

2017 TEXAS POA-PERTINENT BILLS - REPORT #4 by Sharon Reuler
~ PERTAINING TO COMMON INTEREST COMMUNITIES (aka POAs, HOAs, Condos, Townhomes, Subdivisions) ~

NUMERICAL ORDER OF BILLS ~ POSTED ONLINE THROUGH 3/27/17

2017 HOUSE BILLS - POA-PERTINENT			
Bill #	Author	Companion	Sharon's Topic Classification
HB 522	Schofield	SB 1609	USES - Religious Display
HB 561	Murphy		USES - Golf Carts
HB 755	Parker		SALES - Transfer Fee
HB 923	Shaheen		ASSESS - Fines
HB 1341	Munoz		➤ OMNIBUS HOA <u>Governance</u> Bill [6 laws]
HB 1470	Villalba	SB 1405	ASSESS - Foreclose [Proceeds] NEW!
HB 1572	Workman		USES - Tree Removal
HB 1767	Collier	SB 2167	ASSESS - Collection by 3rd Parties
HB 1792	Swanson		LAND USE - Affordable Housing
HB 1964	Murphy	SB 873	UTILITIES - Submetered Water & Sewer
HB 1966	Paul		USES - Guns
HB 2320	Fallon		GOVERN - Declarant Control
HB 2508	Kuempel		USES - Towing
HB 2551	Parker	SB 451	LEASING - Short-Term
HB 2827	Oliveira	SB 1518	GOVERN - Corporate Law [Voting]
HB 3502	Landgraf	SB 1488	CORRECTION - Duplicate Property Code Secs
HB 3528	Vo	SB 2234	➤ OMNIBUS HOA <u>Collections</u> Bill [6 laws]
HB 3699	Walle		LEASING - Tenant Rights (Foreclosure)
HB 3868	Smithee		LEASING - Criminal History
HB 3888	Zerwas		USES - Assisted Living
HB 3974	Ashby		ASSESS - Condition of Purchase
HB 4012	Paul		UTILITIES - Water Shut-Off
HB 4026	Roberts		GOVERN - Board Qualifications
HB 4107	Neave		ASSESS - Foreclose (Expedited)

2017 SENATE BILLS - POA-PERTINENT			
Bill #	Author	Companion	Sharon's Topic Classification
SB 451	Hancock	HB 2551	USES - Leasing - Short-Term
SB 873	Creighton	HB 1964	UTILITIES - Submetered Water & Sewer
SB 1202	West		LEASING - Tenant Rights (Conversion)
SB 1228	Menendez		ARCHITECTURAL - Damage Repair
SB 1405	Creighton	HB 1470	ASSESS - Foreclose [Proceeds] NEW!
SB 1488	West	HB 3502	Chapter 209 - Omnibus Clean Up
SB 1518	Hancock	HB 2827	GOVERN - Corporate Law [Voting]
SB 1542	Kolhurst		CONDO - Creation
SB 1609	Bett- & Kolk-	HB 522	USES - Religious Display
SB 1943	Hughes		USES - Guns
SB 2167	West	HB 1767	ASSESS - Collection by 3rd Parties
SB 2234	Menendez	HB 3528	➤ OMNIBUS HOA <u>Collections</u> Bill [6 laws]

WARNING >> STOP LOOK & LISTEN

An ➤**Omnibus** Bill is hard to describe because it's a compilation of independent law changes that share the same bill number, which means each law change gets less scrutiny. The following [10-page](#) Report #4 treats each law change in an ➤**Omnibus** Bill as if it were a separate bill.

We have TWO ➤**Omnibus** HOA Bills this Session - one focused on HOA governance, the other on assessment collections. Both deal exclusively with "Chapter 209" subdivisions (not condos). [Pages 11 & 12](#) provide an overview of each ➤**Omnibus** Bill. HB 1341 is captioned so broadly that anything POA-related could be added to it during Session.

★ Please visit <http://www.capitol.state.tx.us> for these and all the bills.

