POA-Specific Bills that are on track to become Texas law as of 6pm on 5/20/13 ~ In Order by Progress, then in Order of Bill Number

~ PERTAINING TO COMMON INTEREST DEVELOPMENTS (POAs, HOAs, Condos) ~

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SB=Senate Bill ~ **HB**=House Bill ~ **CS**=Committee Substitute ~ **TPC**=Texas Property Code ~ **SF** = non-condo POA

BILL NO. AUTHOR	SUBJECT	Statute/ Code Affected	Type	STATUS AS OF 6pm 5/20/13
PASSED BOTH CHAMBERS (NO CHANGES) or HEADED FOR GOVERNOR'S DESK ~ as of 6pm on 5/20/13				
HB 35 Menendez	**USES - ADJOINING LOTS.** A peculiar statewide bill - for which there isn't historical or widespread demand - arising out of one constituent's complaint. Allows the owner of adjacent lots to use one of the lots for a dwelling, and to use the other lot for extra garages, parking areas, playscapes, or any of the defined "residential purposes." Because the definition is oddly formatted, it's not clear whether uses other than the 11 that are listed would be allowed . . . such as for a vegetable garden or outdoor kitchen, which aren't listed in the bill. Sounds benign, unless your living room has a view of a lot that is being used for parking and garages. *(For grins, read this bill in the context of a custom townhome development. S-c-a-r-y.)* The adjacent lots must be sold together as a package unless the owner restores the lot to a condition suitable for home building. ***Title companies,*** will you ask about adjacent lot ownership? POAs will want to be conscientious about reporting "adjacency" on resale certificates. Also, the docs of many POAs require a house on every lot and have different rates of assessment for vacant lots and lots with houses. Does an "adjacent lot with residential purpose" qualify for the full rate? ***TREC & Realtors®,*** will you add adjacent lot ownership to the §5.008 property condition disclosure for resales. ***Home builders,*** this bill may support using the lot adjacent to a model home for visitor parking. To the good, POAs may regulate the size, location, shielding, and aesthetics of the "residential purposes" on the adjacent lot based on use-specific criteria in the dedicatory instruments. ***(Yoo-hoo, document drafters, sharpen your quills.)*** Hopefully HOA docs for new projects will be written to address this bill (if it becomes law) - such as not allowing one person to own adjoining lots unless both have houses. From the 2011 hearings, we know that this bill arose from the perception of unfair treatment in rural Comal County when a POA allegedly refused one owner's application for a water well on his adjacent lot, having allowed them on the adjoining lots of other owners. The constituent who testified with passion in 2011 said almost nothing at the 3/5/13 H hearing ~ he no longer has a problem with his HOA. His problem was solved, without this bill becoming law. Ours is just beginning. The use of artificial statutory definitions (like "residential purposes") and the VOIDING of restrictions can have unintended consequences.	TPC Ch 209 - adds 209.015	SF	H passed 4/11 S passed 5/20
HB 3176 Bohac	**GOVERN - DIRECTORS.** Tweaks the 2011 Reform Law dealing with filling vacancies on the board. Allows the board to fill vacancies by appointment - for the duration of the unexpired term - without limiting the cause of the vacancy. Intended to apply also at time of board elections, if no one stands for election to fill a seat. No matter why a vacancy exists, the board can appoint a person to fill the vacancy. But, when the term of the appointee expires, the position must be filled by election . . . unless no one volunteers to run, in which case the board may appoint. (Interesting that some people will accept appointments to the board, but won't stand for election.) If you're not rah-rah about appointed directors, put your name in the hat at the next election. This bill did not change from the version initially filed. How rare is that!	TPC Ch 209 - amends 209.00593(a)	SF	H passed 5/1. S passed 5/20
HB 3800 Coleman	**DOCUMENTS - MANAGEMENT CERTIFICATES.** **WHOA! A "GOTCHA" FOR HOAS IS HIDDEN IN THIS BILL'S "TRANSITION" SECTION.** On its face, HB 3800 pertains only to the 254 County Clerks of Texas who are ordered to start indexing Management Certificates with a uniform statewide code. If this bill were amending Chapter 193 of the Local Govt Code ("Recording & Indexing by Counties"), I might have never noticed it. Fortunately(?), it's in the Property Code. Except for title companies, nobody much cares how docs are indexed. The butt-biter for HOAs is not the meat of the bill. Hidden in the bill's "Transition Section" is a directive to every HOA in Texas ~ RE-FILE YOUR HOA'S MANAGEMENT CERTIFICATE IN THE 4 MONTH WINDOW BETWEEN SEPTEMBER 1 AND JANUARY 1. Stop. Look. And, Listen. That instruction to HOAs may exceed what the Legislature tolerates for a Transition Section ~ the non-substantive "administrative" part of a bill ~~ CONTINUES ON NEXT PAGE ~~	TPC Ch 209 adds (a-1) to 209.004	SF	H passed 5/2. S passed 5/20.

