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83RD LEGISLATIVE SESSION OPERATIONAL IMPACT FOR POA BILLS

To Whom it May Concern:

This most recent legislative session has made some long-overdue changes to POA statutes, particularly with regards to Ch. 81 and Ch. 82 Condominiums. Due to the breadth of issues addressed in this Session of the Legislature, this document is only a summary overview of the bills as passed. As of June 26, 2013, the Governor has signed all of these bills.

First, please note the Effective date of the Bills. Some of the bills become effective as of September 1, 2013, while others are already active.

Next note the applicability each bill. Some bills affect only single-family homes and townhomes, some bills affect only condominiums, and at least one bill affects all residential properties. Because each Association has unique documents, these bills will affect each Association differently, and it is important that the Board and its Managers cooperate with the Attorney in drawing up a plan of action which will quickly and efficiently ease each Association into full compliance with the new laws.

Finally, please note that ALL ASSOCIATIONS are being required by the new laws to file new Management Certificates with the County Real Property Records. For those Associations who already filed a new Management Certificate in compliance with the requirements of the 2011 Legislative Session, you will still be required to file a new Management Certificate. For those Associations who have failed to comply with the 2011 requirements, now is the time to remedy that failure. In either case, this is a good opportunity for each Association to get its governing documents in order.

Also, in some cases it may be necessary to make changes to previously filed documents to conform with the new requirements of the 2013 laws (*see, e.g.* the flagpole provision).

It is recommended that Managers inform the Boards of the required filing(s) immediately, and that they seek written confirmation from the Board for the attorney to draft a compliance packet tailored to the needs of each individual HOA. It is also recommended that the Board be

made fully aware that failure to comply with the drafting requirements of this new session may adversely affect their ability to collect assessments in certain cases.

This Summary organizes the new bills by applicability.

I. CONDENSED SUMMARY OF BILLS

Ch. 209: Single Family Homes & Townhomes ONLY

<u>STATUTE</u>	<u>SUMMARY</u>	<u>EFFECTIVE DATE</u>
HB 3176	<ul style="list-style-type: none"> Boards may now fill a board vacancy by appointment for any reason, for duration of unexpired term Allows appointments at election time, if no one runs for the board Requires that appointed positions must be filled by election... but if no one runs again then the Board can still appoint to fill the position 	Immediately
HB 3800	<ul style="list-style-type: none"> <u>ALL ASSOCIATIONS MUST FILE NEW MANAGEMENT CERTIFICATES BEFORE 1/1/14</u> <ul style="list-style-type: none"> Failure to file may affect ability to collect assessments Applies to Developer run associations, privately run associations and volunteer associations Applies to associations without management companies 	9/1/13
HB 503	<ul style="list-style-type: none"> Severely modifies the ability of a board member (or close associate / family / company) to contract with the HOA: <ul style="list-style-type: none"> Only allowed if numerous other bids (2+) taken Only allowed if board member does not participate in discussion or bid process on board side (including voting) Only if any such interest / relationship is disclosed to or known by the board Only if authorized by board vote of majority of uninterested board members <u>Board must certify these requirements have been met by written resolution</u> However, if previously not allowed to contract by CCRs, provision now allows it, subject to above restrictions 	9/1/13

HB 2978	<ul style="list-style-type: none"> • Adds court-ordered mediation provisions to the expedited foreclosure laws 	Immediately
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Ch. 81-82: Condominiums ONLY

<u>STATUTE</u>	<u>SUMMARY</u>	<u>EFFECTIVE DATE</u>
HB 2075	<p><u>Note: all below provisions apply to both pre and post 1994 condos (e.g. Ch. 81 and Ch. 82)</u></p> <ul style="list-style-type: none"> • Grants the board the statutory right to borrow money in name of HOA, even if declaration does not contain a provision. But, requires a vote if declarations so provide • No longer requires affected unit owners to vote on whether or not to rebuild after insurance loss • Specifically allows all unit owners to vote on rebuild after insurance loss whether or not they were affected • Allows HOA to levy assessment to pay for insurance loss expenses which exceed insurance proceeds • If an insurance loss does not exceed the deductible, the party normally liable for repair / maintenance of the damaged portion must pay the deductible • If an insurance loss exceeds the deductible, the liability for deductible + costs is determined by: <ul style="list-style-type: none"> • The dedicatory instruments; or (if silent) • The board, <u>by written resolution filed in the real property records</u>; or (if the board fails to file a resolution) • The Deductible + costs are automatically deemed a common expense (e.g. HOA can levy assessment to pay for insurance loss expenses) • If an insurance loss is caused wholly <u>or partly</u> by an owner, guest, invitee, the HOA may assess deductible + expenses to the owner • <u>HOMEOWNER MAY NOW REDEEM UNITS FORECLOSED BY HOA AND SOLD TO HOA OR SOLD TO 3RD PARTY (PREVIOUSLY REDEMPTION WAS ONLY ON HOA-PURCHASED UNITS)</u> • <u>ALL ASSOCIATIONS MUST FILE NEW MANAGEMENT CERTIFICATES BEFORE 1/1/14</u> <ul style="list-style-type: none"> • Failure to file may affect ability to collect 	9/1/13

	assessments <ul style="list-style-type: none"> • Applies to Developer run associations, privately run associations and volunteer associations • Applies to associations without management companies 	
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Applicable to Ch. 209 and Ch. 81-82 Properties

<u>STATUTE</u>	<u>SUMMARY</u>	<u>EFFECTIVE DATE</u>
HB 680	<ul style="list-style-type: none"> • Changes 2011 flagpole law to allow flags in “front yards” with 15+ ft. setbacks • Allows flags to be attached to “any portion” of a residence owned by the owner and not maintained by the HOA • <u>MODIFICATIONS TO FLAG USAGE MAY REQUIRE CREATION OR MODIFICATION OF FLAG-USAGE PROVISIONS BY HOA</u> 	Immediately

II. DETAILED SUMMARY OF BILLS

BILLS AFFECTING SINGLE-FAMILY HOMES AND TOWNHOMES

HB 3176: Appointment of Board Members

This bill makes it easier for a board to appoint someone to fill a vacancy. While the previous version limited appointments to reasons of resignation, death or disability, this new version allows appointments for any reason. This bill specifically overrides any conflicting provisions contained in an Association’s governing documents.