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SB 1228 Menendez	ARCHITECTURAL - DAMAGE REPAIR. Requires HOA to "immediately" approve an owner's request to repair weather-damaged property to its pre-damage condition. Wonder what the backstory is. Some HOA docs don't require approval to rebuild according to original specs. Although the bill may be a no-brainer in the context of a tornado, does fading paint from years of sun exposure constitute damage from a "weather-related or other naturally occurring event"? What's an "event"? How soon after the event does the owner apply? What's the turn-around on "immediately"? Common sense should make this bill unnecessary. Too many what-ifs. <u>[THUMBS DOWN]</u>	TPC Ch 209 adds §209.018	SF	#1 S Bus&Comm
HB 1767 Collier	ASSESS - COLLECTION BY 3RD PARTIES. <u>Not POA-specific.</u> This bill adds a whole new chapter to Texas Finance Code, titled "Collection of Consumer Debt by Debt Buyers." If passed, it prevails over conflicting statutes, such as (possibly) TPC 209.0064 which limits third party collections of HOA assessments in subdivisions. I don't yet know enough about this bill, except to flag it. [Companion to SB 2167]	Finance Code Adds Ch 397	Condo & SF	#1 H Invest & Finance
SB 2167 West	ASSESS - COLLECTION BY 3RD PARTIES. See description of companion HB 1767.	Finance Code Adds Ch 397	Condo & SF	F
HB 3528 SB 2234 ► O-SEC 1	ASSESS - COLLECTION COSTS. The gist of NEW §209.0061 is to severely limit charges that are tacked onto a delinquent account by HOA, HOA manager, and HOA attorney. Late fees can't exceed 10% of the delinquent assessment. Interest and administrative charges are capped at 0.5%. Attorneys fees can't exceed 25%. Payment plan fees max at 3%. Also, owner can't be charged for payment plan negotiation or helping the owner understand the HOA's claim. The bill tries to limit charges to those authorized by the "dedicatory instruments", perhaps unaware that some HOAs record self-serving statements of fabricated authority, thus creating a "dedicatory instrument" that meets the letter of this new law. Bill overlooks charges authorized by statute. Small fees reduce HOA's interest in pursuing small debts until they accumulate to a size worth pursuing. Without a corresponding extension in statute of limitations (from 4 years to 10 years), HOAs may be forced to write-off some delinquencies. Although owners need protection from excessive fees, this isn't the answer. <u>[THUMBS DOWN]</u>	TPC Ch 209 adds §209.0061	SF	F
HB 3974 Ashby	ASSESS - CONDITION OF PURCHASE. HOME BUILDERS, MORTGAGE LENDERS, INVESTORS & TITLE INSURERS, BEWARE. Fuzzy intent. Bill may try to prevent a delinquent owner from buying even more lots or homes in the subdivision. If so, Bravo! But . . . how to achieve viz-a-viz disputed charges, foreclosure sale buyers, title insurance issues, use of trustees and single-asset entities to purchase, yada yada? <u>[THUMBS DOWN]</u> . DEVIL'S IN THE DETAILS.]	TPC Ch 209 adds §209.0065	SF	F

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HB 3528 SB 2234 ► O-SEC 1	ASSESS - DEMAND LETTER. (1) Required contents for delinquency demand letter that HOA must send to owner before HOA can add attorneys fees to owner's account. (2) Letter must "verify" every component of the debt and give the owner 30 days in which to question the charges and obtain additional information, at no charge. Sounds like it duplicates the debt verification letter the HOA attorney sends as required by Fair Debt Collection Practices Act.	TPC Ch 209 adds §209.00611	SF	F
HB 923 Shaheen	ASSESS - FINES. Current Texas law addresses the process by which the HOA fines owners for violations. For condos, Texas law requires "reasonable fines". For subdivisions, Texas law doesn't address amounts of fines. HB 923 requires "reasonable fines" for subdivisions and gives 3 criteria for determining reasonableness (1) nature of violation, (2) frequency of violation, and (3) violation's effect on the entire subdivision. Fining is a peculiar process. Some HOAs believe only huge fines will get an owner's attention, even if the fines are later waived. Some HOAs charge fines for every little thing - each infraction on a lot gets a separate fine. Some HOAs favor the same fine for every type violation because it's easy to administer. HB 923 doesn't address "administrative fees" charged by some HOA managers to monitor violations. Although "reasonableness" is hard to quantify, it's a standard that's used repeatedly in Chapter 209. At 3/6 hearing, Shaheen said he'll remove HB 923's cap on fines for continuing violations. What other changes will be made "in committee"? [THUMBS UP] FOR A REASONABLE IDEA.]	TPC Ch 209, adds §209.0061	SF	#2 H B&I PENDING Heard 3/6/17
HB 3528 SB 2234 ► O-SEC 5	ASSESS - FORECLOSE (AMOUNT). Prevents HOA from foreclosing a delinquent account that is \$5,000 or less. Unfortunately, bill doesn't extend the statute of limitations. In some cases, more than 4 years may be required for debt to exceed \$5K. [THUMBS DOWN]	TPC Ch 209 amends §209.009	SF	F
HB 4107 Neave	ASSESS - FORECLOSE (EXPEDITED). <u>Not POA-specific.</u> Amends the TCPRC Section titled "Mediation Following Application for Expedited Foreclosure" to address the loss mitigation application. [Need more info to evaluate.]	CivPrac&Rem Code §154.028	SF	F

