim a resale certificate fee when vacant lots are sold. No one has challenged the unintended consequence, which has been in place for almost 20 years.

Threads of TUCA can also be found in the 2001 version of TPC Chapter 209, and in the subsequent reform amendments of 2011 and 2013. Ironically, the statutory migration pattern seems to be reversing. People who work with the micro-managed provisions of TPC Chapter 209 see TUCA as needing those statutory fixes. The new direction may be trying to graft portions of TPC Chapter 209 onto TPC Chapter 82.

Bottom line. We seem to be destined to create even more POA statutory mush that, in turn, will require even more management and legal services to stay compliant. Already the POA Statutes have become too complicated for the average volunteer-run POAs. Homeowners pick up the tab with increased assessments and conveyance fees. Hope this pessimism is unwarranted.

IV. SELECT POA STATUTORY ISSUES

A. Subdivision POAs Use Governmental Statutes

TPC Chapter 209 seems to be on a statutory path that reinforces the popular perception that "HOAs are mini-governments." Instead of developing standards tailored for subdivision POAs, changes to TPC Chapter 209 show a propensity for looking to government statutes for standards. The Texas Government Code is mentioned in 10 parts of TPC Chapter 209. Accordingly, the comparison of subdivision POAs to governmental entities becomes increasingly valid.

The march of subdivision POAs towards governmental statutes began with the HOA "Reform Laws" of 2011. TPC Chapter 209 was amended to prohibit certain relatives from tabulating or recounting ballots. (TPC Secs. 209.0057(c)(1) and 209.00594) Which relatives? A person within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code.

Also since 2011, subdivision POAs must cap the fees they charge for document requests - not to exceed the maximum fees that governments can charge. See the reference to "1 T.A.C. Section 70.3" in TPC Sec. 209.005(i). "T.A.C." means Texas Administrative Code, which is maintained by the Secretary of State.

The same 2011 Legislature amended TPC Chapter 209 to reference the 1999 fact that certain subdivision POAs in The Woodlands are subject two sections of the Government Code (open meetings and open records). Because of the Government Code connection, they are exempted from a few sections of TPC Chapter 209.

The march towards the Government Code didn't stop in 2011. In 2013 TPC Chapter 209 was amended to add Sec. 209.0052 which identifies "interested directors" by relationships "within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code."

In short, subdivision POAs (but not condo POAs) are subject to some of the same rules as governmental entities. "If some, why not all?" the public and lawmakers may ask.

B. Consanguinity & Affinity ~ a Matter of Degrees

Ironically, subdivision POAs in Texas are held to higher standards than governmental entities. Directors, vote tabulators, and vote re-counters are prohibited from being within three degrees of consanguinity and affinity in certain roles. However, Government Code Chapter 573 goes to only the second degree of affinity. **ALERT**. Relationship charts on Texas governmental websites go to the third degree of consanguinity, but only to the second degree of affinity. Subdivision POAs are required to go to the third degree of affinity. See Appendix 9 attached.

C. Association Formation

This important topic deserves more attention and authentication than this provocative thumbnail. In Texas, as elsewhere, a POA is a real property entity - a real property association - a real property organization that comes into existence upon the later of the following three real property events, which may (and do!) occur in any order. ✱ For this topic, "subdivision" also pertains to the subdivision of a parcel into condominium units.

- **Event One - Subdivision into Units or Lots.** Real property is subdivided into two or more units, lots, or parcels capable of independent ownership, as evidenced by a subdivision plat or condominium plat recorded in the real property records of the county in which the property is located.

- **Event Two - Dedication.** A publicly recorded plat or declaration of covenants (1) describes certain real property that is subject to the plat or declaration, (2) is signed by the owner or owners of all the subject property, and (3) states that the owners of the subject property share a common purpose or duty. The recording must be in the real property records of the county in which the property is located

- **Event Three - Diversity.** The subdivided property has diversity of ownership - at least two units or lots have different owners, as evidenced by deeds recorded in the real property records of the county in which the property is located. One owner (such as the developer) does not an "association" make. An association is a group (more than one, in our case).

Contrary to widespread popular belief and professional opinion, recognition by the Secretary of State of Texas is not a defining feature of a Texas POA. Yes, incorporation may be required by a POA statute (such as TUCA) or a POA's governing documents. In that event, failure to incorporate or to remain actively incorporated may breach a legal duty, but it does not affect the ongoing perpetual existence of the real property POA that continues to meet the formation criteria. As a real property entity, the POA does not cease to exist because its corporate charter lapses. It merely becomes an unincorporated POA. If the owners never get together to "organize" the POA, the POA exists by implication.

D. Statutory Bracketing

Bracketing? Google thinks it refers to March Madness. The Texas Legislature uses it differently. Bracketing is the term used by Texas lawmakers to limit the applicability of a statute to a particular area because of the area's unique circumstance to which the statute pertains. For example, a statute that addresses coastal erosion is "bracketed" to only the counties along the Gulf Coast.

"Bracket bills" is the nickname given to Texas statutes that are neither local laws within the meaning of the Texas Constitution, nor statewide in application, as required by the Texas Constitution. The authority for bracket bills is *Miller v. El Paso County*, 150 S.W.2d 1000 (Tex. 1941), which establishes a three-part test to determine if a less-than-statewide bill proposes general law or is an unconstitutional local bill. *(Yes, it's odd that enacted statutes are called "bills" in this context.)* The constitutionality of the many bracketed POA statutes is not addressed in this article.

Most bracket bills limit a statute's applicability to (1) a stated population bracket, (2) a certain geographic area, or (3) a combination of the two. The POA-specific statutes include a large number of bracketed statutes. Even statewide statutes, like TPC Chapter 82, contain bracketed sections or subsections. Trying to figure out which POA statutes apply to which locations is a trickier challenge than you might think. You've entered the twilight zone of bracket bills.

1. Stated Population Bracket - 4 Oddities

One oddity about population brackets is that the bracket bill doesn't name the city or county. Harris County is identified as "a county with a population of 3.3 million or more."

A second oddity about population brackets is that current population counts don't count (LOL!). Bracket bills must use population numbers that are published only once every 10 years by the U.S. Census Bureau, based on the most recent official decennial Census. In 2018 we're still bound by the 2010 Census results, even though we know populations have changed. The results of the 2020 Census will likely be published in early 2021, and will be used in brackets until 2031, when the next decennial Census results are published. Which leads us to the third oddity.

The third oddity is the source of the Census requirement. When the Texas Property Code uses the "population," the word doesn't have an ordinary meaning because "population" is defined by statute. Where? In Section 311.05 of the Texas Code Construction Act, Government Code Chapter 311. How does an attorney know that? Take a look at TPC Section 1.002. Surprise!

Lastly, it's not always easy to find official Census numbers in a usable format. I recommend using a source that's as close to official as you can find, and which is a permanent public source that can be found years later if necessary to confirm the advice you gave back when. Be wary of any data source that may have keyed-in the data or manipulated it for the site's own purpose. If the bracket is important for a particular purpose, I suggest calling the Texas State Demographer for confirmation of the number you're using.

2. Census Data

- The Texas Legislative Council Drafting Manual exhibits. I take comfort in use by the Texas Legislature.
- Website of the Texas State Library and Archive Commission, using these links:

For Texas County Population Data: https://www.tsl.texas.gov/ref/abouttx/population.html
Be sure to select "Counts by Size" - not "Estimates"
2010 U.S. Census population counts [alpha by county]
2010 U.S. Census population counts, by size

For Texas City Population Data: https://www.tsl.texas.gov/ref/abouttx/population2.html
Be sure to select "Counts by Size" - not "Estimates"
2010 U.S. Census population counts [alpha by city]

2010 U.S. Census population counts, by size

3. Bracket Creep

"Bracket Creep" occurs with population-based statutes when population sizes change every 10 years (as reported by the U.S. Census), without a corresponding amendment to the population-based statute.

TPC Chapter 205 is a simple example of bracket creek. Enacted in 1995 and never amended, TPC Chapter 205 is bracketed for counties with populations of 65,000 or more. Since 1995, the 2000 and 2010 Censuses were taken, resulting in considerable bracket creep. Twelve additional counties fell under the spell of TPC Chapter 205 without anyone being aware. Here is TPC Chapter 205's coverage of 65+K, which may "creep" again after the 2020 Census:

1995 - 2000 39 counties based on the 1990 U. S. Census
2001 - 2010 48 counties based on the 2000 U.S. Census
2011 - 2020 51 counties based on the 2010 U.S. Census

4. Certain Geographic Area

Why can't we just name a city or county and avoid the population changes? I don't know the answer to that except that the earliest brackets may have been based on geography - all counties containing a particular river, or along an international boundary, or on the coastline. It's not like names of counties and cities changed willy nilly.

5. Combinations of Population and Geography

TPC Chapter 204 describes a county with a population of 275,000 or more that is adjacent to a county with a population of 3.3 million or more; and contains part of a national forest. Texas has 12 counties that contain parts of four national forests (who knew!). Harris County [3.3+ M] has 7 adjacent counties. Montgomery County is the only one of the 12 forest counties that is also one of the 7 adjacent counties - two location classifications that are not likely to change. And, Montgomery meets the population requirement. (Are you having fun yet?) That's typical of the type of analysis required for Population and Geography brackets.

6. Project-Specific Brackets

Some of the bracketing of POA statutes is very creative or complicated. The statutory bracket for TPC Chapter 215 uses 297 words - and no place names - to describe the Las Colinas master planned development in Irving.

E. Types of Real Property Ownership

1. Condominium

Condominium is a statutorily defined form of real property ownership. As defined by TPC Chapters 81 & 82, it combines individual (fee simple) ownership of a unit with collective (tenancy in common) ownership of common elements. The condominium form of ownership may be used for any type of real property use - residential, commercial, industrial, recreational. Also, it may be used for any type of building - detached or free-standing units (such as single-family homes), vertically attached units (such as townhomes and duplexes), horizontally attached units (such a high-rises and garden apartments). Further, it may be applied to ownership of spaces that are not defined by buildings, such as platted lots, boat slips, and parking spaces. Because it's an incredibly flexible form of ownership, many properties that don't "look like" condominiums are nevertheless condominium in ownership. Statutorily, "condominium" also refers to the entire project or development that contains condominium units. Some Texas statutes use "condominium" in ways that appear to be synonymous with "apartment building." (Legally, it's not a type of building.)

2. Townhomes

Texas has no statutory definition of townhouse or townhome. "Townhome" is not a legally recognized category of real property ownership. The words have different meanings by region, industry, and context. For instance, a city may have townhouse zoning and townhouse building codes. Often the words refer to a type of building, such as row houses or dwellings that are attached side by side. Real estate brokers may use "townhome" or "true townhome" as synonyms for "not condo." In terms of ownership, a townhouse may be any of these: (1) an apartment in a rental complex with a single owner, (2) a fee-simple attached dwelling in a platted subdivision without restrictions, assessments, or mandatory membership in an association, (3) an "air space" condominium unit, (4) an attached dwelling on a platted lot within a condominium regime, hence also a condominium unit, or (5) an attached dwelling on a platted lot within a subdivision with a POA that is not condominium.

3. HOA

HOA (the acronym for homeowners association - no matter how spelled or punctuated) has no statutory definition. In the real world, HOA often refers generically to the governing body of any type of common interest development, with mandatory membership, that is primarily residential in use. Texas statutes use "Property Owners Association" rather than "Homeowners Association," even when referring to residential-only communities. Because HOA has no precise legal definition, it may also be used in connection with voluntary membership neighborhood associations and mandatory condominium associations.

F. Residential v. Non-Residential - 3 Rules of Thumb

1. Condo-Specific POA Statutes Apply to Residential and Non-Residential.

Condominium is an ownership concept that is unrestricted by use, such as residential, commercial, or recreational. For confirmation, see the statutory definitions in TPC Chapters 81 and 82. Therefore, as a general rule, statutes specific to condominiums cover every type of condominium - residential, non-residential and recreational, attached and detached, freehold and leasehold,

conversion and new construction, and every other type. A condo-specific POA statute may take exception to the general rule and state a limitation or condition of use.

2. Statutes Specific to "Chapter 209 Subdivisions" are Residential Only.
The first three sections of TPC Chapter 209 repeatedly state that Chapter 209 applies only to residential subdivisions. Therefore, any other statute that specifically pertains to Chapter 209 subdivisions, is also residential only.

3. Other Subdivision Statutes are ???
If a statute pertains to subdivisions without reference to a POA or to TPC Chapter 209, it's necessary to study the statute to determine its applicability viz a viz residential or nonresidential use. For example, TPC Chapter 201 is not POA-specific, but is residential-specific, according to its applicability and definition sections.

G. A Caution About Labels

1. Multiple Names
A common interest development has at least two names - one for the real property, and one for the POA. They are not the same.

Beware. Many common interest developments have more than two names, such as: (1) Marketing name of real estate development, which is typically the name on the entry monument and on the cover of the declaration. (2) Name of POA which administers the real estate development, which is often stated in the declaration and used in the title of the bylaws. (3) Name of platted subdivision, if different from the development's marketing name. (4) If the POA is incorporated, its corporate name may be different from its "birth name" in the declaration. (5) POA's assumed name under which is does business, as registered with the County Clerk and (if incorporated) the Secretary of State. (6) Commonly used nicknames or acronyms for the project or the POA. Also consider the development in which each phase is platted with a different name, possibly with different declarations, but under one POA. Endless possibilities.

2. Use of "Condominium"
TUCA [TPC §82.055(1)] requires use of "condominium" in the legal name of the condominium project (the real estate development), but does not require that "condominium" be used in the name of the condo POA. Merely using or omitting the word "condominium" is not enough, by itself, to impose or refute condominium status for a common interest development.

3. Public v Private. Many residential POAs try to limit use of their common areas to residents and their guests so the amenities don't qualify as a "public accommodation" which may trigger the ADA and Architectural Barriers Act. So, it can be confusing to learn that the POA's private swimming pool is defined as a "public" pool for purposes of pool safety statutes. Bottom line, when reading statutes, don't assume that "public" and "private" have their ordinary meanings.

H. Condo v Condo - "Retroactive Provisions"

A Texas condominium is created when the condominium declaration is first recorded in the records of the county in which the condominium is located. A condominium created after January 1, 1994, is born under the Texas Uniform Condominium Act, TPC Chapter 82. It has no ties to TPC Chapter 81. It's a "TUCA condo." A condominium created before 1994 (a "pre-TUCA condo") is born under the first Texas Condominium Act, TPC Chapter 81, formerly known as Article 1301a V.T.C.S. A pre-TUCA condo has three statutory options, the merits of which are not discussed here.

1. Option 1. Do Nothing
Even if a pre-TUCA condo ignores TPC Chapter 82, it is automatically subject to 16 powerful sections of TUCA. The list of 16 sections - nicknamed the "retroactive provisions" - is found in TPC 82.002(c), TUCA's "Applicability" Section. With Option 1, a pre-TUCA condo continues to be governed by TPC Chapter 81, under which it was created, PLUS it gets the burdens and blessings of TUCA's 16 automatically retroactive sections.

2. Option 2. Adopt TUCA
TUCA contains procedures by which a pre-TUCA condo may amend its pre-TUCA declaration to adopt TUCA in its entirety. With Option 2, a pre-TUCA condo ceases to be governed by TPC Chapter 81, under which it was created, and becomes subject to all of TPC Chapter 82 as its sole governing condominium statute.