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continued **HB 3800** Coleman	~~ CONTINUED FROM PRIOR PAGE ~~ that helps to minimize the disruption and avoid the shock of abrupt changes of law (paraphrasing the Texas Legislative Drafting Manual). Because a bill's Transition Section is typically innocuous, it doesn't get much attention. The jury is still out on whether 35,000 HOAs (per TCAA) can be required to prepare, execute, and file documents because of the Transition Section of a bill affecting County Clerks only. There are so many ironies about this bill, it's hard to know where to begin. In no particular order . . . **IRONY ONE.** This bill is the baby of TCAA (Texas Community Association Advocates) which wears the mantle of protecting HOAs and opposing State regulation and unnecessary expenses. **IRONY TWO.** None of the other HOA documents are subject to uniform indexing requirements. County Clerks vary widely in the categories used for indexing Declarations, Bylaws, and all the other "dedicatory instruments." **IRONY THREE.** Except for plats and Declarations, many HOA docs and Management Certs are hard to find in the indexes to County Records because the preparer omits an accurate property description or makes it hard for the County Clerk to identify the Grantee and Grantor for indexing purposes. Changing the classification code won't make it easier to index or find a badly prepared document. **IRONY FOUR.** HB 3800 doesn't change anything about the Management Certificate itself ~ the one recorded 3 years ago is still "good" if the info hasn't changed. It doesn't even require the use of magic words in the document's title so the County Clerk will know whether to classify it as a "condo" or "POA" Management Certificate. **IRONY FIVE.** We've gone from no uniform classification code to TWO codes that are suppose to distinguish Management Certs filed by condos from those filed by subdivisions - if HB 2075 also becomes law. Heaven help the preparers and the County Clerks in figuring out which is which! **IRONY SIX.** If the bill's Transition Section is enforceable as a duty for HOAs, it may create a costly pitfall for HOAs that don't refile before January 1 and who expect to collect delinquent assessments at home closings, because of Property Code Sec. 209.004(d) which was added in 2009. **IRONY SEVEN.** Who benefits financially from the duty imposed by the bill's Transition Section? County Clerks who get recording fees, HOA attorneys who prepare the Management Certs, and HOA managers who handle the filings for their clients. What about the HOA itself? See Irony Three. **IRONY EIGHT.** At the bill's hearing in the House, a lawmaker asked if it would cost anything to implement this bill and was told "No." Maybe no cost for the County Clerks, but under the bill's Transition Section all HOAs pay recording fees (albeit nominal ~ typically $20) and many if not most will pay a preparation or processing fee to an attorney and/or manager. **IRONY NINE.** This bill begs for an Attorney General opinion about the effectiveness of the Transition Section to impose a duty that is outside the scope of a bill's substance. If this weren't TCAA's bill, the logical applicant would be TCAA. **IRONY TEN.** Although there is huge need for an accurate estimate of the number of POAs in Texas, Management Certs aren't useful as a measure for many reasons, such as many (if not most) small self-managed POAs never heard of Management Certs or mistakenly think they're exempt, and well-informed POAs often have multiple Management Certs on file - one for each phase, one for each change of manager, one for each change of law, yada yada. **PERENNIAL IRONY.** Don't be misled by the term "Management Certificate" - it applies to all HOAs, not just those with hired managers. It applies to Declarant-controlled HOAs ***(Yoo-Hoo, Developers!)***, as well as do-it-yourself HOAs that rely entirely on volunteers ***(you, too, Volunteers!)***. The badly named "Management" Cert tells the public how to contact the HOA, and has been required for every subdivision HOA in Texas since 2002 (and for all condo HOAs since 1994). Still, many folks have never heard of Management Certs or think they apply to someone else. *(So much for the effectiveness of our laws!)* HB 3800 is similar to HB 2075 for condo management certificates. No changes in Senate.	TPC Ch 209 adds (a-1) to 209.004	SF	H passed 5/2. S passed 5/20.
SB 198 Watson	**USES - XERISCAPING.** Gives homeowners the right to use drought-resistant landscaping and water-conserving turf (but not astroturf), but . . . also gives POA the right to require and approve detailed landscape plans, and to require "maximum aesthetic compatibility" with other landscaping in subdivision, to the extent practicable. *(Yes, it says "MAXIMUM". Let's hope that's not code for denial of all xeriscaping, or else we may be punished with yet more artificial statutory definitions next Session.)* No changes in House. House floor amendment to allow artificial turf was offered and withdrawn. *(Amazing that "astroturf" became interchangeable with landscape turf. Like "reality" tv? What's real, what's virtual?)*	TPC Ch 202 amends 202.007	SF & Condo	S passed 3/18. H passed 5/20.

