

April 29, 2009

## POA ACTION IN THE 2009 LEGISLATIVE SESSION

There are only five weeks left in the 81<sup>st</sup> Legislative Session. House Committees are running up against deadlines to get bills voted out of the originating committee, as well as deadlines looming regarding second readings of House bills on the floor.

Given this time crunch, this is the busiest part of session. We will continue to work with legislators and staff on amending legislation and remaining vigilant in these last final weeks. It is crucial to watch for any last minute changes to legislation in the form of floor amendments.

There are many bills that are far along in the process, something major is extremely likely to pass regarding POA legislation. CAI remains supportive of helping to pass some good legislation this session. We will continue to work with bill authors to ensure reasonable measures are passed into law. Below is a status update on the major pieces of legislation moving through the process. This update focuses on the "biggest" bills, with an asterisk by those bills most potentially problematic if not amended appropriately.

*Please watch your email for further updates and potential "alerts" for calls to action to support favorable, or oppose unfavorable, legislation.*

**HB 1473: Golf course re-development.** This bill would impose restrictions on redevelopment of golf courses in residential communities (place certain restrictions on, for example, redevelopment for commercial purposes such as office or retail.) *This bill is moving through the process; it was voted out of its House Committee on 4-08-09. The bill has since been placed on the local calendar and voted from the floor of the House. It has been received by the Senate and is pending referral.*

**HB 4299: No restrictions on rain barrels.** *This bill applies to all POAs, including condominiums. This bill, as filed, would have prohibited any POA restriction on rain barrels. Rain barrels could be placed in the front yard, painted purple, 20 feet tall, etc. We have worked with the bill's author and he agreed to accept amendments to the bill that would allow POAs to be able to place reasonable restrictions on size, location, materials, etc. HB 4299 was reported favorably as substituted from committee. It is currently awaiting review in Calendars Committee before it can be set for the House floor.*

**\*HB 1976: Omnibus POA bill.** *This bill applies to all POAs, including condominiums. This bill contains many potentially problematic provisions. As of 4-28-09, in its House Committee Substitute form, all POAs would have to hire a county judge or other similar official to count votes for all POA elections or other votes. The bill would void any self-help remedy in a deed restriction except for forced mowings (no removal of trash, debris, etc.) The bill would void any POA prohibition on public street parking (a POA could not adopt a rule prohibiting street parking). It would require 72 hours notice of all board meetings to be posted in the common area or on an association website. It would prohibit any board decisions being made by email or consensus --- a meeting would be necessary every time. The board could meet for "emergency" purposes, but only after two hours notice is posted in the common area or on the association website.*

It would require POAs to make public all election ballots (your neighbor knows how you voted – intimidation, harassment, retribution, etc.) It requires associations to allow owners to enter into a payment plan for any delinquent amount. *The end result of many of these provisions will be that dues will necessarily increase for all owners. This bill has had a hearing in its House Committee and was voted out of committee as substituted. **The bill has been sent to the Calendars Committee where it must be considered before it is sent to the House floor for a vote.** We have come a long way and continue to work with the author of the bill who is amenable to addressing a number of our concerns. However, there are several outstanding issues that are still potentially very problematic.*

**\*HB 3025: Regulation of religious displays.** *This bill applies to all POAs, including condominiums.* In its form as of 4-28-09, it would give an owner the absolute right to place an item in his “entry” as long as the item “reflects a tenet of” the owner’s religion. POAs would have the ability to adopt rules prohibiting display of offensive items, and require the items to be only on the door or doorframe and have a size of no greater than 25 square inches. This bill passed the House unanimously on 4-28-09.

**\*HB 4637: Ham radio antennas, flags/flag poles.** *This bill applies to all POAs, including condominiums.* This bill would prohibit POAs from placing any meaningful restrictions on ham radios or other amateur radio installations. As filed, there are *no* height or style restrictions: there could be a 60 foot antenna in your neighbor’s yard, or on his roof, supported by guy wires.

The bill also prohibits POAs from restricting the flying of US, Texas, or Armed Services flags, and also says that if an owner wants to erect a flag pole, the POA must allow it. Many associations currently prohibit flag poles, requiring flag stands (smaller poles attached at an angle to a house) instead. This bill also restricts a POA’s ability to restrict installation of generators and solar panels. *HB 4637 was left pending after a House committee hearing on 4-8-09. We have been working with the House bill’s author to address concerns. Committee action is pending.*

**SB 236 and HB 25: Solar panels.** *This legislation applies to all POAs, including condominiums.* These bills prohibit restrictions on solar panels in POAs, with the exception that restrictions are allowed for panels that are unsafe, in common areas, or located other than on the roof or in a fenced yard. *HB 25 was approved by a vote of the House on 4-2-09. HB 25 has been received by the Senate and is pending referral. SB 236 passed the full Senate on 3-19-09, and was heard in House Business and Industry Committee on 4-06-09 and is currently pending.*

**\*SB 237: Voting/bylaws.** This is a lengthy bill having many moving parts. Items it addresses include:

*Mandatory vote tabulators.* It would require that in most matters subject to a vote of the members of an association, the association must utilize a “neutral third party” to tabulate votes if requested by a certain number of members. Attorneys, property managers, and current board members or board candidates are expressly disallowed from serving as “neutral third parties”.