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HB 1470 Villalba	ASSESS - FORECLOSE (PROCEEDS). NEW & MOVING. NEEDS WORK. Marketed as an "after-foreclosure" bill for contested excess sale proceeds, HB 1470 hasn't attracted the attention it deserves. Its problems are so legalistic, you'll snooze reading this thumbnail. Unintended consequences for HOAs include: [1] Caps what a trustee or his attorney get paid for handling competing claims on excess sale proceeds - \$75 on a \$3K assessment lien sale. [2] Wrongly assumes that only trustees handle foreclosures. HOA restrictions aren't trust instruments and some restrictions don't use "trustee" in connection with the HOA's power of sale. [3] Perpetuates lousy definition of "residential real property" that excludes townhomes in rows of 5 or more. [4] Long list of IDs that high bidder must provide may chill bidding or necessitate re-posting. [5] Because the new law isn't in the Property Code with other foreclosure laws, bidders and people foreclosing HOA liens won't know about it. Tsk. Tsk. Also: Residential only. Doesn't affect true judicial foreclosure resulting in sheriff's sale, and possibly not condo statutory lien foreclosure. Analysis based on Substitute received from Rep. Villalba's office on 3/27, not posted on Lege's website. Substitute approved by H Committee 3/27 for H Consent Calendar. [Companion to SB 1405] [THUMBS DOWN] UNTIL FIXED]	Bus & Com Code adds Ch 22; also Amends Occup Code §1802.001 & 1802.002	Condo & SF	#3
SB 1405 Creighton	ASSESS - FORECLOSE (PROCEEDS). See description of companion HB 1470.	Bus & Com Code; Occup Code	Condo & SF	#1 S Bus&Com
HB 3528 SB 2234 ► O-SEC 1	ASSESS - LAWSUIT. Owner has 60 days (after being served with lawsuit) to cure the debt described in the HOA's petition without being liable for more collection-related charges. Limits what HOA can claim, such as a cap of \$500 on "additional attorneys fees." Owner can make payment to HOA's attorney. Court may award more attorneys fees.	adds §209.00612	SF	F
HB 3528 SB 2234 ► O-SEC 4	ASSESS - PAYMENT. HOA may not refuse partial payments or block payment portals, even under payment plan. [OK]	§209.0063 adds (c)	SF	F
HB 3528 SB 2234 ► O-SEC 2	ASSESS - PAYMENT PLAN. Allows early pay-off of plan without penalty. (Do HOAs penalize early payment? Why?) Eliminates HOA manager's carve-out for payment plan administrative fees, which are capped elsewhere in bill. [Thumbs Up]	TPC §209.0062 amends (a) & adds (a-1)	SF	F

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SB 1542 Kolkhorst	CONDO - CREATION. B-A-D for developers. A condominium is "created" when the developer records a declaration of condominium in the county land records. The only public official who sees the declaration is the County Clerk for whom recording is a ministerial task. That's been the law in Texas since the first condo was created in 1963. SB 1542 changes that by authorizing a county to require "approval from the county" before a declaration of condominium can be recorded by the County Clerk. Approval of what? Can the county withhold approval for no reason? Bill is permissive, not mandatory. Don't know backstory. [THUMBS WAY DOWN. TOO BROAD.]	TPC §82.051 adds (d-1)	Condo	#1 S B&C
HB 3502 Landgraf	CORRECTION - DUPLICATE PROPERTY CODE SECTIONS. The 2015 Session enacted bills containing very-similar provisions with the same section numbers. This 305-page omnibus corrections bill does clean-up for many State laws, including one chapter of the Property Code - 209. See SECTION 16.001 on Page 122. [Companion to SB 1488]	TPC Ch 209 - §209.00592(a-1) eliminates one	SF	F
SB 1488 West	CORRECTION - DUPLICATE PROPERTY CODE SECTIONS. See description of companion HB 3502.	TPC Ch 209 - §209.00592(a-1)	SF	#1 S Admin
HB 1341 Munoz, Jr. ► O-SEC 3	GOVERN - ANNUAL MEETING. HB 1341 adds a 10-day notice to members for HOA annual meetings. Although Prop Code Chapter 209 has detailed notice requirements for HOA board meetings and elections, it's silent on notice requirements for HOA membership meetings, like the annual meeting. A minimum of 10 days notice is standard.	TPC §209.014 - amends (a)	SF	#1 H B&I
HB 1341 Munoz, Jr. ► O-SEC 2	GOVERN - BOARD MEETING. Chapter 209's open board meetings section was written in 2011 with a possibly-unique concept - "meeting records," of which the official minutes are but a part. HB 1341 seizes on the vagueness of "meeting records" by requiring it to include all communications from members relating to the board meeting. Why? So a homeowner can prove that his requests to bring a topic to the board's attention were denied? [THUMBS DOWN - TOO BIG A BURDEN ON EVERY SUBDIVISION HOA IN TEXAS FOR QUESTIONABLE BENEFIT]	TPC §209.0051 amends (d)	SF	#1 H B&I
HB 1341 Munoz, Jr. ► O-SEC 2	GOVERN - BOARD MEETING. This is a contender for the Worst Idea Award . It threatens to turn board meetings into gripefests. HB 1341 allows every owner to speak for at least 30(!) minutes at every board meeting . Whoa! The purpose of a board meeting is for directors to thoughtfully deliberate the HOA's business, not to provide a soapbox for homeowners. Under current State law, owners may attend board meetings to observe the board's deliberations, but have no right to speak. Even so, many HOAs provide time-limited open-mike sessions at start or end of board meetings. [THUMBS DOWN FOR DYSFUNCTIONALITY.]	TPC §209.0051 adds (f-1)	SF	#1 H B&I

