

June 3, 2009 **POA Action in the 2009 Legislative Session**

It is OVER! Monday was the last day of the legislative session. We will send out a more comprehensive summary of “what might have been” in the near future, but in short *NO legislation* passed that directly affects property owners associations.

Two bills, described below, passed, which have effect primarily on association management professionals. Both of these bills were “agreed” bills among all industry “players”.

SENATE BILL 1918. Effective date 9-1-09.

This bill amends Ch 207 of the property code. It applies ONLY to resale certificates for NON-condos. Condo resale certs are NOT affected. It provides that an update to a resale certificate (update to a previously-issued certificate) must be issued within 7 days of WRITTEN request by an owner (or his title company or agent). The update need ONLY contain the following information:

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

violations occurring after the initial issuance of the resale cert]

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

SENATE BILL 1919. Effective date 9-1-09.

Again this bill ONLY affects NON-condos. Condos are NOT affected. This bill amends Chapter 209 of the property code, which is not applicable to condos.

The bill amends the section of Chapter 209 which (already under current law) requires a management certificate to be filed, and kept updated, for all associations.

The bill’s amendments:

- (1) require the name of the association to be on the management certificate;
- (2) require the association’s “designated representative” or managing agent be listed on the management certificate [right now the requirement is that the “managing agent” be listed];
- (3) provide that if a POA does not file a management certificate or keep it updated, the purchaser, lender, or title company is not liable for amounts owed to the association as of the date of closing (amounts accruing before the date of closing); and
- (4) provide that if a POA fails to file a management certificate, its POA lien is effective

ONLY for amounts coming due after the effective date of a sale of a home to a new owner. [The POA does NOT lose its lien, “just” loses the right to enforce its lien for amounts coming due prior to the date of sale.]

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

HOUSE BILL 1976; HOUSE JOINT RESOLUTION 76

House Bill 1976, the omnibus POA bill, did not pass. Neither did HJR 76, the proposed amendment to the Texas Constitution that would have effectively done away with the right of a POA to enforce a lien for nonpayment of assessments.

Firm information

Niemann & Heyer LLP has been representing POAs and specializing in POA law for more than 20 years. Our lawyers have been instrumental in drafting virtually all POA law in Texas, including the Texas Uniform Condominium Act (Property Code Chapter 82) and the Texas Residential Property Owners Protection Act (Property Code Chapter 209). Connie Niemann Heyer is a past president and current board member of the Austin chapter of the Community Associations Institute, and is a lobbyist for the Texas Community Associations Institute Legislative Action Committee.