*No restrictions on board candidates.* This bill would outlaw any restrictions on a property owner’s right to run for a position on the board. It requires a POA to obtain from the DPS or a private vendor approved by the DPS, all criminal history record information relating to each person who declares a candidacy for position to the board.

*voids bylaw provisions.* This bill would (retroactively) prohibit bylaws from expanding the powers of the association from beyond those in the declaration. This is very

problematic in that fining authority, rule making authority, authority to enter contracts, and other such authorities are normally (only) incorporated into the bylaws rather than the declaration.

*Election procedure.* This bill requires that if a physical polling place is open for association members to vote, the polling must remain open (members must be allowed to vote) from 7 a.m. to 7 p.m. This would require renting a facility for 12 hours, and paying to staff it for 12 hours, for each POA election.

*This bill was approved by its Senate committee, and was placed on the Senate intent calendar on 4-14-09. The bill was not debated on the floor, and has since been pulled from the intent calendar.*

**SB 238: Relating to the availability of a property owners' association's books and records.** This bill contains some of the most meaningful reform for property owners, representing the biggest change in the law. This bill parallels the requirements of the governmental open records act (Public Information Act); for example, 10 day deadline to produce records, limited exceptions, harsh penalties (\$1,500 fine, etc.) for failure to comply, but importantly does not go so far as to bring POAs under the Act itself. *This bill was approved by the Senate on 4-8-09. The bill was heard in the House Committee on 4-27-09, and is currently pending in committee.*

**SB 240: Mandatory payment plans and application of payments.** A property owners' association would be required to adopt guidelines requiring delinquent owners to be offered payment plans. All owners' payments must be applied first to assessments and other amounts for which the association has a lien. This requirement would likely have the unintended consequence of creating a greater financial burden on rule-abiding, dues-paying owners. *This bill was approved by the Senate on 4-8-09. The bill was heard in the House Committee on 4-27-09, and is currently pending in committee.*

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

The association would likely also incur thousands of dollars in additional expense with each judicial suit filed, and defer or lose months of assessments as the case winds its way through the court system. **The ultimate result would be that assessments go up for all owners to pay for the lack of ability to collect and increased time needed for collection.** *As an alternative, we are suggesting judicial review foreclosure similar to the home equity-type of judicial review. These rules are promulgated by Texas Supreme Court (TRCP 736). We are working to educate members of the House that this would be harmful to association members, and should be amended.*

*This bill was approved by the Senate 4-8-09. The House author proposed a committee substitute that changes the required judicial foreclosure proceedings to expedited judicial foreclosure proceedings allowed under home equity laws, a process that CAI has supported. The bill was heard in its committee on 4-27-09, and is currently pending further action.*

**Key Dates** There are several key deadlines approaching:

- Monday, May 11, 2009 is the final day for House committees to report House Bills or House Joint Resolutions.
- Tuesday, May 12, 2009 will be the deadline for the last House Daily Calendar with House Bills or House Joint Resolutions to be printed and distributed.
- The House also must consider all 2<sup>nd</sup> readings of House Bills or House Joint Resolutions by the 122<sup>nd</sup> day of the session, which is Thursday, May 14, 2009.
- The 134<sup>th</sup> day, Tuesday, May 26, 2009 will be the last day for the House to consider 2<sup>nd</sup> reading Senate Bills or Senate Join Resolutions.
- The 135<sup>th</sup> day, Wednesday, May 27, 2009 will be the last day for the Senate to consider all bills and joint resolutions.

**Summary:** On many of the bills summarized above, the Texas Legislative Action Committee (TLAC) would likely be able to take a supportive or neutral position. However, there are some bills that are of significant concern to property owners' associations and their members. TLAC will continue to work closely with legislators. We also appreciate all the hard work that the substantive House and Senate Committees have invested in crafting these pieces of legislation and their continued efforts to work with CAI. Please watch for future updates and alerts regarding the status of bills that impact our industry. At this critical stage in the session we will need to continue to urge TLAC to contact members and be ready based on any future update or alert.