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HB 4026 Roberts	GOVERN - BOARD QUALIFICATIONS. This "Pillow-Talk" bill is hoot. HB 4026 prohibits cohabitators of a "primary residence" from serving on the HOA board at the same time. History lesson! Prior to 2011, it was common for HOA Bylaws to have limitations like this on who could serve on the board. Hearing complaints from homeowners who were denied board positions because of delinquent accounts, the 2011 Legislature outlawed ALL qualifications for board service (except for criminal convictions) - throwing the baby out with the bath water. The 2015 Legislature began carving into the 2011 statutory override - criminal convictions don't matter after 20 years, and it's OK if bylaws require some - not all - directors to live in the subdivision. Getting back to the specifics of HB 4026 - One size does not fit all. What sounds healthy for a large HOA with a pool of board candidates is toxic for a super-small or apathetic HOA. This badly written bill doesn't address co-owners - only cohabitators. The primary residence of one could be the other's secondary residence. HOAs should have latitude in tailoring some reasonable qualifications for board service - as Bylaws, not as State law. [THUMBS DOWN.]	TPC §209.00591 adds (d)	SF	F
HB 2827 Oliveira	GOVERN - CORPORATE LAW. Not POA-specific. Omnibus bill amends many parts of Business Organizations Code. 8 SECTIONS of 33-page bill pertain to nonprofit corporations or unincorporated nonprofit associations. SECs 3, 28, 29 & 30 are particularly pertinent to POAs. New §6.157 allows co-owners [such as spouses] who are evenly divided on an issue to split their votes, which is contrary to many HOA Docs that prohibit vote splitting or don't count votes of co-owners who disagree. [Companion to SB 1518]	Bus.Org.Code - many sections	Condo & SF	#1 H B&I
SB 1518 Hancock	GOVERN - CORPORATE LAW. See description of companion HB 2827.	Bus.Org.Code - many secs	Condo & SF	#1 S B&C
HB 2320 Fallon	GOVERN - DECLARANT CONTROL. YIKES! Developers & homebuilders, the camel is in the tent. While a project is growing and being populated, it's customary for the developer to run the show by appointing all the HOA directors - typically people who work for the developer. The HOA directors hire the HOA manager, adopt the HOA budget, set the assessments, and enforce the rules - all of which affect homebuilders as they build-out the subdivision. In 2011 Texas law began requiring that one-third of the HOA directors be elected by homeowners when the project is 75% built-out. <i>(That was the camel's nose.)</i> This bill accelerates the election of directors. Under HB 2320, 1/3 of the board is elected by homeowners when subdivision is only 50% built and sold . At 75% homeowners elect a majority of the directors . HB 2320 also requires that board meetings be held within 10 miles of the subdivision during declarant control. [THUMBS DOWN. IMPRACTICAL, CUMBERSOME, COSTLY, CONTENTIOUS.]	TPC §209.0051 & §209.00591	SF	#1 H B&I

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HB 1341 Munoz, Jr. ► O-SEC 1	GOVERN - OPEN RECORDS. State law now requires the use of certified mail for an owner to request access to the HOA's open records. HB 1341 makes it easier (and less costly) for the owner to request access - allowing requests by email, telephone, and snail mail. Although this change seems reasonable for HOAs managed by volunteers, it may be a snake-pit for companies that manage many HOAs and rely on formal processes to ensure that an owner's request is not overlooked. [THUMBS DOWN - OK FOR SOME, NOT FOR ALL]	TPC §209.005 - amends (e)	SF	#1 H B&I
HB 1341 Munoz, Jr. ► O-SEC 1	GOVERN - OPEN RECORDS. State law now allows the HOA to prevent an owner from seeing certain HOA records, such as personnel files. Knowing how much workers are paid seems to be a huge issue for some people. HB 1341 looks like an attempt to circumvent the confidentiality of personnel files by forcing the HOA to open records of its payments to HOA's management company "to pay the company's employees to work on behalf of the HOA on HOA property." Is bill aimed at on-site managers and porters? [NEUTRAL - DON'T KNOW ENOUGH ABOUT]	TPC §209.005 - adds (l-1)	SF	#1 H B&I
HB 1792 Swanson	LAND USE - AFFORDABLE HOUSING. This is a NIMBY bill. B-A-D for developers seeking low income tax credits. Also BAD for people who need affordable housing, like teachers, nurses, and fire fighters. Requires notice and comment on proposed tax credit projects by any HOA and voluntary neighborhood association <u>within 5 miles of the site</u> . We don't have HOA registries. Impossible to implement in urban areas. [THUMBS DOWN]	Govt Code - amends Ch 2306	Condo & SF	#1 H UrbanAff
HB 1341 Munoz, Jr. ► O-SEC 4	LAW ENFORCEMENT - BY STATE. When the HOA ignores the consumer protections in Chapter 209, the wronged owner has no remedy other than suing the HOA so a court can order the HOA to follow the law. If the HOA fights the lawsuit, the owner's costs skyrocket. Bottom line - suing the HOA is too costly for most homeowners, and the bad-boy HOAs know it. Wronged owners are looking for a champion to make the HOA law-abiding. This bill authorizes the Texas attorney general, district attorney, or county attorney to sue the HOA for violating TPC Chapter 209. How is it funded? The HOA can be penalized up to \$25K for violating TPC Chapter 209 - paid to the State. Court-ordered pre-trial mediation may resolve most issues. Wish bill required prior notice to HOA so HOA has one more chance to do the right thing. HOAs claim threat of foreclosure is effective for collecting delinquencies. Perhaps threat of State enforcement would inspire bad-boy HOAs to follow the law. Doesn't affect condos. Applies only to violations of TPC Chapter 209 - not other laws and not the HOA documents. [THUMBS UP FOR FRESH IDEA]	TPC Ch 209 adds §209.017	SF	#1 H B&I