3. Option 3. Hybrid
If the pre-TUCA condo POA has the necessary votes to amend its declaration, nothing in TUCA prohibits the pre-TUCA condo from adopting portions that serve its needs, without adopting TUCA lock-stock-and-barrel. With Option 3, a pre-TUCA condo continues to be governed by TPC Chapter 81, PLUS TUCA's 16 automatically retroactive sections, PLUS any additional portions of TUCA that are added to the pre-TUCA condo declaration by amendment.

4. TUCA Retroactives
The source of TUCA retroactivity is subsection (c) of TPC Sec. 82.002, which is recited below with the addition of the section titles. Also, the itemized list of retroactive "Board Powers" in TPC Sec. 82.102 is provided as an Appendix to this Article.

Sec. 82.002.(c) This section and the following sections apply to a condominium in this state for which the declaration was recorded before January 1, 1994:

Sec. 82.002. Applicability. [as stated in the opening sentence]
Sec. 82.003. Definitions. [to extent they don't conflict with declaration.]
Sec. 82.005. Separate Titles and Taxation.
Sec. 82.006. Applicability of Local Ordinances, Regulations, and Building Codes.
Sec. 82.007. Condemnation.
Sec. 82.053. Construction and Validity of Declaration and Bylaws.
Sec. 82.054. Description of Units.
Sec. 82.102. Powers of Unit Owners' Association. ONLY: (a)(1)-(7), (a)(12)-(21), (f), and (g)
Sec. 82.108. Meetings.
Sec. 82.111. Insurance.
Sec. 82.113. Association's Lien for Assessments.
Sec. 82.114. Association Records.
Sec. 82.116. Management Certificate.
Sec. 82.118. Service of Process on Unit Owners in Certain Municipalities; Change of Address Required.
Sec. 82.157. Resale of Unit.
Sec. 82.161. Effect of Violations on Rights of Action and Attorney's Fees.

The sections listed in this subsection [(c)] apply only with respect to events and circumstances occurring on or after January 1, 1994, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of a condominium for which the declaration was recorded before January 1, 1994.

V. POA STATUTORY DEFINITIONS

A. Property Owners Association

The term "property owners association" has more than one definition in common parlance, in the legal profession, and in the Texas statutes. Best to not assume anything. When using a POA-specific statute, be clear about the definition used in that particular statute. In other communications, such as CLE presentation, it may be necessary to confirm with your audience that you are on the same page in your use of POA.

1. Plain Meaning

In its ordinary meaning, POA refers to any association or organization or group of property owners - whether voluntary or mandatory and regardless of the nature of the property that is owned. The plain meaning of "association" is a group of people. One person is not an association.

2. Supreme Court Meaning

On the professional front, the Texas Supreme Court endorsed the following definition of POA Law in 2017 when the Court recognized POA Law as a subspecialty of real estate law. This definition of **Property Owners Association Law** is copied from the website of the Texas Board of Legal Specialization:

> Real property law practice involving advice and services in connection with common-interest developments, their mandatory-membership associations of real property owners, and the individual owners of real property in common-interest developments. **A common-interest development** is a real estate development with restrictive covenants that tie ownership of a unit or lot to membership in a property owners association to which the owners are obligated to pay assessments. Common-interest developments, such as condominiums and subdivisions, may have residential, nonresidential, or mixed uses. The property owners association typically maintains common property, provides services, and enforces restrictions burdening the common-interest development.

3. Statutory Definition

The term "property owners association" is defined SEVEN times in Texas statutes. Six definitions are in the Property Code, and one is in the Health & Safety Code. See Appendix 11 for the complete list. Of the 7 statutory definitions of POA, one emerges as the runaway favorite. TPC Chapter 202's definition of POA is all encompassing - condo and non-condo, residential and non-residential.

It is noteworthy that none of the POA statutory definitions requires incorporation of the entity. Only one of the 7 statutory POA definitions requires that the entity be nonprofit (TPC Chapter 204). Four of the 7 definitions make it clear that incorporation is not required by statute.

The common feature of the 7 statutory definitions that the author finds most instructive is the description of association membership included in definition (except Las Colinas' TPC Chapter 215). Six of the 7 statutory definitions identify entity members as owners of real property. That thread is one basis for the author's earlier statement that POAs are real property entities, period.

4. Houston Use

In the Houston area, it may be popular to use "POA" more narrowly - to exclude condos - because TPC Chapters 204 and 209 are both widely used in that part of the state. Both TPC Chapters (204 & 209) define POA without mentioning condos, neither Chapter applies to condos, and both Chapters pertain to residential (only) subdivisions. So, it's understandable that a Houston attorney may think of POA only in the context of TPC Chapters 204 & 209 - as a synonym for a subdivision HOA. It will be interesting to observe whether the new legal certification in POA Law has an affect on the lexicon of Houston lawyers. Some habits are persistent.

B. Dedicatory Instrument

"Dedicatory Instrument" wins author's first prize for most awkward definition in the POA statutes.

1. Plain Meaning

The plain meaning of "dedication" is the appropriation of property for a particular purpose or a donation of land for public use. A real estate attorney might understand a "dedicatory instrument" to be a plat, an easement, or restrictive covenants - a writing that establishes the fundamental property use.

2. Statutory Definition

See Appendix 12 of this article.

VI. STATUTORY TIPS

A. Legislature's 9 Tips for Reading and Understanding a Statute (of any kind)

The following tips (except #4) are borrowed from *Reading Statutes and Bills*, published by Texas Legislative Council for the 85th Legislature, which opens with:

> "Many statutes are straightforward and easily understood, while others are more complicated. Cross-references, dependent subdivisions, and phrases that provide exceptions to an application of the statute can make the meaning difficult to follow. Below are a few tips to help understand statutes."

(1) Read the complete heading. The heading (code/title/subtitle/chapter/subchapter/section) establishes how the section fits into the entire code's organization.

(2) Check for the context of the statute. Think of the statute as a unit of law that is part of a series of units of law and scan the table of contents to see what sections precede and follow the section you are reading. If there is a short title section (usually at the beginning of the chapter or subchapter), read it.

(3) Look for a definitions section and read it. If present, it is usually found at the beginning of a chapter or subchapter.

(4) Look for applications of the Code Construction Act. Government Code Chapters 311 and 312 contain important statutory definitions of some seemingly ordinary words, as well as rules of statutory construction. [Sharon added.]

(5) Pay close attention to the statute's format and organization. Look for breaks in the text. Assume everything in the statute has meaning, including punctuation and format.

(6) Look for key verbs. Legislative drafters use important "action" words such as "may," "shall," or "must" that establish whether a provision requires or authorizes some action or condition. "Shall" denotes a duty imposed on a person or entity. "Must" denotes a condition that must be met or an event that must occur as a prerequisite to full legitimacy. "May" denotes a privilege or discretionary power. "Is entitled to" denotes a right, as opposed to discretionary power. "May not" and "shall not" denote a prohibition.

(7) Look for exceptions to the application of the statute. Exceptions are signaled by keywords such as "certain," "only," "under," "over," "more than," "less than," "if," and "unless" or signaled by a series ending in "and" or "or" that indicates whether all the elements of the series are included or only one of the elements needs to be included to satisfy the series.

(8) Do not skip over words that you do not know or fully understand. Do not rely only on common understanding for the meaning of a word about which you are unsure, and do not assume a word (e.g., "person") has the same meaning that it has in everyday conversation. Use statutory context and definitions to determine the precise meaning of a word.

(9) Read through cross-referenced sections in their entirety. Legislative drafters avoid repetition of text by the use of cross-references to other statutory provisions. If a cross-reference is to an entire chapter or subchapter, read through the chapter's or subchapter's table of contents and definitions section to discern the context.

B. Sharon's 9 Tips for working with POA Statutes, in particular

(1) Assume nothing and expect to be surprised.
(2) Don't be a word snob - different strokes for different folks.
(3) Know the law.
(4) Know the property's gender - Condo or Subdivision.
(5) Know the property's location for use with bracketed statutes.
(6) Confirm a statute's definitions and applicability. (Remember the Code Construction Act!)
(7) Watch for judicial interpretations of POA-relevant statutes.
(8) Be a counselor. What's "legal" may not be "right." Bad facts make bad law.
(9) Be mindful of the huge many-layered statutory galaxy of which POA-specific law is only a small part.

VII. WHAT'S NEW IN POA LAW?

A. Recent Statute Changes

2011 was the watershed year for POA statutes. The 2011 Texas Legislature enacted what became known as the "HOA Reform Laws." Since then there have been a large number of significant changes to POA statutes (USA and Texas), but nothing as seismic as the 2011 changes. Here I've identified my "top ten" statutory changes during the last 5 years. I chose new statutes that are easily overlooked, as well as some especially significant ones. They are in chronological order, starting with the newest changes.

1. USA - Protecting Tenants at Foreclosure Act (PTFA). Effective June 23, 2018, this federal law was revived and made permanent, as Section 304 of Public Law No. 115-174, the *Economic Growth, Regulatory Relief, and Consumer Protection Act,* signed on May 24, 2018. First enacted in 2009 as a short-term response to a nationwide real estate crash, PTFA expired at the end of 2014.

2. USA - Servicemembers Civil Relief Act (SCRA). Effective June 23, 2018, the federal one-year protection period was made permanent as Section 313 of Public Law No. 115-174, the *Economic Growth, Regulatory Relief, and Consumer Protection Act,* signed on May 24, 2018.

3. USA - In June 2018 both Fannie Mae (FNMA) and Freddie Mac (FHLMC) updated their underwriting guidelines for loans on condominium units. Increasingly favorable treatment of detached units, and more rules for condo conversions. Many subtle changes throughout, for anyone who works with condo project approvals.

4. TX - Texas Nonjudicial Foreclosure. Effective September 1, 2017, Texas has new foreclosure law that's "hiding" in the Business and Commerce Code, as Chapter 22, *Public Sale of Residential Real Property Under Power of Sale*.

5. USA - Hostile Environment in Fair Housing. Effective October 14, 2016, the federal Fair Housing Rules were amended by the addition of HUD Rule 100.600, which was published in the Federal Register (Vol. 81, No. 178, Page 63054) as "*Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act*."

6. TX - Statutory Power of Sale for Subdivision POAs. Effective September 2015, TPC Chapter 209 creates a statutory power of sale - added to Section 209.0092(a) - for a POA that a "right to foreclose" under its restrictions, but lacks an express power of sale.

7. TX - Condo Construction Defect Claims. Effective September 1, 2015, the Texas Uniform Condominium Act was amended by the addition of TPC Sections 82.119 and 82.120, to ward off an anticipated wave of opportunistic construction defect litigation that was working its way east from California, Arizona, and Colorado.

8. TX - Subdivision POA Governance & Elections. During the 84th Texas Legislature (2015), one bill enacted 30 POA law changes that became effective September 1, 2015. Royce West's Senate Bill 1168 changed POA law for condos as well as subdivisions. It makes my Top Ten because of the many amendments to TPC Chapter 209's provisions dealing with subdivision POA board meetings, elections, and voting. *(The Statutory Power of Sale (#6 above) is part of this Omnibus Bill.)*

9. USA - Interstate Land Sales Act Amendments. Effective March 24, 2015, the federal Interstate Land Sales Full Disclosure Act of 1968 (ILSFDA or ILSA) was amended to limit the Act's applicability to condos. Public Law 113-167, 128 Stat. 1882 (2014), is codified primarily at 15 U.S.C. 1702(b)(9) and (d).

10. TX - Condo Right of Redemption Expanded. Effective September 1, 2013, a unit owner's right to redeem his unit following the condo POA's foreclosure sale may be exercised against any party that purchases the unit at the foreclosure sale. Previously, redemption was available only if the POA purchased the unit.

B. Texas Certification Specialty

In 2018 Texas will welcome the inaugural class of State-certified specialists in Property Owners Association Law, a new legal specialty recognized by the Supreme Court of Texas on September 29, 2017. To become certified, a Texas lawyer must have pertinent legal experience, legal education in Real Estate Law, peer references, and a passing grade on an exam that tests knowledge of Real Estate Law as well as POA Law. Certification in POA Law is available to Texas attorneys who work with any aspect of common interest developments, from creation to termination, and everything in-between. POA Law must comprise at least 20 percent of a candidate's law practice.

Within the framework of the Texas Board of Legal Certification, POA Law is classified as one of four types of Real Estate Law. The other three are Commercial Real Estate Law, Residential Real Estate Law, and Farm & Ranch Real Estate Law. A candidate for any of the four subcategories takes a written exam that covers all four area of Real Estate Law, in addition to an exam in the specialty field.

The Texas Board of Legal Specialization is the State agency that determines qualifications, processes applications, and administers the examination by which an attorney becomes certified in POA Law. TBLS administers the annual certification exams in mid-October. The certification process begins by completing the TBLS online application, typically January through April. Anyone interested in POA Law certification should visit the TBLS website for current information about dates, fees, and requirements.

Following closely on the heels of Florida, Texas is the second state to recognize POA Law as a specialized area of legal knowledge and practice. In Florida the stand-alone specialty is called Condominium and Planned Development Law. Both Texas and Florida are certifying lawyers for the first time in 2018.

C. Crystal Ball - Looking Ahead Statutorily

I have no reason to think that any of the following speculations will actually occur, except for the last one, which is a certainty. Still, it's fun to imagine what may-could pop out of this still evolving body of statutes.

- State licensing and bonding of POA managers.
- Lege orders Secretary of State to create new entity category for POAs to help monitor numbers in State.
- TPC Chapter 82 loses its "Uniform Act" pedigree due to misguided efforts to conform it to TPC Chapter 209.
- Statutory authority for POAs to hire professional directors.
- Statutes to facilitate or prevent redevelopment of common areas.
- Statutory path for voluntary HOAs to become mandatory POAs.
- POA courts and POA-specific alternate dispute resolution.
- Local governments are required to re-assume responsibility for drainage, parks, and rights-of-way.
- Blurring of lines between POAs and special districts, perhaps morphing into a new kinds of special district.
- Resale certificates replaced by estoppel letters and access to POA websites with the required docs & info.
- Legislative micro-management of the recording, indexing, and hierarchy of POA documents.
- More legislative micro-management of every aspect of POA functions.
- Bilingual communications required for POAs (Spanish & English).
- Statutes dealing with real estate investors and rentals - allowing or prohibiting.
- More "bracketed" State statutes for particular projects.
- More "voiding" State statutes for particular interests.
- More carve-outs for special interests, such as artificial turf, electric charging stations, drone operators.
- Changes to statutory bracket coverage following 2020 census.

VIII. STATUTORY MISCELLANY

A. Context

POA Statutes don't exist in a vacuum. They are part of a large, multi-faceted, evolving, expanding body of law comprised of many intertwining elements. Although every lawyer is familiar with each of the elements, it can be illuminating to reflect on them as a package, considering the role each plays in POA Statutory Law. The following list may be useful as a backup to identify possible law sources for a particular problem presented.

- Constitutions, which typically are written by legislative bodies and approved by voting citizens. In addition to the U. S. Constitution, we have The Texas Constitution. Each has a Bill of Rights.

- Statutes, which are generally the laws made by legislative bodies, including Federal statutes and State statutes. The author apologies for periodically using "law" instead of statute. *(Thanks, Roy, for reminding me that "law" includes common law.)*

- Court-Made Rules, such as Texas Rules of Civil Procedure.

- Other Rules, which are generally the laws made by executive or administrative bodies, including local codes and ordinances, State regulations (such as TCEQ Rules), and Federal regulations (such as OTARD).

- Attorney-General Opinions. The Texas AG is often asked to interpret statutes. My fave is Opinion No. GA-0223, issued by Texas AG Gregg Abbott on July 30, 2004, finding that Hays County is authorized to regulate the platting of a condominium development "as a subdivision."