HB 3800: Management Certificates

Though ostensibly not the primary purpose of this bill, it nevertheless requires all Single Family and Townhome Associations to file a new management certificate between September 1, 2013 and January 1, 2014. The bill requires a new filing even if the Association has recently filed a certificate (e.g. even an HOA who files a certificate on August 31, 2013 must file a new certificate between 9/1/13 and 1/1/14).

HB 503: Association Contracts

This bill contains provisions which will affect an Association's ability to contract by creating a set of restrictions which must be met in order for an Association to enter into a contract with a board member, a person related to a board member "within the third degree of consanguinity or affinity" (board member associate) or with a company controlled by a board member or board member associate. The restrictions are:

- Contracting with board member / associate only allowed if numerous other bids (2+) taken
- Contracting with board member / associate only allowed if board member does not participate in discussion or bid process on board side (including voting)
- Contracting with board member / associate only if any such interest / relationship is disclosed to or known by the board
- Contracting with board member / associate only if authorized by board vote of majority of uninterested board members

Depending on the Association's governing documents, it either expands or limits the Association's right to contract. In other words, if the Association governing documents flatly prohibited such contracts, the statute now allows them, subject to the restrictions. However for Associations without any limiting provisions on Association contracts, the above provisions now apply.

Finally, a Board entering into a contract under this provision must **certify that the requirements have been met via a written resolution**. Board resolutions are documents affecting real property, and must be filed with the real property records.

HB 2978: Expedited Foreclosure

This bill deals only with the new "expedited foreclosure" process created by the 2011 legislature. It creates a process through which the Court can order mediation between parties prior to disposition of an expedited foreclosure matter (further lengthening the already non-expeditious process). It further provides that a set of official forms for this process will be available by March, 2014. Note: this provision does not affect the exorbitant fees necessary to file an expedited foreclosure, so for most Associations it remains more cost effective (and usually faster) to simply file a lawsuit and foreclose judicially.

BILLS AFFECTING CONDOMINIUMS

HB 2075: Board Borrowing, Insurance Deductibles, Redemption, Management Certificates

This bill is significant, and covers many topics. The discussion below is broken up by topic.

Board Borrowing

This bill grants the Board the statutory right to borrow money in the name of the HOA, even if previously prohibited by the Condominium Declaration. It also provides that a vote on such action may be necessary, but only if the Condo Declaration requires such a vote.

Insurance

In the prior version of this law, after a unit or a portion of the common elements was damaged or destroyed to the extent that an insurance claim was filed (insurance loss), the damaged portions would be repaired unless 80% of the homeowners voted not to rebuild, including the owners of the unit(s) affected. This Bill removes the affected owner requirement, and specifically opens up the voting to all owners, affected or not.

The bill also specifically grants the Association the right to levy an assessment to pay the cost of repair after an insurance loss that exceeds the insurance proceeds.

The amount of damage now determines the allocation of liability for the cost to repair an insurance loss. Specifically:

- If the insurance loss does not exceed the deductible, the party normally liable for the repair / maintenance of the damaged portion of the property must pay the deductible (e.g. in many cases this means the Association will pay to repair common elements and the homeowner will repair the interior of the unit).
- If the insurance loss exceeds the deductible, then liability is decided by the first applicable option below:
 - The dedicatory instruments of the Association; or
 - The board of directors, who shall memorialize their decision in a written resolution which must be filed in the real property records; or
 - The deductible plus expenses are deemed to be a “common expense” and the Association may levy an assessment to pay for the cost of repair.

Finally, the bill provides that if an insurance loss is cause wholly or partly by a homeowner, guest, or invitee thereof, then the HOA may charge the deductible plus expenses directly to the homeowner who is determined to have caused the damage.

Redemption

At long last, a homeowner whose unit is foreclosed by the Association for non-payment of assessments may exercise their statutory right of redemption regardless of whether the purchaser at the foreclosure sale is the Association, or a 3rd party purchaser. Previously, the right of

redemption for condominiums only existed when the Association purchased the unit at foreclosure.

Management Certificates

A portion of this bill requires all Condominiums to file a new management certificate between September 1, 2013 and January 1, 2014. The bill requires a new filing even if the Association has recently filed a certificate (e.g. even an HOA who files a certificate on August 31, 2013 must file a new certificate between 9/1/13 and 1/1/14).

BILLS AFFECTING ALL ASSOCIATIONS

HB 680: Flags

This bill extends the 2011 flag provision to specifically allow for flags to be located in “front yards” where “front yard” is defined as having at least a 15 ft. setback line. Previously many Associations used the Associations power to approve locations from the 2011 bill to restrict flags to back yards.

The bill also allows for homeowners to attach a flag to any part of a house owned by the owner and not maintained by the Association. This may cause some confusion, and examination of the statute and governing documents should be performed before any flag enforcement.

Depending on the Association, the existing flag provisions may need to be modified to comply with this new law. If no flag policy exists in an Association, the Association should have the attorney draft one to take advantage of the restrictions allowed for by the statute (e.g. restrictions based on the United States Code and the Texas Government Code). The Association can only take advantage of the restriction if it “opts in” by filing a policy, they do not otherwise apply.

Regards,

Casey Jon Lambright

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