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REPORT #4 - with ► Omnibus Bills Integrated

2017 TEXAS POA-PERTINENT BILLS by Sharon Reuler

~ PERTAINING TO COMMON INTEREST COMMUNITIES (aka POAs, HOAs, Condos, Townhomes, Subdivisions) ~

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BILL NO. AUTHOR	POA-PERTINENT BILLS ~ POSTED ONLINE THROUGH 3/27/17 (in alpha order of topic assigned by Sharon Reuler) Describes the initially filed version of a bill (unless otherwise noted). Because bills morph during Session, unwise to rely on these thumbnail descriptions.	Statute/ Code Affected	Property Type	Status (SEE KEY) as of 3/27/17
HB 3868 Smithee	LEASING - CRIMINAL HISTORY. If approved by "a majority of owners", HOA may investigate the background and criminal history of prospective tenants in the subdivision. Bill is silent as to what the HOA does with the info. HB 3868 may inadvertently legitimize short-term rentals. BAD. Criminal check may trigger fair housing investigation. See HUD Policy issued 4/4/16 . Another BAD - a "majority of owners" is different than owners of a majority of the lots or owners holding a majority of the votes. Also BAD - approval procedure in HB 3868 overrides all other approval procedures. That's a slippery slope. [THUMBS DOWN - RISKY & SLIPPERY]	TPC Ch 209 - adds §209.018	SF	F
HB 2551 Parker	LEASING - SHORT TERM. See description of companion SB 451.	LocalGovtCode - adds §250.008	Condo & SF	#1 H UrbanAff
SB 451 Hancock	LEASING - SHORT TERM. Supports air B&Bs by preventing local governments from interfering with STRs (short-term rentals) - 30 days or less. Interesting testimony for and against. City of Galveston wants to keep its STR ordinance, which encourages and regulates STRs. Bill doesn't affect leasing rules of private entities, "such as POAs defined by TPC §204.004" - which is law in only 3 counties and doesn't cover condos. FIX. Somebody, please change the POA definition to TPC §202.001(2). [Companion to HB 2551]	LocalGovtCode - adds §250.008	Condo & SF	#2 S B&C PENDING heard 3/14/17
HB 3699 Walle	LEASING - TENANT RIGHTS. Not POA-specific. Foreclosure purchasers, ALERT! If a tenant-occupied dwelling is sold at a foreclosure sale, the tenant has a new bundle of rights under HB 3699. Under some circumstances, tenant has a <u>90-day</u> right [instead of current 30 days] to occupy after receiving notice to vacate.	TPC §24.005 adds 5 subsecs	Condo & SF	F
SB 1202 West	LEASING - TENANT RIGHTS. Not POA-specific. BAD for developers & investors. This bill affects condo conversions by adding duties to the ones specified in Property Code Chapter 82 - Texas Uniform Condominium Act. It appears to apply if you're trying to create a condo out of rental property, or to terminate a condo for redevelopment purposes. The bill is anti-landlord in many ways, and applies even if you own a single rent house or condo unit. Hope TAA puts the kibosh on this bill. [THUMBS DOWN]	TPC Ch 92, adds §92.026	Condo & SF	#1 S B&C