- Common Law, which is generally court-made law comprised of rulings by the judiciary, from the United States Supreme Court, down through Federal Courts, State Courts, County Courts, and Municipal Courts. The judiciary interprets statutes.

- Legal Doctrines, which arise out of large bodies of common law, such as the doctrines of waiver, estoppel, merger, and laches.

- Institutional Standards, such as the legal requirements for condominiums and planned unit developments in the mortgage underwriting guidelines used by national lenders such as Fannie Mae, Veterans Administration, Federal Housing Administration.

B. Statutory Gatekeepers

Who's in charge of real property statutes? POA statutes? Who protects the integrity of TUCA as a Uniform Act? Who monitors the effects of census changes on bracketed POA statutes? Who educates lawmakers about bracketing abuses? Who protects the consistent and accurate use of defined POA terms throughout the Texas statutes? Who ensures that POA terms are defined in anticipation of being "borrowed" for unrelated statutory uses? Who keeps an eye out for changes to the increasing number of "unrelated" statutes that are incorporated into the POA statutes by reference? Who watches for potential conflicts and gaps with other statutes?

Sadly (IMHO), no one - no person and no organization - is authorized to speak to Texas lawmakers, as a neutral or as an advocate, about real property law, even under color of authority of the real property bar. The Property Code in general, and POA statutes, in particular, are without a champion, a shepherd, a custodian.

1. Texas Legislative Council

TLC (or "Lege Council") could, perhaps, but doesn't. It was created in 1949 as a State agency whose mission is "To provide professional, nonpartisan support to the Texas Legislature and the legislative agencies of Texas." If TCL had a permanent staff of attorneys who develop considerable expertise in particular areas of the law, it might be possible.

2. REPTL

Another could, but doesn't. For only $30 a year, any Texas attorney can identify with the real property bar by joining the Real Estate, Probate, and Trust Law (REPTL) Section of the State Bar. Legislatively, REPTL has two distinct sides - referred to colloquially as dirt and death. REPTL's death side has long been legislatively active, assuming "ownership" of the Trust & Estates Code. In contrast, the dirt side of REPTL has a long and seemingly cherished tradition of not being involved in legislative processes. During biennial legislative sessions a REPTL committee monitors pending legislation and issues an end-of-session report of law changes of interest to the real property bar. A valuable service, to be sure. But of little benefit to our hapless Property Code.

3. Texas College of Real Estate Attorneys

RIP. The Texas College of Real Estate Attorneys fade away decades ago. The College was created in the late 1970s to provide a vehicle for the real estate bar to take positions on real property bills, because REPTL declined to do so. "College" was chosen for the title as a signal to legislators who understood that the State Bar rarely testifies in its own name. It was never an academic venture. The College died in the mid-1990s, using its last breath to formally endorse the proposed Texas Uniform Condominium Act. *(Thank you, Terry Bray.)* An effort to revive the College in the Y2K era didn't stick. In hopes of planting a seed in the next generation of real property law leaders, here's the purpose paragraph from the College's articles of incorporation:

> The corporation is organized and shall be operated for the purpose of promoting improvements in the laws of the State of Texas regarding real estate matters. Specifically, the corporation, through its members, will analyze proposed legislation, act as a resource for the legislature in the areas of real estate laws, draft suggested legislation when appropriate and prepare amicus briefs on issues before the courts affecting these areas.

4. Special Interest Groups

Because no one has authority to speak to lawmakers about real property law, on behalf of the real property bar, the arena is wide open to competing special interests that are represented in Austin, such as Texas Community Association Advocates, Texas Association of Builders, Texas Land Title Association, and Texas Neighborhoods Together. Large developers and large planned communities increasingly hire their own lobbyists to protect them from unfavorable legislation, and to watch for bills with unintended consequences. Instead of trying to stop what they see as "bad bills," they typically try to get "bracketed out" of the bill.

C. Resource Articles

1. **About Statutory Construction**

(1) *The Art of Statutory Construction: Texas Style*, by Ron Beal, 2015 Advanced Administrative Law Course, sponsored by State Bar of Texas.

(2) *Statutory Construction in Texas - A Twelve-Step Approach*, by Scott Rothenberg, 2014 Advanced Civil Appellate Practice Course, sponsored by State Bar of Texas.

(3) *The Art of Statutory Construction: Texas Style*, by Ron Beal, Baylor Law Review, Spring 2012. Also available on State Bar OnLine Library.

2. **About Statutory Bracketing.** I recently stumbled upon a gemstone about bracketing in a place I wasn't looking. Look at the exhibits to *Restrictive Covenants: Modifying and Updating*, by Reid C. Wilson, 2014 Advanced Real Estate Law Course, sponsored by State Bar of Texas.

3. **Additional CLE Articles by Sharon Reuler re: Texas POA Statutes**

Any article about POA Statutes is likely to be at least slightly out of date within two years, after the next Legislature adjourns. And any article published before 2011 (year of the HOA Reform Laws) is particularly dated. However, IMHO the 10 listed articles contain some tools and statutory analyses that are still relevant and useful. May they inspire you to create something more current and useful for the Texas POA Bar to work with.

All the articles are available on the State Bar's OnLine Library except for the 2002 Evolution article. The 1994 and 1995 articles are posted and available (at my request), but may be hard to find because technically the Library starts at 1998.

(1) *Laws Affecting HOA Assessment Liens and Foreclosures*, by Sharon Reuler, presented at the 2014 Handling Your First (or Next) HOA Assessment Lien Foreclosure Course, sponsored by the State Bar of Texas.

(2) *2013 POA Legislative Update: Condos & Owners Associations*, by Roy D. Hailey and Sharon Reuler, sponsored by State Bar of Texas. [60 minute webcast with materials]

(3) *2011 HOA Reform Laws: Select Issues – Developer~Declarant Perspectives*, by Roy D. Hailey, Robert D. Burton, and Sharon Reuler, sponsored by State Bar of Texas. [90 minute webcast with materials]

(4) *2011 HOA Reform Laws: Select Issues – Records, Meetings, and Elections*, by Roy D. Hailey and Sharon Reuler, sponsored by State Bar of Texas. [2 hour webcast with materials]

(5) *New Day for Texas HOAs: Overview of 2011 Reform Legislation for Condos and Owners Associations*, by Roy D. Hailey and Sharon Reuler, sponsored by State Bar of Texas. [90 minute webcast with materials]

(6) *2009 Legislative Update for Real Estate Lawyers: Condos and Owners Associations – More "Band Aid" Laws*, by Roy D. Hailey and Sharon Reuler, sponsored by the State Bar of Texas. [90-minute webcast with materials]

(7) *Statutory Minefield for Creating and Marketing Condominiums and Planned Developments*, by Sharon Reuler, presented at 2008 Advanced Real Estate Drafting Course, sponsored by State Bar of Texas.

(8) *Statutory Evolution of Condominiums and Property Owners Associations in Texas*, by Roy D. Hailey and Sharon Reuler, presented at the 2002 Mortgage Lending Institute, sponsored by The University of Texas School of Law.

(9) *Condominium Sales & Resales Under the Texas Uniform Condominium Act*, by Sharon Reuler, presented at 1995 Advanced Real Estate Drafting Course, sponsored by State Bar of Texas.

(10) *Texas Uniform Condominium Act*, by Sharon Reuler, presented at 1994 Advanced Real Estate Drafting Course, sponsored by State Bar of Texas.

IX. APPENDIXES

APPENDIX 1 - ROADMAP TO "BIGGIE" POA-SPECIFIC TEXAS STATUTES

APPENDIX 2 - POA GENDER REVEAL - CONDO OR SUBDIVISION?

APPENDIX 3 - RETROACTIVE "BOARD POWERS" FOR PRE-TUCA CONDOS

APPENDIX 4 - TIMELINE OF TEXAS POA LANDMARK STATUTES

APPENDIX 5 - HIGHLIGHTS OF 2011 POA REFORM LAWS (82nd Texas Legislature)

APPENDIX 6 - HIGHLIGHTS OF 2013 POA LAW CHANGES (83rd Texas Legislature)

APPENDIX 7 - TEXAS CODE CONSTRUCTION ACT

APPENDIX 8 - BRACKETING OF TPC CHAPTER 204

APPENDIX 9 - THREE DEGREES OF CONSANGUINITY AND AFFINITY

APPENDIX 10 - POA DOC PREP STATUTE

APPENDIX 11 - STATUTORY DEFINITIONS OF "PROPERTY OWNERS ASSOCIATION"

APPENDIX 12 - STATUTORY DEFINITIONS OF "DEDICATORY INSTRUMENT"

APPENDIX 13 - STORIES BEHIND SOME TEXAS POA STATUTES

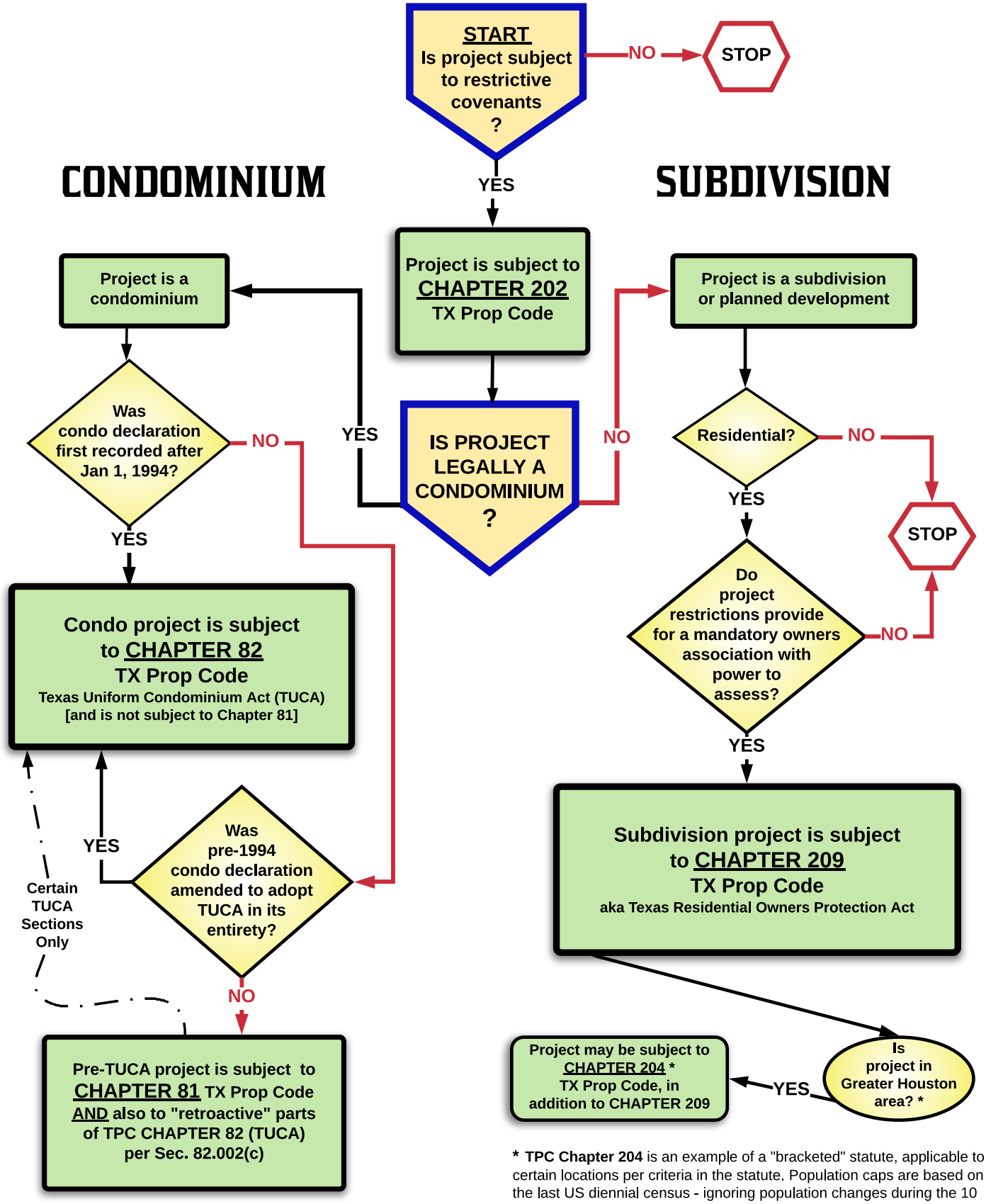
APPENDIX 14 - 2018 CATEGORICAL LIST OF POA STATUTES - STATE & FEDERAL

APPENDIX 1

ROADMAP TO PRIMARY POA-SPECIFIC TEXAS STATUTES

FOR COMMON INTEREST PROJECTS ~ CONDOS, TOWNHOMES, and SUBDIVISIONS

Updated Summer 2018 by Sharon Reuler



*** TPC Chapter 204** is an example of a "bracketed" statute, applicable to certain locations per criteria in the statute. Population caps are based on the last US diennial census - ignoring population changes during the 10 intervening years. Check applicability after 2020 U.S. Census.

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APPENDIX 2
POA GENDER REVEAL - CONDO OR SUBDIVISION?

To know which Texas POA laws apply to a common interest development, start by determining whether the project is a condominium or a subdivision. For projects that defy simple classification, this screening survey may help.

C/S	INDICIA
	CLIENT SEZ-SO. Probably correct, but don't rely on that alone. Look for other signs.
	POA DOCUMENTS > POA documents are consistent with TPC Chapter 82's requirements. Probably condo. > POA documents are consistent with TPC Chapter 209's requirements. Probably subdivision.
	TYPE OF BUILDINGS > Individually owned homes are "stacked" - one on top of another. Must be condo. > Individually owned homes are attached side-by-side in townhome or duplex buildings. Either subdivision or condo. > Individually owned homes are detached - traditional houses, patio homes, zero lot line homes. Probably subdivision, but could be "site" condos.
	TYPE OF LEGAL DESCRIPTION FOR INDIVIDUALLY OWNED HOME > Unit __, Bldg. ___, Blackacre, plus undivided interest in common elements. Must be condo. > Lot __, Block __, Whiteacre, according to the plat thereof recorded ___. Probably subdivision.
	TYPE OF PLAT > Plats are recorded with the Declaration as exhibits. Must be condo. > Plats are recorded in the County's Map or Plat Records, having been approved and signed by the platting authority. Probably subdivision.
	NAME OF PROJECT > ABC Condominium. Probably condo.‡ > ABC Townhomes [without use of "Condominium"]. Probably subdivision. > ABC Addition. Probably subdivision.
	NAME OF OWNERS ASSOCIATION > ABC Council of Co-Owners. Probably condo. > ABC Condominium Association. Probably condo. > ABC Townhome Association. Either subdivision or condo. > ABC Master Association. Probably subdivision, possibly condo. > ABC Homeowners Association, Owners Association, Community Association. Either subdivision or condo.
	ALLOCATED INTERESTS > All lots pay same uniform assessment and have equal votes. Probably subdivision. > Class A and Class B members. Probably subdivision. > Undivided interest in common elements. Must be condo. > Votes or assessments based on relative size or value. Probably condo.
	OWNERSHIP OF COMMON AREA > If no common area/element, must be subdivision. > If common area/element is owned by owners, collectively, in undivided interests, must be condo. > If common area is owned by the POA entity, the developer, or another third party, probably subdivision.

Cautions About Names. (See "Language" Article in paper for more.)

✱ A common interest community may have 6 or more names.
✱ "Townhome" has no legal definition, and can be used to describe almost anything.
✱ TUCA requires "condominium" in the name of the real estate development, but not in the name of the association.

