

# POA CHECKLIST

## SUMMARIZED FROM 2011 TEXAS POA REFORM LAWS

**Roy D. Hailey**  
 BUTLER| HAILEY  
 8901 Gaylord Drive, Suite 100  
 Houston, Texas 77024  
 (713) 780-4135  
 E: [rhailey@ButlerHailey.com](mailto:rhailey@ButlerHailey.com)

### BEWARE!!!

This handout is intended to highlight the major new POA specific laws (from the 82<sup>nd</sup> Texas Legislative Session) and their effective dates for attorneys representing and creating POAs, managers of POAs and directors of POAs. It is not comprehensive. Not ALL new laws that may impact POAs are included and for brevity, bracketed laws, most exceptions and details are omitted. Subject matter and descriptions are intentionally brief to provide a quick checklist of "to dos", "need to knows" and deadlines. It is not intended to replace the advice of competent legal counsel or to address a particular situation. Legal knowledge may be required for the proper use of this material.

▪ POA = Property Owners Association ▪ C = Condos ▪ SF = Single Family (all POAs that are not condos)

✓	SUBJECT	TEX. PROP. CODE (BILL NO.)	PROP. TYPE	EFF. DATE
	~ PROPERTY USE ~			
	<b>Rain Barrel Rules</b> – Review existing POA dedicatory instruments and POA's geographics (e.g. location of condo units, size of lots, setbacks, etc.) to determine need for rules. Absent any existing restrictions/rules, owners may have absolute right to install any number, anywhere.	§202.007(d) (HB 3391)	SF & C	9/1/11
	<b>Solar Panel Rules</b> – Review existing POA dedicatory instruments and POA's geographics (e.g. location of condo units, size of lots, setbacks, etc.) to determine need for rules.	§202.010 (HB 362)	SF & C	6/17/11
	<b>Storm Shingles</b> – Owners absolute right to install, so long as they "resemble" other authorized shingles in the subdivision and "match the aesthetics" of the surrounding property.	§202.011 (HB 362)	SF & C	6/17/11
	<b>Flag Rules</b> – Review existing POA dedicatory instruments and POA's geographics (e.g. location of condo units, size of lots, setbacks, etc.) to determine need for rules. Unless POA has rules that comply with the new law, POA may not be able to dictate any aspect of newly permitted flags.	§202.011 (HB 2779)	SF & C	6/17/11
	<b>Religious Display Rules</b> – Review existing POA dedicatory instruments and POA's geographics (e.g. location of condo units, size of lots, setbacks, etc.) to determine need for rules.	§202.018 (HB 1278)	SF & C	6/17/11
	~ ELECTIONS, MEETINGS & DIRECTORS ~			
	<b>Open Board Meetings</b> – <b>REQUIRED</b> , including notice to owners (except certain matters allowed for executive sessions and other forums).	§209.0051 (HB 2761)	SF	1/1/12
	<b>Meeting Notice</b> – 10 to 60 day notice of owner meetings <b>REQUIRED</b> .	§209.0056 (HB 2761)	SF	1/1/12
	<b>Recount Procedures</b> – Owners may demand election recount by statutorily allowed tabulators.	§209.0057 (HB 2761)	SF	1/1/12
	<b>No Secret Ballots</b> – Ballots <b>MUST</b> be in writing and signed (electronic votes allowed).	§209.0058 (SB 472 and HB 2761)	SF	9/1/11
	<b>Owner Voting Rights</b> – <b>CANNOT</b> be suspended.	§209.0059(a) (SB 472 & HB 2761)	SF	9/1/11
	<b>Director Qualifications</b> – Most owner director qualifications <b>VOID</b> (except no felons or crimes of moral turpitude).	§209.00591 & §209.00592 (SB 472 & HB 2761)	SF	9/1/11
	<b>Developer Director Transition</b> – Existing developer board composition (developer to owner) reviewed to ensure compliance. Review control turnover provisions in form project documents to ensure compliance for new projects.	§209.00591 (c) (HB 2761)	SF	1/1/12