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HB 755 Parker	SALES - TRANSFER FEE. Not POA-specific. This "transfer fee" is not the one paid to HOA managers. It does interest <u>developers</u> of large master-planned and mixed-use developments who sometimes use "transfer fees" to fund cultural, educational, and recreational activities for the communities they create. This "transfer fee" is created by a recorded covenant that obligates every future purchaser of a property to pay into a dedicated fund - separate from the POA, but serving same population. In a rush to close a potentially abusive loophole in the statute, the 2011 Texas legislature severely tightened what qualifies as a community benefit for permitted uses of transfer fees. HB 755 slightly loosens one of the reins for educational activities. It's a start on fixing one of the more convoluted sections of the Property Code. [THUMBS UP FOR EDUCATION]	TPC §5.202 amends (c)	Condo & SF	#2 H W&M PENDING heard 3/22/17
HB 3888 Zerwas	USES - ASSISTED-LIVING. Without knowing the backstory, it's hard to know what this bill tries to achieve. On its surface, HB 3888 doesn't seem to change current law. It authorizes the POA to enforce restrictions against an assisted-living facility (specifically) just like any other land use in the development subject to the same restrictions - no special treatment, while recognizing that "community homes" have statutory protection. Could it be that an assisted-living facility is in a housing development with "one size fits all" restrictions and seeks special treatment from the HOA under the guise of being State-licensed? Is this the tip of an iceberg of changing land uses in aging developments with restrictions written for a single land use? [THUMBS DOWN - UNNECESSARY]	TPC Ch 202 adds §202.0045	Condo & SF	F
HB 561 Murphy	USES - GOLF CARTS. This is one of 4 bills that amend sections of Texas Transportation Code dealing with unlicensed vehicles - like golf carts & utility vehicles - in a "master planned community" - a term which (thankfully) is not yet defined in Texas statutes. At the 3/23 hearing, Rep. Murphy presented a "substitute" for the bill originally filed and the term "HOA" was used a few times in testimony and questioning. Eager to see the substitute version. Keep an eye on the batch of "golf cart" bills in case lawmakers decide to define "master planned community" for use in the Transportation Code. (Please, no!) ■ HB 561 by Murphy ■ HB 2968 by Bonnen ■ SB 684 by Seliger	Trans Code	Condo & SF	#2 H Trans PENDING heard 3/23/17
HB 1966 Paul	USES - GUNS. Bill prevents HOA from prohibiting concealed handguns going to or from unit or car. Although bill seems to aim at multifamily residential property, its applicability to "condos" means it applies to detached as well as attached units, and nonresidential as well as residential. [13 authors]	TPC Ch 82 adds §82.121 and Ch 92 adds §92.026	Condo only	#1 H B&I
SB 1943 Hughes	USES - GUNS. POA can't prevent lawful possession, transportation, storage, or discharge of firearms or ammo.	TPC Ch 202 adds §202.020	Condo & SF	#1 S State Aff

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HB 522 Schofield	USES - RELIGIOUS DISPLAY. Texas Almanac lists more than 31 religions with congregations in Texas - from Adventists to Zoroastrians. The list isn't exhaustive. For example, Wicca and Voodoo aren't listed. Today, most Texas HOAs use architectural control to prevent owners from installing permanent outdoor religious displays - such as front yard altars - even while allowing temporary Lent or Christmas displays. People have always been able to put religious displays inside their homes and in their fenced yards. HOAs regulate <u>public</u> displays. The religious display door was opened in 2011 by the "mezuzah law" that allows folks to put a small religious symbol on the front door or door frame - written for a high-rise condo with front doors opening to common interior hallways. This bill completely eliminates size & location requirements - for subdivisions & condos. There is no HOA or ACC control - nothing to temper religious displays that intimidate or anger people of different faiths. Will be interesting to see what role, if any, Fair Housing Acts play in this drama. Perhaps "architectural harmony" (aka sameness) is necessary to preserve the veneer of civility that allows people of different strongly-held faiths to feel at home in the same high-density community where only 10 feet separates houses from each other. As you would expect, many lawmakers want to champion religious expression. This bill has <u>21</u> authors, so far. Where to draw the line between freedom to worship and freedom to display? [THUMBS DOWN - TOO BROAD] [Companion to SB 1609]	TPC Ch 202 - amends §202.018	Condo & SF	#2 H B&I PENDING Heard 3/6/17
SB 1609 Bettencourt & Kolkhorst	USES - RELIGIOUS DISPLAY. See description of companion HB 522.	TPC Ch 202 - amends §202.018	Condo & SF	#1 S B&C
HB 2508 Kuempel	USES - TOWING. BIG! NEW! This bill moves some of the vehicle towing laws from the Texas Occupations Code to the Texas Property Code as the new 12-page "Texas Parking Facility Act." POAs are a type of "parking facility owner" defined by the Act. Don't yet know how it differs from current towing laws affecting POAs. But, happy to see it in the Property Code. (History nerds may recognized Title 16 of TPC - and the 400s Sections - as once housing [LOL!] the short-lived Texas Residential Construction Commission Act.)	Adds Title 16 §§401.001 et seq to Property Code	Condo & SF	#1 H License
HB 1572 Workman	USES - TREE REMOVAL. POAs and local governments must allow owner to remove trees or vegetation on his land that "the owner believes" pose a risk of fire. Rep. Workman filed same bill in 2013 [HB1858] & 2015 [HB1442] in response to 2011 Labor Day Fires in Central Texas, drought, and proliferation of invasive "junk trees" such as Ash Juniper ("Cedars"), Mesquite, and Salt Cedars. Bill was much debated in 2013, saw little action in 2015.	TPC Ch 202, adds 202.013; Local Govt Code adds 250.008	Condo & SF	#1 H B&I