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APPENDIX 3
RETROACTIVE "BOARD POWERS" FOR PRE-TUCA CONDOS

TPC Sec. 82.102. POWERS OF UNIT OWNERS' ASSOCIATION. (a) Unless otherwise provided by the declaration, the association, acting through its board, may:

(1) adopt and amend bylaws;

(2) adopt and amend budgets for revenues, expenditures, and reserves, and collect assessments for common expenses from unit owners;

(3) hire and terminate managing agents and other employees, agents, and independent contractors;

(4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;

(5) make contracts and incur liabilities relating to the operation of the condominium;

(6) regulate the use, maintenance, repair, replacement, modification, and appearance of the condominium;

(7) adopt and amend rules regulating the use, occupancy, leasing or sale, maintenance, repair, modification, and appearance of units and common elements, to the extent the regulated actions affect common elements or other units;

[SKIP (8)-(11)]

(12) impose interest and late charges for late payments of assessments, returned check charges, and, if notice and an opportunity to be heard are given in accordance with Subsection (d), reasonable fines for violations of the declaration, bylaws, and rules of the association;

(13) adopt and amend rules regulating the collection of delinquent assessments and the application of payments;

(14) adopt and amend rules regulating the termination of utility service to a unit, the owner of which is delinquent in the payment of an assessment that is used, in whole or in part, to pay the cost of that utility;

(15) impose reasonable charges for preparing, recording, or copying declaration amendments, resale certificates, or statements of unpaid assessments;

(16) enter a unit for bona fide emergency purposes when conditions present an imminent risk of harm or damage to the common elements, another unit, or the occupants;

(17) suspend the voting privileges of or the use of certain general common elements by an owner delinquent for more than 30 days in the payment of assessments;

(18) purchase insurance and fidelity bonds it considers appropriate or necessary;

(19) exercise any other powers conferred by the declaration or bylaws;

(20) exercise any other powers that may be exercised in this state by a corporation of the same type as the association; and

(21) exercise any other powers necessary and proper for the government and operation of the association.

[SKIP (b), (c), (d), (e)

(f) Except as provided by Subsection (g), the association by resolution of the board of directors may (1) borrow money; and (2) assign as collateral for the loan authorized by the resolution: (A) the association's right to future income, including the right to receive assessments; and (B) the association's lien rights.

(g) If a dedicatory instrument requires a vote of members of the association to borrow money or assign the association's right to future income or the association's lien rights, the loan or assignment must be approved as provided by the dedicatory instrument. The board may determine whether a vote for that purpose may be cast electronically, by absentee ballot, in person or by proxy at a meeting called for that purpose, or by written consent. If a lower approval threshold is not provided by the dedicatory instrument, approval requires the consent of owners holding 67 percent of all voting interests.

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APPENDIX 4
TIMELINE OF TEXAS POA LANDMARK STATUTES
~ WITH SOME HISTORY NOTES ~

SESSION YEAR	EVENT	CONDO	SUB-DIVISION
1920s	HISTORY NOTE. Houston, Galveston & Dallas developers created neighborhoods with parks, assessments, and owners associations, before the Great Depression.		
1941	HISTORY NOTE. *Evans v Southside Place Park Ass'n*, 154 SW 2d 914 [Ct of Civil Appeals of Texas, Galveston, 1941] - an early reported opinion. HOA wins!		
1963	**CONDOMINIUM ACT** enacted as Article 1301(a), Vernons Texas Civil Statutes	✔	
1965 -1969			
1971	HISTORY NOTE. Seeing rapid growth in POAs, FHA published sample HOA Docs for PUDs and Condos - used nationwide - and began reviewing and approving projects for FHA financing. VA soon followed. FHA & VA joined by Fannie Mae and Freddie Mac created models for POA development.		
1973 - 1977			
1979 - 1981	Secs. 23.18. 25.09 and 171.082, Tax Code	✔	✔
1983	HISTORY NOTE. Art. 1301(a) VTCS codified as **TPC CHAPTER 81** - Texas Condominium Act, when Texas Property Code adopted.		
1985	**TPC CHAPTER 202 enacted** First Bracketed Statute - TPC Chapter 201, bracketed to Houston/Harris	✔	✔
1987	Charitable Immunity and Liability Act of 1987, Chapter 84, Civil Prac & Rem	✔	✔
1989 - 1991			
1993	**TPC CHAPTER 82 enacted** - ***(Texas) Uniform Condominium Act (TUCA)***	✔	
1995	**TPC CHAPTER 204 enacted** - Multi-Topic, Bracketed to Harris County		✔
1997	HISTORY NOTE: Houston area anti-HOA homeowners began pounding on lawmakers.		
1999	TPC Sec. 5.012 - Notice of Obligations Related to Membership in POA TPC Chapter 207 - "Resale Certificate" [inspired by TUCA]		✔
2001	**TPC CHAPTER 209 enacted** - FIRST STATEWIDE MULTI-TOPIC LAW FOR SUBDIVISION POAS. ***Texas Residential Property Owners Protection Act***		✔
2003 - 2009	HISTORY NOTE: 4 hard-fought Sessions of heated hearings over many HOA bills.		
2011	**HOA REFORM LAWS** - Huge expansion of TPC Chapters 202 & 209	✔	✔
2013	**POA OMNIBUS BILL** - Lots of spot law changes for condos & subdivisions	✔	✔
2015			
2017	HISTORY NOTE. Texas Supreme Court approved POA Law as a specialty area of real estate law practice for State certification by TBL in 2018.		

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APPENDIX 5
HIGHLIGHTS OF 2011 POA REFORM LAWS (82nd Texas Legislature)

Because the 2011 Texas Legislative Session was a game changer for subdivision POAs, the laws enacted were nicknamed the "HOA Reform Laws." This material was published on June 30, 2011, in *New Day for Texas HOAs: Overview of 2011 Reform Legislation For Condos and Owners Associations*, a TexasBarCLE webcast presented by Roy Hailey and Sharon Reuler. Some of the 2011 laws have since changed. Please don't rely on this historical snapshot as current law. Most of these do not apply to condominiums.

HOA MEMBERS ~ HOMEOWNERS

- Open records & open board meetings
- Guaranteed right to vote in HOA elections and on matters affecting the owner
- Payments applied to "dues" first - delinquent and current
- Payment plans when delinquent
- Notices to protect active military
- Okay to have flags, solar panels, roof shingles, rain barrels, and religious door markers

REAL ESTATE LAWYERS, TITLE COMPANIES & COUNTY CLERKS

- To be enforceable, HOA's governing documents must be recorded
- End of hard-to-amend Declarations - max of 67% of votes to amend
- Notice must be recorded every 3 years to sustain a grandfathered private transfer fee

HOA ATTORNEYS

- Limits on contingency fee agreements
- New foreclosure procedures
- Lien notices must be prepared by lawyer
- HOA must apply payments from owners to assessments before attorneys fees
- Authorizes JP court suit to enforce access to HOA records and award of prevailing party legal fees
- New notice requirements for collections and enforcement
- HOAs must adopt and record open records procedures, payment plan guidelines, and records retention policies

DEVELOPERS & HOME BUILDERS

- Conditions on "Declarant Control Period"
- "Development Period" carve-out for open meetings, solar panels, board appointees, declaration amendments
- Requirements to grandfather private transfer fees paid to developer or 501(c)s that don't "directly benefit"
- New disclosures for home sales contracts

LENDERS

- Junior lienholders get notice & 60 days to cure owner's default to HOA

HOA DIRECTORS

- At least 72 hours notice of board meetings (regular & special) to all members
- Limits on what board can do without prior notice to members or in executive session
- Every owner may run for board - can't disqualify *(except for "disclosed" felons & moral turps)*
- No secret ballots (must be signed), and access to ballots for inspection is limited
- Board must call annual meeting to avoid call for elections by grass roots group
- Limits on appointments to board (versus election)

HOA MANAGERS

- Transfer fees paid to managers at closing are protected - no changes - business as usual
- Resale certificates - longer to prepare, prepayment by buyer
- Changes to content of resale certificates
- If HOA or manager maintains publicly-accessible website for HOA, must post governing documents

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APPENDIX 6
HIGHLIGHTS OF 2013 POA LAW CHANGES (83rd Texas Legislature)

This material was published on July 16, 2013, in *Flagpoles, Condos, Turf & More - An Overview of 2013 State Law Changes for Texas Property Owners Associations*, a TexasBarCLE webcast presented by Roy Hailey and Sharon Reuler. Some of the 2013 laws may have since changed. Please don't rely on this historical snapshot as current law.

Prop. Type		Topic of Law Change, Bill Number, Effective Date, and Affected Code
ASSESSMENT COLLECTION - FORECLOSURE		
	Condos	Post-Foreclosure Right of Redemption. [§5 of HB 2075 (EFF. 9/1/13) amends §82.113(g) of Prop. Code ~ TUCA]
	Subdivisions	➤ Expedited Foreclosure Mediation. [§2 of HB 2978 (EFF. 6/14/13) adds §154.028 to Civ. Prac. & Rem. Code] ➤ Expedited Foreclosure Forms. [§3 of HB 2978 (EFF. 6/14/13) adds §22.018 to Govt. Code] ➤ Expedited Foreclosure Citation. [§1 of HB 2978 (EFF. 6/14/13) adds §17.031 to Civ. Prac. & Rem. Code]
ASSESSMENT COLLECTION - UTILITY SHUT-OFF		
	Condos, mostly	➤ Master-Metered Not-Submetered Electric or Gas. [HB 1772 (EFF. 1/1/14) amends Util. Code and Ch. 92 of Prop. Code] ➤ Master-Metered & Submetered Electric.[HB 1086 (EFF. 9/1/13) expands §92.008 of Prop. Code]
DEVELOPMENT		
	Condos	Definition of "Declaration" corrected. [§2 of HB 2075 (EFF. 9/1/13) amends §82.003(a)(11) of Prop. Code - TUCA]
	Subdivisions	"Development Period" is defined for all of Chapter 209. [HB 503 (EFF. 9/1/13) amends §209.002 Prop. Code]
GOVERNANCE		
	Condos	Changes to Chapter 82 of Property Code - Texas Uniform Condominium Act (TUCA): ➤ Assigning Lien Rights as Collateral for a Loan to POA. [§3 of HB 2075 (EFF. 9/1/13) amending §82.102] ➤ Determining Who Pays Insurance Deductible & Repair Expenses. [§4 of HB 2075 (EFF. 9/1/13) amending §82.111] ➤ Decision to Not Rebuild after Damage or Loss. [§4 of HB 2075 (EFF. 9/1/13) amending §82.111] ➤ Confirming Due Process Before Fining in Pre-TUCA Condos. [§3 of HB 2075 (EFF. 9/1/13) amending §82.102(a)(12)] ➤ Defining "Dedicatory Instrument" for TUCA. [§2 of HB 2075 (EFF. 9/1/13) amending §82.003(a)] ➤ "Retroactive Provisions" Expanded. [§1 of HB 2075 (EFF. 9/1/13 amending §82.002(c)]
	Subdivisions	➤ Appointment of Directors. [HB 3176 (EFF. 6/14/13) amends §209.00593(a) of Prop. Code] ➤ Contracting with Directors. [HB 503 (EFF. 9/1/13) adds §209.0052 to Prop. Code]
	Timeshares	➤ Timeshare Associations are NOT POAs. [§5 of SB 1372 (EFF. 9/1/13) adds §221.004 to Prop. Code] ➤ Timeshare Governance. [§2 of SB 1372 (EFF. 9/1/13) adds §§221.081 et. seq. to Prop. Code]
LAND USE		
	Condos & Subdivisions	➤ Front Yard Flags & Flagpoles. [HB 680 (EFF. 6/14/13) amends §202.011/012 of Prop. Code Chapter 202] ➤ Xeriscaping & Turf. [SB 198 (EFF. 9/1/13), amends §202.007 Prop. Code Chapter 202]
	Subdivisions	Use of adjacent vacant lot. [HB 35 (EFF. 6/14/13), adds §209.015 to Prop. Code Chapter 209]
MANAGEMENT CERTIFICATES		
	Condos	New indexing rules for County Clerks, and POAs must record new Certs for re-indexing purposes between 9/1/13 and 1/1/14. [§6 of HB 2075 (EFF. 9/1/13) amending §82.116 Prop. Code - TUCA]
	Subdivisions	New indexing rules for County Clerks, and POAs expected to assist re-indexing by filing Certs between 9/1/13 and 1/1/14. [HB 3800 (EFF. 9/1/13) amending §209.004 of Prop. Code Chapter 209]
SALES		
	Timeshares	Exempt from Some Contract Disclosures. [§4 of SB 1372 (EFF. 9/1/13), amending §221.003 of Prop. Code]
ODDS & ENDS		
	Condos & Sub	Renumbers Flag Display section of Chapter 202 [§22.001(40) of SB 1093 (EFF. 9/1/13)]
	Subdivisions	Repeals 5 duplicate sections of Chapter 209 [§§17.003 & 17.004 of SB 1093 (EFF. 9/1/13)]
	Bracketed	Las Colinas exempt from Chapter 209 Prop. Code. [HB 1824 (EFF. 9/1/13) amending Chapter 215 Prop. Code]
	Bracketed	Llano County covered by Chapter 211 Prop. Code. [SB 1853 (EFF. 9/1/13) amending Chapter 211 Prop. Code]

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APPENDIX 7
TEXAS CODE CONSTRUCTION ACT

Every Texas Code contains General Provisions, and most mirror this provision from TPC Chapter 1:

> TPC Sec. 1.002. CONSTRUCTION OF CODE. The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

GOVERNMENT CODE
CHAPTER 306. LEGISLATIVE INFORMATION
SUBTITLE B. LEGISLATION

CHAPTER 311. CODE CONSTRUCTION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 311.001. SHORT TITLE
Sec. 311.002. APPLICATION
Sec. 311.003. RULES NOT EXCLUSIVE
Sec. 311.004. CITATION OF CODES
Sec. 311.005. GENERAL DEFINITIONS
Sec. 311.006. INTERNAL REFERENCES

SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

Sec. 311.011. COMMON AND TECHNICAL USAGE OF WORDS
Sec. 311.012. TENSE, NUMBER, AND GENDER
Sec. 311.013. AUTHORITY AND QUORUM OF PUBLIC BODY
Sec. 311.014. COMPUTATION OF TIME
Sec. 311.015. REFERENCE TO A SERIES
Sec. 311.016. "MAY," "SHALL," "MUST," ETC

SUBCHAPTER C. CONSTRUCTION OF STATUTES

Sec. 311.021. INTENTION IN ENACTMENT OF STATUTES
Sec. 311.022. PROSPECTIVE OPERATION OF STATUTES
Sec. 311.023. STATUTE CONSTRUCTION AIDS
Sec. 311.024. HEADINGS
Sec. 311.025. IRRECONCILABLE STATUTES AND AMENDMENTS
Sec. 311.026. SPECIAL OR LOCAL PROVISION PREVAILS OVER GENERAL
Sec. 311.027. STATUTORY REFERENCES
Sec. 311.028. UNIFORM CONSTRUCTION OF UNIFORM ACTS
Sec. 311.029. ENROLLED BILL CONTROLS
Sec. 311.030. REPEAL OF REPEALING STATUTE
Sec. 311.031. SAVING PROVISIONS
Sec. 311.032. SEVERABILITY OF STATUTES
Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY
Sec. 311.035. CONSTRUCTION OF STATUTE OR RULE INVOLVING CRIMINAL OFFENSE OR PENALTY

EXAMPLE TEXT OF ONE SECTION

Sec. 311.005. GENERAL DEFINITIONS. The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:

(1) "Oath" includes affirmation.