✓	SUBJECT	TEX. PROP. CODE (BILL NO.)	PROP. TYPE	EFF. DATE
	<b>Electronic &amp; Absentee Ballots</b> – Allowed.	\$209.00593 (SB 472) \$209.00592 (HB 2761)	SF	9/1/11
	<b>Director Appointment</b> – <b>NO</b> appointment to expired terms.	\$209.00593 (HB 2761)	SF	1/1/12
	<b>Election Vote Tabulators</b> – Candidates and their kin <b>PROHIBITED</b> ; access to ballots <b>RESTRICTED</b> .	\$209.00594 (SB 472 & HB 2761)	SF	9/1/11
	<b>Annual Meetings &amp; Elections</b> – Annual meetings <b>REQUIRED</b> ; otherwise owners right to call election meeting.	\$209.014 (HB 2761)	SF	1/1/12
	<b>~ POA RECORDS &amp; DOCUMENTS ~</b>			
	<b>Recording Requirement</b> – All POA dedicatory instruments <b>MUST</b> be filed of record or = “no effect”.	\$202.006 (HB 1821)	SF & C	1/1/12
	<b>Website Posting</b> – All dedicatory instruments <b>MUST</b> be filed on POA or management company’s POA publicly accessible website, if any.	\$207.006 (HB 1821)	SF	1/1/12
	<b>Declaration Amendment</b> – Only 67% owner approval required if higher % required in declaration.	\$209.0041 (SB 472)	SF	9/1/11
	<b>Open Records</b> – <b>MUST</b> adopt and file of record an open records policy (includes records production, review and copying), otherwise <b>NO</b> charges allowed; JP court remedies for owners denied access.	\$209.005(i) (HB 2761)	SF	1/1/12
	<b>Records Retention Policy</b> – POAs consisting of 15 lots or larger <b>MUST</b> adopt (and file of record).	\$209.005(m) (HB 2761)	SF	1/1/12
	<b>~ ASSESSMENTS, COLLECTIONS, LIENS, FORECLOSURE &amp; VIOLATIONS ~</b>			
	<b>Military Notice</b> – <b>REQUIRED</b> for certain enforcement actions.	\$209.006(b) (HB 1127)	SF	1/1/12
	<b>Payment Plan Guidelines</b> – POAs consisting of 15 lots or larger <b>MUST</b> be adopted and filed of record.	\$209.0062(a),(b) (HB 1228 and HB 1821)	SF	1/1/12
	<b>Application of Payments</b> – Owner payments <b>MUST</b> be applied in accordance with statutory application.	\$209.0063 (HB1228)	SF	1/1/12
	<b>Third Party Collections</b> – 30 day certified notice prior to turnover <b>REQUIRED</b> ; owner not liable for fees under contingency agreements.	\$209.0064(b),(c) (HB 1228)	SF	1/1/12
	<b>Copy Charge Foreclosure</b> – No foreclosure of debt consisting solely of fees charged for obtaining copies of POA records.	\$209.009(3) (HB 2761)	SF	1/1/12
	<b>Junior Lienholder Notice</b> – 60 day certified notice & opportunity to cure <b>REQUIRED</b> .	\$209.0091 (HB 1228)	SF	1/1/12
	<b>Judicial Foreclosure</b> – Expedited judicial foreclosure <b>REQUIRED</b> .	\$209.0092 (HB 1228)	SF	1/1/12
	<b>Foreclosure Amendment</b> – 67% of owners can amend to adopt or remove foreclosure provisions.	\$209.0093 (HB 1228)	SF	1/1/12
	<b>Lien Notices</b> – Prepared by attorneys (confirms prior law).	\$209.0094 (HB 1228)	SF	1/1/12
	<b>~ HOME SALES &amp; REALES ~</b>			
	<b>Transfer Fees</b> – Review existing transfer fees to determine limited need for statutorily required filing. And, attorney sample restrictions reviewed to ensure compliance with new “effective date” prohibitions.	Ch. 5, Subch. G (HB 8)	SF & C	6/17/11
	<b>Resale Certificates</b> – New timeframes, production procedures and required information, including POA lawsuits (except tax suits) and transfer fee disclosure.	\$207.003 (HB 1821)	SF	1/1/12