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HB 4012 Paul	UTILITIES - MASTER METERED WATER. Notices that the water utility company must give before shutting-off master-metered water to a multi-family property (includes condos with at least 10 units). Doesn't apply if water is submetered to the units. This is in addition to notices required by other statutes.	Water Code Ch 13 adds §13.521- 523; amends TPC Ch 92 §92.302	Condo	F
HB 1964 Murphy	UTILITIES - SUBMETERED & MASTER METERED WATER & SEWER. For developments with a single ("master") water meter that serves units as well as common areas, Texas has rules for charging each unit a share of the whole water bill. This bill deals with water and sewer "overcharges" that exceed what's permitted by State Code. It's largely "pro-manager" by (1) distinguishing water utility charges from other charges to resident, (2) requiring an administrative procedure prior to suit, (3) limiting penalties for overcharging, and (4) providing rebuttable presumption favorable to HOA manager. Doesn't pertain to gas or electricity. [THUMBS UP] [Companion to SB 873]	Water Code §§ 13.501, 13.503, 13.5031, 13.505, 13.506	Condo	#1 HEARING 3/29/17 H NatRes
SB 873 Creighton	UTILITIES - SUBMETERED & MASTER METERED WATER & SEWER. See description of companion HB 1964.	Water Code	Condo	#1 S Ag, Water & Rural

(End of 10-page Report of POA-Pertinent Bills)

Next two pages are SECTION-by-SECTION overviews of two ► Omnibus Bills:

► Omnibus HOA Governance Bill (HB 1341 by Munoz, Jr.)
and

► Omnibus HOA Collections Bill (HB 3528 by Vo, SB 2234 by Menendez)

► **OMNIBUS HOA GOVERNANCE BILL OVERVIEW - HB 1341 by Munoz, Jr.**

SECTION-BY-SECTION REPORT OF 6 INDEPENDENT LAWS IN A 3-PAGE BILL

An omnibus bill packages together several independent measures under a single bill number. Each part of an omnibus bill stands alone ~ could be a separate bill.

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BILL SECTION	TOPIC - IN NUMERICAL ORDER OF BILL'S SECTIONS	TX PROPERTY CODE SECTION AFFECTED	Property Type
1	GOVERN - OPEN RECORDS. State law now requires the use of certified mail for an owner to request access to the HOA's open records. HB 1341 makes it easier (and less costly) for the owner to request access - allowing requests by email, telephone, and snail mail. Although this change seems reasonable for HOAs managed by volunteers, it may be a snake-pit for companies that manage many HOAs and rely on formal processes to ensure that an owner's request is not overlooked. [THUMBS DOWN - OK FOR SOME, NOT FOR ALL]	§209.005 - amends (e)	SF only
1	GOVERN - OPEN RECORDS. State law now allows the HOA to prevent an owner from seeing certain HOA records, such as personnel files. Knowing how much workers are paid seems to be a huge issue for some people. HB 1341 looks like an attempt to circumvent the confidentiality of personnel files by forcing the HOA to open records of its payments to HOA's management company "to pay the company's employees to work on behalf of the HOA on HOA property." Is bill aimed at on-site managers and porters? [NEUTRAL - DON'T KNOW ENOUGH ABOUT.]	§209.005 - adds (l-1)	SF only
2	GOVERN - BOARD MEETING. Chapter 209's open board meetings section was written in 2011 with a possibly-unique concept - "meeting records," of which the official minutes are but a part. HB 1341 seizes on the vagueness of "meeting records" by requiring it to include all communications from members relating to the board meeting. Why? So a homeowner can prove that his requests to bring a topic to the board's attention were denied? [THUMBS DOWN - TOO BIG A BURDEN ON EVERY SUBDIVISION HOA IN TEXAS FOR QUESTIONABLE BENEFIT]	§209.0051 amends (d)	SF only
2	GOVERN - BOARD MEETING. This is a contender for the Worst Idea Award . It threatens to turn board meetings into gripefests. HB 1341 allows <u>every owner</u> to speak for at least 30(!) minutes at <u>every board meeting</u> . Whoa! The purpose of a board meeting is for directors to thoughtfully deliberate the HOA's business, not to provide a soapbox for homeowners. Under current State law, owners may attend board meetings to observe the board's deliberations, but have no right to speak. Even so, many HOAs provide time-limited open-mike sessions at start or end of board meetings. [THUMBS DOWN FOR DYSFUNCTIONALITY.]	§209.0051 adds (f-1)	SF only
3	GOVERN - ANNUAL MEETING. HB 1341 adds a 10-day notice to members for HOA annual meetings. Although Prop Code Chapter 209 has detailed notice requirements for HOA board meetings and elections, it's silent on notice requirements for HOA membership meetings, like the annual meeting. A minimum of 10 days notice is standard. [NEUTRAL]	§209.014 - amends (a)	SF only
4	LAW ENFORCEMENT - BY STATE. When the HOA ignores the consumer protections in Chapter 209, the wronged owner has no remedy other than suing the HOA so a court can order the HOA to follow the law. If the HOA fights the lawsuit, the owner's costs skyrocket. Bottom line - suing the HOA is too costly for most homeowners, and the bad-boy HOAs know it. Wronged owners are looking for a champion to make the HOA law-abiding. This bill authorizes the Texas attorney general, district attorney, or county attorney to sue the HOA for violating TPC Chapter 209. How is it funded? The HOA can be penalized up to \$25K for violating TPC Chapter 209 - paid to the State. Court-ordered pre-trial mediation may resolve most issues. Wish bill required prior notice to HOA so HOA has one more chance to do the right thing. HOAs claim threat of foreclosure is effective for collecting delinquencies. Perhaps threat of State enforcement would inspire bad-boy HOAs to follow the law. Doesn't affect condos. And applies only to violations of TPC Chapter 209 - not other laws and not the HOA documents. [THUMBS UP FOR FRESH IDEA]	Ch 209 adds §209.017	SF only