(2) "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(3) "Population" means the population shown by the most recent federal decennial census.

(4) "Property" means real and personal property.

(5) "Rule" includes regulation.

(6) "Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing.

(7) "State," when referring to a part of the United States, includes any state, district, commonwealth, territory, and insular possession of the United States and any area subject to the legislative authority of the United States of America.

(8) "Swear" includes affirm.

(9) "United States" includes a department, bureau, or other agency of the United States of America.

(10) "Week" means seven consecutive days.

(11) "Written" includes any representation of words, letters, symbols, or figures.

(12) "Year" means 12 consecutive months.

(13) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

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APPENDIX 8
BRACKETING OF TPC CHAPTER 204
Analysis by Sharon Reuler

APPLICABILITY SYNOPSIS. Harris County ✔ has been subject to TPC Chapter 204 since 1995. Galveston County ✔ has been subject since 2003. Montgomery County ✔ has been subject since 2005. Galveston County **?** may lose its coverage with the 2020 census because of a 2011 bracket amendment. Brazoria County has never been subject to TPC Chapter 204. Looking ahead, if Galveston County wants to remain under TPC Chapter 204 after the 2020 Census, it may want to amend TPC Chapter 204 to remove the population cap and to add a location feature that's unique to Galveston County. *Just sayin'.*

AUTHORITY. Sec. 311.005(3), Code Construction Act, Chapter 311, Texas Government Code, defines "population" as the population shown by the most recent federal decennial census, unless the statute or context in which the word is used requires a different definition. Same as the Construction Rules for Civil Statutes in Sec. 312.011(20), Texas Govt Code.

TPC CHAPTER 204 BRACKET DESCRIPTION	COUNTY	OFFICIAL 1990 CENSUS	OFFICIAL 2000 CENSUS	OFFICIAL 2010 CENSUS	Unofficial 2017 Population Estimate
County with population of 2.8+ million [now 3.3+ million]	✔ Harris	✔ 2,818,199	✔ 3,400,578	✔ 4,092,459	4,652,980
County adjacent to Gulf of Mexico and adjacent to county with population of 2.8+ million [now 3.3+ million]	✘ Brazoria	191,707	241,767	313,166	362,457
	✘ Chambers	20,088	26,031	35,095	41,441
	✔ Galveston	217,399	✔ 250,158	✔ 291,309	**?** 335,036
County with population of 275,000+, adjacent to county with population of 3.3+ million, and contains part of a national forest	✔ Montgomery	182,201	✔ 293,768	✔ 455,746	570,934

CHRONOLOGY OF BRACKET CHANGES TO TPC CHAPTER 204:

1995 [based on 1990 Census] - Chapter 204's original bracket was the **Harris County Bracket**.

(a)(1) . . . in a county with a population of 2.8 million or more. [now 3.3 million]

2003 [based on 2000 Census] - the 3-part **Galveston County Bracket** was added to Chapter 204:

or (2) in a county with a population of 250,000 or more that is adjacent to the Gulf of Mexico and that is adjacent to a county having a population of 2.8 million or more. [SEE 2011 AMENDMENT]

✘ **CONFUSION.** Mistakenly relying on interim population estimates instead of the last official decennial US census, some lawyers say that Brazoria County qualified for Chapter 204 when its population exceeded 250,000.

2005 [based on 2000 Census] - the 3-part **Montgomery County Bracket** was added to Chapter 204:

or (3) in a county with a population of 275,000 or more that is adjacent to a county with a population of 3.3 million or more and contains part of a national forest.

2011 [based on 2010 Census] - the **Galveston County Bracket** in Chapter 204 was "capped" at 300,000:

(2) in a county with a population of not less than 285,000 and not more than 300,000, that is adjacent to the Gulf of Mexico and that is adjacent to a county having a population of 3.3 million or more.

✘**CONFUSION.** Mistakenly relying on interim population estimates instead of the last official decennial US census, some lawyers say that Galveston County "fell out" of Chapter 204 when its population exceeded 300,000.

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APPENDIX 9
THREE DEGREES OF CONSANGUINITY AND AFFINITY

CAUTION. THIS EXHIBIT IS NOT AUTHORITATIVE OR WARRANTED. IT DOESN'T RE-CREATE AN OFFICIAL CHART. DO NOT RELY ON IT FOR ANY PURPOSE. IT MERELY ILLUSTRATES THE CONCEPTS OF DEGREES OF AFFILIATION.

Authority. Texas Govt Code, Chapter 573. *Degrees of Relationship; Nepotism Prohibitions*, especially §§ 573.002 & 573.021.-573.025, and Texas AG's online index to opinions on rules of consanguinity and affinity. Get a legal opinion, if necessary.

Relevance. TPC Chapter 209 uses three degrees of consanguinity and three degrees of affinity to qualify certain positions.

Sharon's Note. Most charts describe three degrees of consanguinity, and only two degrees of affinity. In addition to adding the third degree of affinity, I separated "spouse-based affinities" from "blood-based affinities," because I understand it better that way.

CONSANGUINITY

3 DEGREES OF CONSANGUINITY - *Kin by Blood and Adoption*		
FIRST DEGREE	**SECOND DEGREE**	**THIRD DEGREE**
Children Parents	Sisters & Brothers Grandparents Grandchildren	Aunt & Uncles (Sisters & Brothers of Parents) Nieces & Nephews (Daughters & Sons of Parent's Sisters & Brothers) Great Grandparents Great Grandchildren

AFFINITY

3 DEGREES OF AFFINITY - BLOOD BASED. *Spouses of Kin by Blood and Adoption*		
FIRST DEGREE	**SECOND DEGREE**	**THIRD DEGREE**
Daughter's Spouse (Son-In-Law) Son's Spouse (Daughter-In-Law) Mother's Spouse (Stepfather) Father's Spouse (Stepmother)	Spouses of Sisters & Brothers Spouses of Grandparents (Step) Spouses of Grandchildren	Spouses of Aunts & Uncles Spouses of Nieces & Nephews Spouses of Grandparents Spouses of Great Grandchildren

3 DEGREES OF AFFINITY - SPOUSE BASED. *Spouse and Spouse's Kin by Blood and Adoption*			
FIRST DEGREE		**SECOND DEGREE**	**THIRD DEGREE**
Spouse	Spouse's Children (Step) Spouse's Parents	Spouse's Sisters & Brothers Spouse's Grandparents Spouse's Grandchildren (Step)	Spouse's Aunt & Uncles Spouse's Nieces & Nephews Spouse's Great Grandparents Spouse's Great Grandchildren (Step)

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APPENDIX 10
POA DOC PREP STATUTE

See bottom of page for TPC Chapter 209's use of the phrase "**a legal instrument affecting title to real property**." It alludes to Chapter 83 of the Texas Government Code without citing it. These seem to be the only two Texas statutes that use the phrase.

TEXAS GOVERNMENT CODE

CHAPTER 83. CERTAIN UNAUTHORIZED PRACTICE OF LAW

Sec. 83.001. PROHIBITED ACTS. (a) A person, other than a person described in Subsection (b), may not charge or receive, either directly or indirectly, any compensation for all or any part of the preparation of **a legal instrument affecting title to real property**, including a deed, deed of trust, note, mortgage, and transfer or release of lien.

(b) This section does not apply to:

(1) an attorney licensed in this state;

(2) a licensed real estate broker or salesperson performing the acts of a real estate broker pursuant to Chapter 1101, Occupations Code; or

(3) a person performing acts relating to a transaction for the lease, sale, or transfer of any mineral or mining interest in real property.

(c) This section does not prevent a person from seeking reimbursement for costs incurred by the person to retain a licensed attorney to prepare an instrument.

Sec. 83.002. EXPENSES. This chapter does not prevent an attorney from paying secretarial, paralegal, or other ordinary and reasonable expenses necessarily and actually incurred by the attorney for the preparation of legal instruments.

Sec. 83.003. FORMS. This chapter does not prevent a person from completing lease or rental forms that:

(1) have been prepared by an attorney licensed in this state and approved by the attorney for the particular kind of transaction involved; or

(2) have been prepared by the property owner or prepared by an attorney and required by the property owner.

Sec. 83.004. CUMULATIVE REMEDIES. This chapter is not exclusive and does not limit or restrict the definition of the practice of law in the State Bar Act (Chapter 81). This chapter does not limit or restrict any remedy provided in the State Bar Act or any other law designed to eliminate the unauthorized practice of law by lay persons and lay agencies.

Sec. 83.005. RECOVERY. A person who pays a fee prohibited by this chapter may bring suit for and is entitled to:

(1) recovery of the fee paid;
(2) damages equal to three times the fee paid; and
(3) court costs and reasonable and necessary attorney's fees.

Sec. 83.006. UNAUTHORIZED PRACTICE OF LAW. A violation of this chapter constitutes the unauthorized practice of law and may be enjoined by a court of competent jurisdiction.

TEXAS PROPERTY CODE

CHAPTER 209. TEXAS RESIDENTIAL PROPERTY OWNERS PROTECTION ACT

Sec. 209.0094. ASSESSMENT LIEN FILING. A lien, lien affidavit, or other instrument evidencing the nonpayment of assessments or other charges owed to a property owners' association and filed in the official public records of a county is **a legal instrument affecting title to real property**.

Prepared by Texas real estate attorney Sharon Reuler to illustrate a CLE presentation on 9/12/18. Material isn't intended to be exhaustive, to replace advice of competent legal counsel, or to address particular situations. Expertise in Texas POA law is advised for its proper use.
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APPENDIX 11
STATUTORY DEFINITIONS OF "PROPERTY OWNERS ASSOCIATION"

(Emphasis added - highlights and underlines)

SOURCE OF DEFINITION	TEXT OF DEFINITION	BY CITATION, THE DEFINITION IS USED IN OTHER STATUTES
PROPERTY CODE CHAPTER 202 § 202.001(2)	"Property owners' association" means an incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by the dedicatory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the residential subdivision, planned unit development, condominium or townhouse regime, or similar planned development.	Prop Code § 5.202(a)(7)(B)&(C) Prop Code § 205.001(2) Prop Code § 208.001(2) Prop Code § 210.001(3) Occ Code § 1903.002 Parks & Wild § 43.0612(a)(1) Trans Code § 551.454(a)
PROPERTY CODE CHAPTER 204 § 204.004.(a) & (b)	(a) A property owners' association is a designated representative of the owners of property in a subdivision and may be referred to as a "homeowners association," "community association," "civic association," "civic club," "association," "committee," or similar term contained in the restrictions. The membership of the association consists of the owners of property within the subdivision. (b) The association must be nonprofit and may be incorporated as a Texas nonprofit corporation. An unincorporated association may incorporate under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes). *Note: TPC Chapter 204's applicability excludes condominiums*	Trans Code § 430.002(a)
PROPERTY CODE CHAPTER 209 § 209.002.(7)	"Property owners' association" or "association" means an incorporated or unincorporated association that: (A) is designated as the representative of the owners of property in a residential subdivision; (B) has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; and (C) manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision. *Note: Applicability of TPC Chapters 207 & 209 excludes condominiums*	Prop Code § 5.202(a)(7)(B) Prop Code § 207.001(2)
PROPERTY CODE CHAPTER 211 § 211.001.(3)	"Property owners' association" means an incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by the dedicatory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the residential subdivision or similar planned development. *Note: TPC Chapter 11 doesn't specifically exclude condos from applicability*	
PROPERTY CODE CHAPTER 213 § 213.001(7) [Expires 9/1/21]	"Property owners' association" means an incorporated or unincorporated association that: (A) is designated as the representative of the owners of lots or parcels of real property in a development; (B) has a membership primarily consisting of those owners; and (C) manages or regulates all or part of the development for the benefit of those owners.	
PROPERTY CODE CHAPTER 215 § 215.001.(2)	"Property owners' association" or "association" means, unless otherwise indicated, a master mixed-use property owners' association.	
HEALTH & SAFETY CODE § 757.001.(11)	"Property owners association" means an association of property owners for a residential subdivision, condominium, cooperative, town home project, or other project involving residential dwellings.	

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APPENDIX 12
STATUTORY DEFINITIONS OF "DEDICATORY INSTRUMENT"

SOURCE OF DEFINITION	**TEXT OF DEFINITION**	BY CITATION, THE DEFINITION IS USED IN **OTHER STATUTES**
PROPERTY CODE CHAPTER 82 (TUCA) 82.003(a)(11-a) [added 2013]	"Dedicatory instrument" means each document governing the establishment, maintenance, or operation of a condominium regime. The term includes a declaration or similar instrument subjecting real property to: (A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a unit owners' association; (B) properly adopted rules and regulations of the unit owners' association; or (C) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.	
PROPERTY CODE CHAPTER 202 § 202.001(1) & (4)	"Dedicatory instrument" means each document governing the establishment, maintenance, or operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to: (A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association; (B) properly adopted rules and regulations of the property owners' association; or (C) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations. --- "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.	Prop Code § 204.001(2) Prop Code § 206.001(2) Prop Code § 208.001(2) Prop Code § 210.001(1 &(5)
PROPERTY CODE CHAPTER 209 § 209.002.(4) & (11)	"Dedicatory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or similar instruments subjecting property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, and to all lawful amendments to the covenants, bylaws, rules, or regulations. --- "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.	Prop Code § 207.001(2) Prop Code § 215.001(3)
PROPERTY CODE CHAPTER 211 § 211.001.(1)	"Dedicatory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision or any similar planned development. The term includes a declaration or similar instrument subjecting real property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, or to all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.	
PROPERTY CODE CHAPTER 213 § 213.001(3) & (9) [Expires 9/1/21]	"Dedicatory instrument" means a governing instrument that: (A) restricts amenity property to use as amenity property; (B) designates real property in the development, other than amenity property, as a beneficiary of a restriction described by Paragraph (A); and (C) addresses the establishment, maintenance, and operation of amenity property. --- "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.	

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APPENDIX 13
STORIES BEHIND SOME TEXAS POA STATUTES
As re-told by Sharon Reuler, September 2018

Statutes usually start as solutions or reactions to real or perceived problems. Over time, we lose the context out of which statutes arise, unlike common law which is illustrated with story-telling court opinions. In 2002 Roy Hailey and I compiled some stories for an ambitious CLE article - *Statutory Evolution of Condominiums and Property Owners Associations in Texas*, that we presented at the 2002 Mortgage Lending Institute. Versions of some of the stories published in 2002 are included here for preservation in the State Bar's Online Library. Recognizing that every statute's backstory would be told differently by each of the many people involved, we invite you to make a record of your perspective on these events, and perhaps one day we'll have a way to stitch them all together.

CHAPTER 81, TEXAS PROPERTY CODE - 1963

Enacted in 1963, The Texas Condominium Act (initially Article 1301a V.T.C.S., now Chapter 81 Texas Property Code) is a typical "first generation" enabling statute - enabling condominium ownership - and characterized by brevity, rigidity, and a distinct lack of consumer protections. Like most first generation condominium statutes, it's based on the Model Act for the Creation of Apartment Ownership, published in 1962 by the Federal Housing Administration, based on Puerto Rico's 1958 Horizontal Property Act. (USA is a late bloomer condo-wise. Europe and Latin American have had enabling condo statutes "forever" ~ allegedly back to Ancient Rome.)

Between 1963 and 1993 (when TUCA was adopted), Texas had the dubious distinction of being one of the few growth states with a nearly pristine first-generation condominium statute. During that period, the Condominium Act was once codified (in 1983 as Chapter 81 Property Code), and twice amended (1984 and 1989). Not much activity for a 30-year period.

In 1962, before Texas had any condominium legislation, an Arizona developer (whose name is lost in the annals of history) wanted to convert a Houston highrise apartment building to condominium ownership. To finance the conversion, his lender required an enabling statute. (Common law condos may have existed prior to 1963.) Using the 1962 FHA Model Act as a base, the developer got an enabling statute through the 1963 Texas Legislature. (Beginner's luck!)

Because no one in 1963 Texas knew what a condominium looked likes, the developer's bill specifically described the type of structure he was converting - a high rise apartment building with janitor lodgings, garbage incinerators, elevators, basements, flat roofs, central heat and air, sanitary services, balconies, and terraces. You can almost "see" his building from TPC Chapter 81's definition of "General Common Elements."

SONDOCK AMENDMENT TO CHAPTER 81, TEXAS PROPERTY CODE - 1984

The most significant amendment to the Condominium Act during its first 30 years is now TPC §81.104.(e) and §81.111. It is also the poster child for the now-familiar pattern of seeking a statewide legislative solution for one citizen's issue with a particular POA, under the banner of "what's good for me is good for everyone."

The 1984 "Sondock Amendment" is named after Ruby Sondock, a state district judge in Houston who served on the Texas Supreme Court for a while as a gubernatorial appointee. Judge Sondock also owned a unit in By the Sea Condominiums, in Galveston. Her condo POA had voted to permanently remove continually rusting carports along the seawall to eliminate the expense of frequent replacement.

Judge Sondock was displeased that the carport over her assigned parking space was removed without her permission. She hadn't voted for the removal. So, Judge Sondock sued her condo POA. She lost at the trial level, also on appeal, and then the Supremes refused to grant writ for *Board of Directors of By the Sea Council of Co-Owners, Inc. v. Sondock*, 644 S.W.2d 774 (Tex.App. —Corpus Christi 1982). Ouch!

Shut out of the courthouse, Judge Sondock turned to the statehouse. With the help of State Senator Buster Brown, Judge Sondock effected an amendment of the condominium statute to save other owners from what she perceived as an injustice. The Sondock Amendment seemed innocuous to the lawmakers and lobbyists who waved it through the 1983 Legislative Session, which (sadly for Judge Sondock) ended too soon. Not to worry! The 68th Legislature had two special sessions. The Sondock Amendment was enacted in 1984, during the second special session.

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Whether intentionally or inadvertently, the Sondock Amendment changed the private restrictions of many condominiums in Texas. If previously a condominium declaration could be amended by written ballot or petition, the Sondock Amendment requires that the vote be taken at a meeting. If previously a condominium declaration could be amended with a simple majority of the ownership interests, the Sondock Amendment requires approval by at least 67 percent. Interestingly, the requirement of "67 percent approval" has been used since in many POA statutes. And, the clincher - the Sondock Amendment requires the unanimous consent of all affected owners and their mortgagees for certain issues. "Affected" isn't defined.

CHAPTER 82, TEXAS PROPERTY CODE - 1993

By the late 1960s, every state had adopted a first generation condominium enabling statute. By the early 1970s, it was apparent that first generation statutes were inadequate to deal with the variety and complexity of the emerging condominium market. Development of a second generation condominium statute fell to the National Conference of Commissioners on Uniform State Laws. The first version of the Uniform Condominium Act appeared in the Uniform Land Transactions Act ("ULTA"). In 1977 the Uniform Law Commissioners published a free-standing Uniform Condominium Act (UCA), which was subsequently revised several times, and ultimately folded into the Uniform Common Interest Ownership Act (UCIOA).

By 1979, the model UCA was in the hands of Austin attorney and lobbyist Larry Niemann, who took the UCA concept to the House Committee on Business & Industry. After the 1979 session, the B&I Committee appointed an interim subcommittee to study condominium housing law, chaired by Representative Robert Bush of Sherman, Texas. The 1980 Report of the Subcommittee on Condominium Housing Laws contains the first draft of the proposed (Texas) Uniform Condominium Act, which came to be known as "too-kah". Although Mr. Niemann's name does not appear in the Report, he helped conduct the statewide hearings and was instrumental in creating interest in the proposal.

> Author Sidebar Comment. The 1979 hearing in Dallas introduced me to TUCA and Larry Niemann. In 1979 I was a Realtor who chaired the Dallas Board of Realtors' Condominium & Townhome Committee. The hearing also motivated the Dallas condo development community to organize itself, which we did by forming the Dallas/Fort Worth Chapter of the Community Associations Institute in 1981.

TUCA made its first formal appearance as a Texas bill during the 1981 Legislative Session, and was re-filed in the Sessions of 1983 and 1985. It sat out the sessions in 1987 and 1989. Larry Niemann was its promoter in that era.

In 1989 the State Bar's Real Estate Probate & Trust Law Section (REPTL) appointed a Committee on Condominium and Common Interest Ownership, at the request of Dallas attorney Frank St. Claire, who was appointed its chair. *(Frank authored the Texas Condominium Law Manual published by Lexus in 1990.)* At the Committee's first meeting, the 12-or-so members from Dallas, Houston, Austin, and San Antonio, formed an independent ad hoc TUCA Drafting Committee to review and update the proposed TUCA bill. One objective was to evaluate and incorporate changes made to the model UCA (1980 version).

> Author Sidebar Comment. In 1989 I was a second-year lawyer (at age 43) at St. Claire and Case, which hosted the first REPTL Committee meeting. I was privileged to serve as reporter for the ad hoc TUCA Drafting Committee, which worked intensely through 1990 and early 1991 to get the bill ready for prime time at the 1991 Legislature.

The updated TUCA bill was filed in 1991 and almost passed. It helped that TUCA had "been around" for 10 years, that 20 other states had adopted model Uniform Acts (UCA or UCIOA), that it was supported by a group of respected POA lawyers, and endorsed by the Texas College of Real Estate Attorneys, in addition to other industry groups. It had good credentials and the time was "right." TUCA attracted no organized opposition, possibly due to Texas' dispirited real estate industry. However, because the bill got a late start and was held in subcommittee, the 1991 Session ended before TUCA could clear the last hurdle to adoption.

To preserve TUCA's coalition of supporters, the bill that ended the 1991 Session was re-filed "as is" in 1993. The word around the Capitol was that, after 13 years, TUCA's time had finally come. The bill started in the House Committee on Business and Industry, and passed to the Senate Committee on Economic Development. Thanks to skillful handling by the bill's chief House sponsor, Rep. Robert Eckels of Houston, TUCA moved through both chambers without difficulty, and was signed by Governor Ann Richards on May 22, 1993, to be effective January 1, 1994. Texas became the twenty-first state to adopt a second generation statute based on the model UCA or UCIOA.

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CHAPTER 204, TEXAS PROPERTY CODE - 1995

Credit for TPC Chapter 204 goes to the Greater Houston Neighborhood Associations (GHNA), which started life as Cypress Creek United Civic Associations (CCUCA), a voluntary coalition of more than 100 HOAs in the unincorporated areas of Harris County.

For most of the 1990s, CCUCA's Legislative Action Committee was chaired by Houston attorney Michael T. Gainer. The newly enacted Texas Uniform Condominium Act inspired Mr. Gainer to draft a bill for the benefit of CCUCA's members who were subdivision POAs. A number of influences shaped the bill.

Mr. Gainer used TUCA's Sec. 82.102, Powers of Unit Owners Association, as the basis for Sec. 204.010. Mr. Gainer wrote Sec. 204.009 to "codify" the holding of Candlelight Hills Civic Association v. Goodwin, 763 S.W.2d 474 (Tex. App.-Houston [14th Dist.] 1988, writ denied). He also drafted the bill to address a laundry list of problems he had encountered in his HOA practice, such as procedures for amending restrictions that lack an amendment provision, and providing a life line to architectural control committees that have expired or are about to expire.

The bill's author, Houston Representative Kevin Bailey, represented a district with few POAs but many aging neighborhoods. Thinking that POAs could breathe new life into the older neighborhoods of his district, Representative Bailey inspired Mr. Gainer to draft Section 204.006 which allows a deed restricted neighborhood to create a POA with the consent of 60% of the owners, regardless of the amendment clause in the existing restrictions, or even in absence of one.

When Rep. Bailey filed House Bill 2152 in the 74th Legislature (1995), it was initially "bracketed" to Harris County and all adjacent counties with a 1990 census population of at least 150,000 souls - intending to cover the counties of Harris, Brazoria, Fort Bend, Galveston, and Montgomery. Because lawmakers from the adjacent counties didn't support Bailey's bill, the bracket was pared down to only Harris County to improve the bill's odds of passing.

TPC Chapter 204 is an example of a significant piece of POA legislation that was enacted the first time it was introduced. That success is due largely to bracketing, which reduces the potential for opposition.

CHAPTER 206, TEXAS PROPERTY CODE - 1997

Friendswood Development Company began developing the Clear Lake Area near Houston in the 1960s, starting with Clear Lake City. Although named "City," Clear Lake City is a large private mixed-use planned community. Friendswood imposed on the Clear Lake City acreage a Service Charge Agreement that required all future owners to be members of the Clear Lake City Community Association and to pay an annual "mill" assessment. The Service Charge Agreement had a termination "drop dead" date of 2003 and no provision for amending or extending the restriction. As 2003 neared, Clear Lake City Community Association was facing an economic and legal crisis.

In the late 1990s, the Clear Lake City Community Association considered its options. The property is within the bracketed area of Chapter 201 of the Property Code, which provides a mechanism for renewing and extending restrictions. Because that statute allows property owners to "opt out" of the extended restrictions, its use would not guarantee universal assessment coverage for Clear Lake City. Finding no other remedy, the Association's attorney, Marilyn Mieszkuc, drafted a 1997 bill that became Chapter 206 of the Property Code. The fact that the bill is narrowly bracketed to apply only to Clear Lake City contributed to its swift passage in 1997.

A few years later, another part of the Clear Lake Area realized that it, too, was facing termination of the restriction that creates an assessment obligation for all property owners. Ms. Mieszkuc's partner Elizabeth Scott, went back to the well on behalf of Clear Lake Forest Community Association. In 2001, the bracketing of Chapter 206 was amended to apply to Clear Lake Forest as well as Clear Lake City, although neither property is named in the statute.

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CHAPTER 209, TEXAS PROPERTY CODE - 2001

Chapter 209 of the Property Code was adopted in 2001 as the Texas Residential Property Owners Protection Act. However, its first incarnation was in 1999 as parts of Senator Carona's Senate Bill 699, the Texas Planned Community Act. The purpose of the proposed Texas Planned Community Act was to create a statewide statutory framework for the operation of subdivision POAs, with some balancing consumer protections. Unlike TUCA, the proposed Texas Planned Community Act was not a comprehensive model Uniform Act and did not attempt to replace the other piecemeal subdivision POA statutes. It would have been one more Band-Aid statute, albeit somewhat broader in scope than the others.

Having started the 1999 session as a primarily "pro-POA" bill, Senate Bill 699 ended the 1999 session as an awkward amalgam of provisions that had been shaped by a difficult and acrimonious lobbying process. It came close to passing, but ran out of steam waiting to be read for the third and final time on the last day of the 1999 session.

Two years later, in 2001, Senator Carona took the consumer protections from his 1999 bill and filed them in 2001 as Senate Bill 507, titled the Texas Residential Property Owners Protection Act. The pro-POA bill was reborn as a pro-consumer bill.

> Author Sidebar Comment. A 2013 article about Sen. Carona wrongly paints Senate Bill 507 as anti-consumer, unaware that SB 507 provided the first consumer protections for subdivision POAs, in part by constraining - not empowering - the POAs.

Until the final weeks of the 2001 session, Senator Carona's Senate Bill 507 enjoyed a relatively predictable trip through the legislative processes. Homeowner rights groups supported the bill and the various groups and personalities informally comprising the "HOA lobby" were either supportive or neutral. It was the calm before the storm.

First the Houston media, then the national media, announced the plight of Wenonah Blevins, an 82-year old widow who was evicted from her $150,000 Houston home on April 10, 2001, following her HOA's judicial foreclosure of its lien for an assessment delinquency of less than $1,000.

By the first week in May 2001, in response to the heavy media coverage, Houston lawmakers - led by Senator Jon Lindsay - tried to file several bills that would have crippled all POAs in Texas as punishment for the perceived wrong to Mrs. Blevins. Because the bill filing deadline had expired, the House and Senate rules were suspended so the Houston legislators could file "emergency bills," which they valiantly tried to push through the legislature during its waning weeks.

Suddenly, Senator Carona's Senate Bill 507 became attractive as a vehicle to which the late-filed anti-POA bills could be attached as amendments. Understandably, the Houston lawmakers wanted to show their constituents that they can pass protective laws. It fell on deaf ears that Senator Carona's bill already contained foreclosure-related consumer protections, and that Ms. Blevins foreclosure was done judicially, with all the protections of the judicial system.

A publicized battle of wills between Senators Carona and Lindsay ensued - Senator Carona trying to keep Senate Bill 507 intact, Senator Lindsay trying to amend Senate Bill 507 with additional consumer protections. They almost came to blows on the Senate Floor. When the dust settled, Senate Bill 507 passed largely intact, with one bow to Senator Lindsay's efforts. The bill, not the statute, acquired a new "SECTION 2" that says: S.B. No. 507, 77th Legislature, Regular Session, 2001, is enacted in honor of Wenonah Blevins and may be unofficially referred to as the Wenonah Blevins Residential Property Owners Protection Act.

GOVERNMENT CODE - OPEN MEETINGS & OPEN RECORDS

Property Code Chapter 209 contains a number of exceptions for subdivision POAs that are subject to Sections 551.0015 and 552.035 of the Government Code. In the late 1990s, Representative Tommy Williams lived in The Woodlands, a 27,000-acre master planned community near Houston, with several large subassociations. Being a proponent of open government, Representative Williams wanted his neighbors and constituents in The Woodlands to enjoy the same rights of open meetings and open records that local governments are required to provide to citizens. Representative Williams took the initiative to sponsor a bill that would require the largest planned communities in The Woodlands to be subject to the Government Code's open meetings laws (Chapter 551) and open records laws(Chapter 552), which regulate state, county, local, and quasi-governmental entities. The bill filed and passed in 1999 - creating Sections 551.0015 and 552.035 of the Government Code - is narrowly and creatively bracketed to apply only to 4 specific subdivision POAs in The Woodlands.

(End of Appendix)

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APPENDIX 14
2018 CATEGORICAL LIST OF POA STATUTES - STATE & FEDERAL

RELEVANT TO TEXAS PROPERTY OWNERS ASSOCIATIONS
AND COMMON INTEREST DEVELOPMENTS
(Condos, Townhomes, Subdivisions, Planned Developments)

This material is categorized in a non-traditional manner that may take some getting used to. The categories and sub-categories evolved from experience reporting on POA bills during the biennial Texas Legislatures. For legislative sessions in which large numbers of POA interest bills are filed, this three-part categorization scheme helps the author identify which bills to follow most closely. This CLE article is the first attempt to use the same categories to organize the universe of POA statutes as tool for use by Texas lawyers.

PART 1: POA-SPECIFIC STATUTES. These are statutes that expressly pertain to POAs or common interest developments. The large category of State statutes is further sub-categorized into statutes that are multi-topic versus single-topic, and statewide statutes versus bracketed statutes.

PART 2: POA-PERTINENT STATUTES. These are statutes that are frequently used in connection with many POAs, although the statutes are not written specifically for POAs, such as corporation statutes. Some POA-Pertinent Statutes are not pertinent to particular POAs.