➤ **OMNIBUS HOA COLLECTIONS BILL OVERVIEW**

Companions: HB 3528 by Vo and SB 2234 by Menendez

SECTION-BY-SECTION REPORT OF 6 NEARLY-INDEPENDENT LAWS IN AN 8-PAGE BILL

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BILL SECTION	TOPIC - IN NUMERICAL ORDER OF BILL'S SECTIONS	SECTION OF TX PROPERTY CODE CHAPTER 209 AFFECTED	Property Type
1	ASSESS - COLLECTION COSTS. The gist of NEW §209.0061 is to severely limit charges that are tacked onto a delinquent account by HOA, HOA manager, and HOA attorney. Late fees can't exceed 10% of the delinquent assessment. Interest and administrative charges are capped at 0.5%. Attorneys fees can't exceed 25%. Payment plan fees max at 3%. Also, owner can't be charged for payment plan negotiation or helping the owner understand the HOA's claim. The bill tries to limit charges to those authorized by the "dedicatory instruments", perhaps unaware that some HOAs record self-serving statements of fabricated authority, thus creating a "dedicatory instrument" that meets the letter of this new law. Bill overlooks charges authorized by statute. Small fees reduce HOA's interest in pursuing small debts until they accumulate to a size worth pursuing. Without a corresponding extension in statute of limitations (from 4 years to 10 years), HOAs may be forced to write-off some delinquencies. Although owners need protection from excessive fees, this isn't the answer. [THUMBS DOWN]	adds §209.0061	SF only
1	ASSESS - DEMAND LETTER. (1) Required contents for the delinquency demand letter that HOA must send to owner before HOA can add attorneys fees to owner's account. (2) Letter must itemize and substantiate ("verify") every component of the debt and give the owner 30 days in which to question the charges and obtain additional information, at no charge. Sounds like it duplicates the debt verification letter the HOA attorney sends as required by Fair Debt Collection Practices Act.	adds §209.00611	SF only
1	ASSESS - LAWSUIT. Owner has 60 days (after being served with lawsuit) to cure the debt described in the HOA's petition without being liable for more collection-related charges. Limits what HOA can claim, such as a cap of \$500 on "additional attorneys fees." Owner can make payment to HOA's attorney. Court may award more attorneys fees.	adds §209.00612	SF only
2	ASSESS - PAYMENT PLAN. Allows early pay-off of plan without penalty. (Do HOAs penalize early payment? Why?) Eliminates HOA manager's carve-out for payment plan administrative fees, which are capped elsewhere in bill. [Thumbs Up]	§209.0062 amends (a) & adds (a-1)	SF only
3	Re-titles heading of Sec. 209.0063. (Non-substantive)	§209.0063 amends	SF only
4	ASSESS - PAYMENT. HOA may not refuse partial payments or block payment portals, even under payment plan. [OK]	§209.0063 adds (c)	SF only
5	ASSESS - FORECLOSURE. Prevents HOA from foreclosing a delinquent account that is \$5,000 or less. Unfortunately, bill doesn't extend the statute of limitations. In some cases, more than 4 years may be required for debt to exceed \$5K. [THUMBS DOWN]	amends §209.009	SF only