PART 3: POA-RESOURCE STATUTES. No matter what we work with, a statute is likely to play a role. The entire multi-level statutory universe is a resource for any lawyer. This category contains only a sampling of State and Federal statutes as a reminder that statutes completely unrelated to POAs may become "POA-pertinent" in certain circumstances.

PART 4: TOOLS FOR WORKING WITH TEXAS POA STATUTES. Hopefully the title is self-explanatory.

■ Parts 1, 2, and 3 are each sub-categorized into State and Federal statutes. ■ "Statute" broadly includes statute appurtenances, such as statute-like or statute-related regulations, rules, guidelines, orders, and rulings. ■ The only guaranty that comes with this list is that it's incomplete. ■ If your favorite statute is absent or mis-categorized, please contact author, who loves to discuss such things (time permitting). ■ Finally, apologies for the list's many inconsistencies, such as the form of code citations. If this proves to be a popular presentation, future editions may be more finely tuned.

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2018 CATEGORICAL LIST OF POA STATUTES - STATE & FEDERAL
Relevant to Texas Property Owners Associations
and Common Interest Developments

PART 1: POA-SPECIFIC STATUTES

IMPORTANT. This presentation does not identify the many substantive topics contained within the multi-topic POA Biggies. You are presumed to know the contents of those statutes. Accordingly, don't assume the statutes listed by topic in Part 1, and the topical statutes in Part 2 are the entire statutory coverage of the named topics. They're not. Remember the Biggies!

1.A. STATEWIDE - MULTI-TOPIC POA "BIGGIES"

1.A.1. **Condominiums - Only: TPC Chapters 81 & 82**

(1) *Condominium Act*, TPC **CHAPTER 81**, Title 7. Condominiums
Applies: Condos created before 1994, except those that adopt TUCA.
Roots: Enacted 1963 as Article 1301a of Vernons Texas Civil Statutes, codified 1983

(2) *Uniform Condominium Act*, TPC **CHAPTER 82**, Title 7. Condominiums
Nickname: "TUCA" (too-kah) - Texas Uniform Condominium Act
Applies: Condos created since 1994, and pre-1994 condos that adopt.
Note: Some sections apply to pre-1994 condos; 2 subsections bracketed.

1.A.2. **Subdivisions - Only: TPC Chapter 209**

(1) Texas Residential Property Owners Protection Act, TPC **CHAPTER 209**, Title 11. Restrictive Covenants. Applies: Subdivisions, no matter when created

1.A.3. **Both - Condominiums & Subdivisions: TPC Chapter 202**

(1) Construction and Enforcement of Restrictive Covenants, TPC **CHAPTER 202**, Title 11. Restrictive Covenants

1.B. STATEWIDE - SINGLE-TOPIC.

Some of these topics may also be addressed in other parts of this Categorical List, and in parts of the POA-Specific "Biggies," which are multi-topic. CAUTION. Don't assume the statutes listed in this Section are the entire statutory coverage of the named topics. They're not.

1.B.1. **Conveyancing**

(1) *Notice of Obligations Related to Membership in Property Owners' Association*, TPC Sec. 5.012. (Subdivisions only)

(2) *Prohibited Fees*, TPC Sec. 5.015. (Condos only - rights of first refusal)

(3) *Certain Private Transfer Fees Prohibited; Preservation of Private Real Property Rights*, TPC Secs. 5.201 - 5.207 (Chapter 5, Subchapter G). [Note. This law initially enacted as TPC Sec. 5.017.]

(4) *Disclosure of Information by Property Owners' Association*, TPC Chapter 207. (Subdivisions only)

1.B.2. **Foreclosure**

(1) *Foreclosures Requiring a Court Order*, Rule 735, Texas Rules of Civil Procedure, Part VII, Section 1 *(Procedures Related to Foreclosures of Certain Liens)*

(2) Expedited Foreclosure Proceeding, Rule 736, Texas Rules of Civil Procedure, Part VII, Section 1 *(Procedures Related to Foreclosures of Certain Liens)*

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1.B.3. **Group Homes & Assisted Living Facilities** (aka "Community Homes")

(1) *Zoning and Restriction Discrimination Against Community Homes Prohibited*, Sec. 123.003, Human Resources Code. (Chapter 123 is known as "Community Homes for Persons With Disabilities Act")
[Note 1: This law was previously Article 1011n in VTCS, as referenced in TPC §§202.002 and 202.003]
[Note 2: Definition of "community home" includes "assisted living facility."

(2) *Assisting Living Facility*, Chapter 247 Health and Safety Code.

1.B.4. **Liability, Directors & Officers**

(1) *Charitable Immunity & Liability Act of 1987*, Chapter 84, Civil Practice & Remedies Code. Defines "charitable organization" to include "a homeowners association as defined by Section 528(c) of the Internal Revenue Code of 1986". [Note. This Act's use of "charitable organization" is statutorily contrived and does not conform to other uses of the term, such as Chapter 2252, Govt. Code, which excludes POAs from the definition.]

1.B.5. **Licensing**

(1) *Irrigators*, Chapter 1903, Occupations Code, Title 11. Practices and Trades Related to Water, Health, and Safety, Subtitle A. Occupations Related to Water. [Note. Sec. 1903.002(a) defines POA to exempt POAs in Sec. 1903.002(c)(6).]

1.B.6. **Nuisance**

(1) *Common and Public Nuisances*, Chapter 125, Civil Practice & Remedies Code. Condominium included in definition of "multi-unit residential property." [Note. See Sec. 125.0015(b) for possibly liability for condo POA.]

1.B.7. **Personnel**

(1) *Criminal History Record Information Checks of Employees of Residential Dwelling Projects*, Chapter 765, Health & Safety Code

1.B.8. **Streets & Roads - Private**

(1) *Gated Communities and Multi-Unit Housing Projects*, Sec. 352.111 et. seq., Local Govt Code. (Chapter 352. County Fire Protection)

(2) *Gates on Third-Class and Neighborhood Roads*, Sec. 251.010, Transportation Code, Title 6. Roadways, Chapter 251. General County Authority Relating to Roads and Bridges.

1.B.9. **Streets & Roads - Public**

(1) *Signs Erected by Neighborhood Association*, Sec. 430.002, Transportation Code, Subtitle H. Highway Beautification. [Statewide or bracketed? Uses POA definition from TPC Chapter 204, which is bracketed.]

1.B.10. **Swimming Pool & Water Feature Safety**

(1) *Swimming Pools and Bathhouses*, Sec. 341.064, Health and Safety Code
(2) *Pool Safety*, Sec. 341.0645, Health and Safety Code
(3) *Interactive Water Features and Fountains*, Sec. 341.0695, Health and Safety Code
(4) *Pool Yard Enclosures*, Chapter 757, Health and Safety Code
(5) *Standards for Public Pools and Spas*, See Rule §265.182, Subchapter L, Chapter 265, Part 1, Title 25, Texas Administrative Code. [POA pool is "public" even if used exclusively by residents.]

(6) *Public Interactive Water Features and Fountains*, See Rule §265.302 (49)(d), Subchapter M, Chapter 265, Part 1, Title 24, Texas Administrative Code. [POA water feature is "public" even if used exclusively by residents.]

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1.B.11. **Tax - Franchise**

(1) *Exemption--Certain Homeowners ' Associations*, Section §171.082, Tax Code (Chapter 171. Franchise Tax, Subchapter B. Exemptions)

(2) *Texas Application for Exemption - Homeowners' Associations,* on website of Texas State Comptroller.

1.B.12. **Tax - Property**

(1) *Property Owned by a Nonprofit Homeowners' Organization for the Benefit of its Members*, Sec. 23.18, Tax Code (Title 1. Property Tax Code, Chapter 23. Appraisal Methods and Procedures)

(2) *Condominiums and Planned Unit Developments*, Sec. 25.09, Tax Code. (Title 1. Property Tax Code, Chapter 25. Local Appraisal) [Enacted 1979, uses "planned unit development association" to refer to subdivision POA.]

(3) *Priority of Tax Liens over Other Property Interests*, Sec. 32.05, Tax Code. (Title 1. Property Tax Code, Chapter 32. Tax Liens and Personal Liability)

(4) *Right of Redemption*, Sec. 34.21.g.(2)(A)(iv), Tax Code. (Title 1. Property Tax Code, Chapter 34. Tax Sales and Redemption)

1.B.13. **Tax - Sales**

(1) *Limited Sales, Excise, and Use Tax Act*, Sec. 151.001 et. seq., Tax Code, defines "Information Service" [Sec. 151.0038] to exclude POAs in certain circumstances.

1.B.14. **Utilities**

(1) *Notice of Utility Disconnection of Nonsubmetered Master Metered Multifamily Property to Municipalities, Owners, and Tenants*, Sec. 92.302, TPC Chapter 92, Subchapter G. Utility Cutoff.

(2) *Submetering and Nonsubmetering for Apartments and Manufactured Home Rental Communities and Other Multiple Use Facilities*, Subchapter M, Chapter 13, Subtitle B, Title 2, Water Code.

(3) *Protection Against Utility Service Disconnection*, Subchapter E, Chapter 17, Title 2, Utilities Code.

(4) *Protection Against Utility Service Disconnection*, Subchapter H, Title 3. Gas Regulation, Utilities Code.

(5) *Metering in Apartments, Condominiums, and Mobile Home Parks*, Subchapter B, Chapter 184. Electric and Water Metering, Utilities Code.

(6) *Submetering for Apartments, Condominiums, and Mobile Home Parks*, Rule §25.142, Chapter 25, Title 16, Administrative Code.

(7) Website of Texas Public Utility Commission has Rules for disconnection of electric service, telecommunication service, water and sewer service. Also, some cities have ordinances regarding utility shut-offs.

1.B.15. **Vehicles**

(1) Towing. *Vehicle Towing and Booting*, Chapter 2308. Occupations Code. (Title 14. Regulation of Motor Vehicles and Transportation) [fka Chapter 684, Transportation Code - recodified 2007]

(2) Golf Carts. *Limited Operation*, Sec. 551.403, Transportation Code, Subchapter F.

(3) Package Delivery Vehicles. *Operation on Property of Subdivision or Condominium*, Sec. 551.454, Transportation Code, Subchapter G.

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1.B.16. **Wildlife**

(1) *Trapping and Transporting Surplus White-Tailed Deer; Permit Required,* Sec. 43.0612, Parks and Wildlife Code. Authorizes state to issue permits to POAs.

1.C. BRACKETED CHAPTERS & SECTIONS ("Local State Laws")

1.C.1. **TPC - Multi-Topic & Bracketed Chapters**

(1) Chapter 204. *Powers of Property Owners' Association Relating to Restrictive Covenants in Certain Subdivisions*
(2) Chapter 215. *Master Mixed-Use Property Owners' Associations*

1.C.2. **TPC - Single-Topic & Bracketed Chapters**

(1) Chapter 201. *Restrictive Covenants Applicable to Certain Subdivisions* [technically not POA-specific]
(2) Chapter 203. *Enforcement of Land Use Restrictions in Certain Counties* [technically not POA-specific]
(3) Chapter 205. *Restrictive Covenants Applicable to Revised Subdivisions in Certain Counties*
(4) Chapter 206. *Extension of Restrictions Imposing Regular Assessments in Certain Subdivisions*
(5) Chapter 208. *Amendment and Termination of Restrictive Covenants in Historic Neighborhoods*
(6) Chapter 210. *Extension or Modification of Residential Restrictive Covenants by Petition in Certain Subdivisions*
(7) Chapter 211. *Amendment and Enforcement of Restrictions in Certain Subdivisions*
(8) Chapter 212. *Extension of Restrictions by Majority Vote in Certain Subdivisions* [technically not POA-specific]
(9) Chapter 213. *Modification or Termination of Restrictions in Certain Real Estate Developments by Property Owners' Association or Property Owner Petition* [Expires 9/1/21]

1.C.3. **TPC - Single-Topic & Bracketed Sections in Multi-Topic POA "Biggies"**

(1) TPC Chapter 81: None
(2) TPC Chapter 82: 82.051(g), 82.118, 82.153(a)(12)
(3) TPC Chapter 202: 202.007(e)
(4) TPC Chapter 209: 209.0055

1.C.4. **Texas Government Code - POA Bracketed Sections**

(1) *Certain Property Owners' Associations Subject to Law* [Open Meetings], Sec. 551.0015, Govt Code [Corresponding carve-out in TPC 209.0051(a)]

(2) *Certain Property Owners' Associations Subject to Law* [Open Records], Sec. 552.0036, Govt Code [Corresponding carve-out in TPC 209-005(b)]

1.C.5. **Texas Health and Safety Code - POA Bracketed Sections**

(1) *Fire Protection Sprinkler Systems in Certain Residential High-Rise Buildings in Certain Counties*, Secs. 766.051 et seq, Subchapter B, Chapter 766, Health and Safety Code. [Secs. 766.054 expires 9/1/28]

1.C.6. **Texas Local Government Code - POA Bracketed Sections**

(1) City - May Enforce POA Restrictions. *Enforcement of Land Use Restrictions Contained in Plats and Other Instruments*, Subchapter F, Local Govt Code, for cities identified in §212.151, authorizes certain city to sue on private restrictions (§212.153), forbids city participation in POA foreclosure (§212.1535).

(2) City - Notice of Enforcement. Sec. 54.035 (a-1) and (a-2), Chapter 54, Local Govt Code, gives certain city methods of service on condominium POA and unit owner. Also, §214.001(b-1), Local Govt Code gives certain city methods for notifying condominium POA or unit owner about unsafe or substandard building.

(3) Golf Course Redevelopment. *Additional Requirements for Certain Replats Affecting a Subdivision Golf Course*, Sec. 212.0155, Chapter 212 (Municipal Regulation of Subdivisions and Property Development), Local Govt Code.

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1.C.7. **Texas Transportation Code - POA Bracketed Sections**

(1) *Acquisition of Public Interest in Private Road by Certain Counties*, Chapter 281, Transportation Code.
(2) *Speed Restrictions on Private Roads*, Sec. 542.006, Transportation Code
(3) *Traffic Regulations: Private Subdivisions in Certain Counties*, Sec. 542.007, Transportation Code
(4) *Traffic Regulations: Private Subdivisions in Certain Municipalities*, Sec. 542.008, Transportation Code
(5) *Overnight Parking of Commercial Motor Vehicles in or near Residential Subdivision*, Sec. 545.307, Trans.Code

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1.D. FEDERAL STATUTES. Some of these topics may also be addressed in other parts of this Categorical List, and in parts of the POA-Specific "Biggies," which are multi-topic. CAUTION. Don't assume the statutes listed in this Section are the entire statutory coverage of the named topics. They're not.

1.D.1. **Bankruptcy.** *2005 Bankruptcy Abuse Prevention and Consumer Protection Act*, Section 523(a)(16) - post-order POA fees are not discharged.

1.D.2. **Discrimination** (aka **Fair Housing)**

(1) *Fair Housing Act*, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§3601 - 3619.42, as amended, such as *Fair Housing Amendments Act of 1988*. [Note: Although the Act is not POA-specific, the Rules and rulings on the Rules, are POA-specific.]

(2) *Fair Housing Rules*, promulgated by the U.S. Dept. of Housing and Urban Development, located at 24 CFR, Subtitle B, Chapter I, Subchapter A.

Subpart A. *General* (§§ 100.1 - 100.20)
Subpart B. *Discriminatory Housing Practices* (§§ 100.50 - 100.90)
Subpart C. *Discrimination in Residential Real Estate-Related Transactions* (§§ 100.110 - 100.148)
Subpart D. *Prohibition Against Discrimination Because of Handicap* (§§ 100.200 - 100.205)
Subpart E. *Housing for Older Persons Act of 1995* (HOPA) (§100.300 et seq)
Subpart F. *Interference, Coercion or Intimidation* (§ 100.400)
Subpart G. *Discriminatory Effect* (§ 100.500)
Subpart H. *Quid Pro Quo and Hostile Environment Harassment* (§ 100.600) [NEW in 2017]

1.D.3. **Flag Display**. *Freedom to Display the American Flag Act of 2005*, Pub.L. 109–243, 120 Stat. 572.
[Note: Defines "condominium association" and "residential real estate management association"]

1.D.4. **Handicap/Disability**. See Fair Housing Act above, Subpart D.

1.D.5. **Insurance.** *Underwriting Guidelines for Condominiums*, published by FEMA (Federal Emergency Management Agency).

1.D.6. **Mortgages.** Each "federal" (quasi-governmental) lender, underwriter, and guarantor has its own criteria for making loans on homes in POAs, which may include requirements for POA documents, budgets, reserves, insurance, and owner-occupancy ratios.

(1) **Fannie Mae** (Federal National Mortgage Association or FNMA) Single Family Selling Guide

(2) **FHA** (Federal Housing Administration) Condominium Project Approval & Processing Guide. Online list of FHA-Approved Condominiums.

(3) **Freddie Mac** (Federal Home Loan Mortgage Corporation or FHLMC) Single-Family Seller/Servicer's Guide

(4) **VA** (U.S. Dept. of Veterans Affairs) Lenders Handbook, and condominium loan guaranty requirements in 38 CFR 36.4360.

(5) **FHFA**. The Federal Housing Finance Agency (FHFA) is conservator for Fannie Mae and Freddie Mac. The Housing and Economic Recovery Act of 2008 prohibits foreclosure of property in which FHFA has an interest, without

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FHFA's consent. States with statutory POA "super priority liens" challenged FHFA's prohibition, and lost in 2017 & 2018. Texas is not a super-priority lien state. Still, the issue pops up periodically.

1.D.7. **Swimming Pool Safety**. Virginia Graeme Baker Pool & Spa Safety Act (P&SS Act), 15 U.S. Code Chapter 106, §8000 et. seq. [Note: Act defines "public pool" to include private POA pools used by POA members.]

1.D.8. **Tax - Income.** 26 U.S. Code §528 - *Certain Homeowners Associations*, aka Section 528(c) of the Internal Revenue Code of 1986. [U.S. Code. Title 26. Subtitle A. Chapter 1. Subchapter F. Part VII. §528] See also Revenue Rulings.

1.D.9. **Television**
(1) *Telecommunications Act of 1996* (Telecom Act), 47 U.S.C.A. §609
(2) *Over-the-Air Reception Devices (OTARD) Rule*, 47 CFR §1.4000 et. seq. (See FAQs on FCC website)

PART 2: POA-PERTINENT STATUTES

Some of the topics listed in Part 2 are also addressed in Part 1, such as parts of the POA-Specific "Biggies," which are multi-topic. Don't assume the statutes listed in Part 2 are the entire statutory coverage of the named topic. They're not.

2.A. TEXAS STATUTES.

2.A.1. **Bounced Checks**

(1) *Processing Fee by Holder of Payment Device*, Sec. 3.506, Business and Commerce Code

2.A.2. **Consanguinity and Affinity**

(1) *Relationships by Consanguinity or by Affinity*, Subchapter B, Chapter 573, Government Code. [Note. Cited in TPC Secs. 209.0052(b), 209.0057(c), 209.00594(a).]

(2) CAUTION. Some affinity charts published by State agencies go to only 2 degrees of affinity. TPC Chapter 209 requires 3 degrees of affinity as well as 3 degrees of consanguinity.

2.A.3. **Corporations and Entities**

(1) *General Provisions*, Title 1, Texas Business Organizations Code. Chapters 1 - 12 apply to all entities, e.g. Sec. 7.001 *Limitation of Liability of Governing Person*.

(2) *Corporations,* Title 2, Texas Business Organizations Code
Chapter 20. *General Provisions*.
Chapter 22. *Nonprofit Corporations*. [Title 1 & Chapter 20 also apply to Nonprofit Corps.]

(3) *Associations*, Title 6, Texas Business Organizations Code
Chapter 252. *Unincorporated Nonprofit Association Act*. [Parts of Title 1 also apply, per Sec. 252.017]

2.A.4. **Damage to Property**

(1) *Lien Related to Damaged Fence*, TPC §70.501 et seq. Perfection of lien is per Chapter 501 Transportation Code.

2.A.5. **Debt Collection**

(1) *Texas Debt Collection Act*, Chapter 392, Finance Code (Title 5. Protection of Consumers of Financial Services). Aka "Texas Fair Debt Collection Practices Act" as the state counterpart of the so-named federal law.

2.A.6. **Discrimination**

(1) *Discriminatory Provisions*, Sec. 5.026. TPC Chapter 5.

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(2) *Texas Fair Housing Act*, TPC Chapter 301. [Federal Fair Housing Act is POA-Specific. Some cities have fair housing ordinances.]

2.A.7. **Document Preparation**

(1) *Certain Unauthorized Practice of Law*, Chapter 83, Government Code.

2.A.8. **Document Production**

(1) *Cost of Copies of Public Information*, Chapter 70, Part 3, Title 1, Texas Administrative Code, which is a compilation of state agency rules, published by the Secretary of State. Examples:
Sec. 70.3, *Charges for Providing Copies of Public Information*, cited in TPC 209.005(i).
Sec. 70.10, *The Attorney General Charge Schedule.* (Also published on AG's website)

2.A.9. **Flag Displays**

(1) *Display of State Flag*, Chapter 3100, Government Code (Title 11. State Symbols and Honors; Preservation)

2.A.10. **Foreclosure**

(1) *Public Sale of Residential Real Property Under Power of Sale*, Chapter 22, Business and Commerce Code. [NEW IN 2017]

(2) *Interests in Land*, TPC Chapter 41, Subtitle A. *Property Exempt from Creditors' Claims*.

(3) *Provisions Generally Applicable to Liens*, TPC Chapter 51.

(4) *In Foreclosure Proceedings*, Rule 309, Texas Rules of Civil Procedure. [Cited in TPC Sec. 209.0092]

(5) *Sale of Real Property*, Rule 646a, Texas Rules of Civil Procedure. [Cited in TPC Sec. 209.0092]

2.A.11. **Handicap/Disability**

(1) Elimination of Architectural Barriers, Chapter 469, Government Code
(2) Texas Accessibility Standards (TAS), website of Texas Dept. of Licensing and Regulation
(3) Architectural Barriers Administrative Rules, website of Texas Dept. of Licensing and Regulation

2.A.12. **Limitations (as in "Statute of Limitations)**

(1) *Limitations*, Chapter 16, Texas Civil Practice & Remedies Code: e.g., §16.004. *Four-Year Limitations Period*.

2.A.13. **Litigation**

(1) *Attorney's Fees in Breach of Restrictive Covenant Action*, Sec. 5.006, TPC Chapter 5.
(2) *Vexatious Litigants*, Chapter 11, Texas Civil Practice & Remedies Code
(3) *Texas Uniform Declaratory Judgment Act*, Chapter 37, Texas Civil Practice & Remedies Code
(4) *Judgment Lien*, Chapter 52, Texas Property Code.

2.A.14. **Roofs**

(1) *Wood Shingle Roof*, Sec. 5.025, TPC Chapter 5.

2.A.15. **Solar Energy Device** is defined in Sec. 171.107, Tax Code, and used in TPC Sec. 202.010.

2.A.16. **Streets and Road**s

(1) *Rules on Private Property*, Sec. 542.005, Transportation Code.

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2.A.17. **Tax - Sales**

(1) *Religious, Educational, and Public Service Organizations*, Sec. 151.310(a)(2), Tax Code. Entities exempt from federal tax under IRC Section 501(c)(3), (4), (8), (10) or (19) may also be eligible for a State sales tax exemption. (Example, sales tax on landscaping services.)

(2) *Texas Application for Exemption - Homeowners' Associations,* on website of Texas State Comptroller.

2.B. FEDERAL STATUTES. Some of these topics may also be addressed in other parts of this Categorical List, and in parts of the POA-Specific "Biggies," which are multi-topic. CAUTION. Don't assume the statutes listed in this Section are the entire statutory coverage of the named topics. They're not.

2.B.1. **Debt Collection - Consumer Protection**

(1) *Automatic Stay*, 11 U.S.C. §362 Bankruptcy Code

(2) *Fair Credit Reporting Act* (FCRA). 15 U.S.C. §1681 et. seq.

(3) *Fair Debt Collection Practices Act* (FDCPA). 15 U.S.C. §§ 1692-1692p

[Note: TPC §209.0064 borrows definition of "collection agent" from 15 USC Sec. 1692a]

2.B.2. **Discrimination**

(1) Civil Rights Act of 1964. Public Law 88–352, 78 Stat. 241. Outlaws discrimination based on race, color, religion, sex, or national origin - the 5 original protected classes. The Civil Rights Act of 1968 (Fair Housing Act) adds familial status and handicap for housing purposes.

2.B.3. **Foreclosure**

(1) *Protecting Tenants at Foreclosure Act* (PTFA). Public Law No. 111-22, Title VII §§701-704. [Effective May 2018, PTFA is permanent. Originally scheduled to expire on 12/31/14.]

(2) *Service Members Civil Relief Act* (fka "Soldiers' and Sailors' Civil Relief Act"). 50 U.S.C. App §§501-597b.

2.B.4. **Handicap/Disability - Public Accommodations**

(1) *Americans with Disabilities Act of 1990* (**ADA**), 42 U.S.C. §12181 et seq., the regulations for which are published in 28 C.F.R. §36.101 et seq., and which is administered by the Justice Department.

(2) *Federal Architectural Barriers Act of 1968* (**ABA**), 42 U.S.C. §4151 et seq.

2.B.5. **Tax - Income.** 26 U.S. Code §501(c)(4) - *Social Welfare Organization*.

[PART 3 STARTS ON NEXT PAGE]

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PART 3: POA-RESOURCE STATUTES

3.A. TEXAS STATUTES. Some of these topics may also be addressed in other parts of this Categorical List, and in parts of the POA-Specific "Biggies," which are multi-topic. CAUTION. Don't assume the statutes listed in this Section are the entire statutory coverage of the named topics. They're not.

3.A.1. **Arbitration**

(1) *Arbitration of Controversies Between Members of Certain Nonprofit Entities*, Chapter 173, Civ. Prac & Rem Code. See also Chapter 171. General Arbitration

3.A.2. **Constitution.** *The Texas Constitution*, including the *Bill of Rights* in Article 1

3.A.3. **Construction & Remodeling**

(1) *Residential Construction Liability Act* (RCLA), Chapter 27, Property Code
(2) *Mechanic's, Contractor's, or Materialman's Lien*, Chapter 53, Property Code

3.A.4. **Eviction**. *Forcible Entry and Detainer*, Chapter 24, Property Code

3.A.5. **Family**
(1) *Passage of Estate on Decedent's Death*, Sec. 101.001, Estates Code
(2) *Property Rights and Liabilities*, Subtitle B, Title 1. The Marriage Relationship, Family Code

3.A.6. **Financing**. *Interest Rates*, Chapter 302, Subtitle A, Title 4, Finance Code

3.A.7. **Fraud**
(1) *Deceptive Trade Practices Act* (DTPA), Chapter 17, Business and Commerce Code
(2) *Statute of Frauds*, Chapter 26, Business and Commerce Code.

3.A.8. **Homestead**

(1) *Protection of Homestead from Forced or Unauthorized Sale; Exceptions; Requirements for Mortgage Loans and Other Obligations Secured by Homestead*, Article 16, Sec. 50, Texas Constitution.

(2) *Size of Homestead; Uses; Release or Refinance of Existing Lien*, Article 16, Sec. 51, Texas Constitution.
(3) *Descent and Distribution of Homestead; Restrictions on Partition*, Article 16, Sec. 52, Texas Constitution
(4) *Property Exempt from Creditors' Claims, Interests in Land,* TPC Chapter 41, Title 5

3.A.9. **Real Property Records**

(1) *Public Records*, Title 3, Texas Property Code, including:
TPC §11.001 dictates place of recording
TPC §11.002 English is official language of real property records
TPC §11.008 requires confidentiality notice on certain instruments
TPC §12.001 requires signature and acknowledgment on each instrument
TPC §12.0011 addresses original signature on paper & electronic documents
TPC §13.002 recording is constructive notice

3.A.10. **Rental - Landlord/Tenant Law**

(1) *Assignment of Rents to Lienholder,* TPC Chapter 64
(2) *Landlord and Tenant*, TPC Title 8

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3.A.11. **Sex Offenders**

(1) *Sex Offender Registration Program*, Chapter 63, Texas Code of Criminal Procedure
(2) Some cities have sex offender residency restriction ordinances (SORROs)

3.B. FEDERAL STATUTES. Some of these topics may also be addressed in other parts of this Categorical List, and in parts of the POA-Specific "Biggies," which are multi-topic. CAUTION. Don't assume the statutes listed in this Section are the entire statutory coverage of the named topics. They're not.

3.B.1. **Constitution.** *The Constitution of the United States*, including amendments that comprise the *Bill of Rights*.

3.B.2. **Marketing New Homes.** *Interstate Land Sales Full Disclosure Act of 1968* (ILSFDA or ILSA), 15 U.S. Code Chapter 42, Secs. 1701 et. seq. [Public Law 90-448; 82 Stat. 590]. If looking at older CLE materials, be aware of the significant **2014 amendment** that limits the Act's applicability to condominiums. Public Law 113-167, 128 Stat. 1882 (2014), amending ILSA, was signed September 26, 2014, became effective March 25, 2015, and is codified primarily at 15 U.S.C. 1702(b)(9) and (d).

3.B.3. **Flag Display.** *Federal Flag Code*, 4 U.S.C., Chapter 1, Secs. 5-10.

3.B.4. **Records.** Sarbanes–Oxley Act of 2002 (aka SOX and the American Competitiveness and Corporate Accountability Act of 2002) is aimed primarily at public companies, with some limited applicability to nonprofit entities. Included because Sarbanes–Oxley is often invoked to encourage POAs to embrace certain record-keeping and audit procedures, even though the Act may not require those for nonprofits. See PL 107–204, 116 Stat. 745.

PART 4: TOOLS FOR WORKING WITH TEXAS POA STATUTES

4.A. STATE LAWS OF STATUTORY CONSTRUCTION

4.A.1. **Code Construction Act**, Texas Government Code, Chapter 311 - applies to codified statutes.

4.A.2. **Construction of Laws Act**, Texas Government Code, Chapter 312 - applies to the Revised Civil Statues ("Vernons").

4.B. STATE AGENCY RESOURCES

4.B.1. **Texas Legislature Online**

4.B.2. **Tips for Reading and Understanding a Statute**, Pages 4 & 5, *Reading Statutes and Bills*, a publication of Texas Legislative Council, prepared for the 85th Legislature.

4.B.3. **Website of Texas Attorney General**, which contains a searchable index to Attorney General Opinions, some of which comment on or interpret POA statutes.

4.B.4. **Website of the Texas Judicial Branch**, which is the official site of the *Texas Rules of Civil Procedure*, among other publications.

4.B.5. **Website of Texas Legislative Council**, which contains a wealth of information about statutes and the law-making process. Check out the "Publications" section, and scroll down to "General Reference." That's where you'll find the *Legislative Drafting Manual*.

4.B.6. **Website of Texas Secretary of State**, which is the official site of the *Texas Administrative Code* and has FAQs about some aspects of the Texas Business Organizations Code.

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