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SB 1093 West	**CORRECTION - DUPLICATE PROPERTY CODE SECTIONS.** The 2011 Session enacted bills containing identical or very-similar provisions - some with the same section numbers, some with different section numbers. This 228-page omnibus corrections bill does clean-up for many State laws, including 3 chapters of the Property Code - 51, 202, and 209. See Article 17 of the bill starting on Page 149 of the bill.	TPC 51.002(i) TPC 202.011-roofs TPC 209-many §§	SF & Condo	Sent to Guv 5/13
SB 1372 Hinojosa	**TIMESHARES - GOVERNANCE.** **DEVELOPER RIGHTS AFFECTED**. Timeshare bills usually fly under the radar because few of us work with timeshares. The 13-page bill adds 9 sections to Chapter 221 to create a governance subchapter titled "Timeshare Owners' Association." The new subchapter borrows bits and pieces of the 2011 HOA Reform Laws, and borrows TUCA's concept of "period of declarant control." Limits and defines significant development rights. One of the House floor amendments exempts timeshares from all Property Code provisions relating to POAs.	TPC Ch 221	time-share	S passed 4/18 H passed 5/16 with floor amendments. S ok'd H changes 5/20
PASSED BOTH CHAMBERS, WITH CHANGES - WAITING FOR CONCURRENCE OR CONFERENCE COMMITTEE - as of 6pm 5/20/13				
	(none in this category at 6pm on 5/20/13)			
IN THE HOME STRETCH - PASSED CHAMBER #1, OUT OF COMMITTEE IN CHAMBER #2 - as of 6pm 5/20/13				
HB 503 Hernandez Luna	**GOVERN - DIRECTORS.** Bill does two things. **FIRST**, it adds a global definition to Chapter 209 - for "development period." ***Hurrah!*** Up until now, the definition has been used section-by-section. *(Wish it also added a much-needed definition for "period of declarant control.")* **SECOND**, it affirmatively allows POAs to contract with its directors for goods or services if certain conditions are met, except during the defined "development period." **Six possible unintended consequences. ONE,** it doesn't apply to HOAs governed by homeowner-elected boards if the developer still has development rights. **TWO,** does excluding the development period also exclude the affirmative right of a declarant-controlled HOA to contract with the declarant or its affiliates? Surely it's only the conditions that don't apply during the development period. **THREE,** it introduces the term "*current association* board member" to Chapter 209, instead of the widely-used "board member". Is the distinction meaningful? **FOUR,** bill seemingly overrides HOA docs that expressly prohibit contracts with directors. **FIVE,** it doesn't address HOA contracts with homeowners or HOA officers (who aren't directors). Incorporated HOAs are still subject to Texas Business Organizations Code §22.230 which does cover HOA contracts with homeowners and HOA officers, as well as directors, and which has no carve-out for developers. **SIX,** it invokes the Government Code's consanguinity and affinity table for the third time in Chapter 209 ~ another subtle chink in the wall between private POAs and government entities? *(Note: This version of HB 503 didn't get a public hearing in the House. No changes in Senate as of 5/17.)*	TPC Ch 209 adds definition to 209.002; adds 209.0052	SF	H passed 5/10. S Comm passed 5/16 (no changes) S Consent Cal. 5/21

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HB 680 Burkett	**USES - FLAGS.** A 2011 POA Reform Law prevents POAs from prohibiting the display of certain flags on home lots, while giving POAs the right to approve locations of flagpoles. Some POAs used their "location" power to restrict flagpoles to back yards. HB 680 was filed to clarify that flags could be flown from flagpoles in front yards. Although the concept is reasonable, the bill was problematic for high density developments with little if any front yards. Possibly to address those applications, the bill version approved by the Senate Committee has a few changes that confuse me. **Confusion One.** POA can't prevent a homeowner from attaching a flagpole to any part of the house that's not maintained by POA . . . the roof? the chimney? the balcony? Not clear that the POA can limit locations unless the proposed location violates a local code. Can't picture a rooftop flagpole? Check out the White House in D.C. For second story mounts, check out the Texas Governor's Mansion. **Confusion Two.** Seems to permit the POA to demand removal of a flagpole on a "gotcha" technicality (didn't have prior ACC approval), while another addition seems to allow the homeowner to keep a flagpole that "otherwise complies" with the POA's regulations. **Confusion Three**. A front yard is not a "front yard" if the front building setback is less than 20 feet. *(The definition applies to all of Chapter 202, not to only the flag section. Looking ahead, wanna bet the "front yard" definition gets used and changed in future sessions for things like rain barrels, political signs, sale signs, religious displays, etc.?)* These may be non-issues for older subdivisions of houses on large lots. Different story for high density neighborhoods and new subdivisions of naked lots with skinny trees. (Mature trees hide a lot.) This badly written bill could easily become the template for future statutory protections of other types of lot uses.	TPC Ch 202 adds to 202.001 amends 202.011(b)	SF & Condo	H passed 4/3, S Comm passed CS 5/17 (changes) S Consent Cal. 5/21
HB 1824 Harper-Brown	**BRACKETED TO SPECIFIC SUBDIVISION - LAS COLINAS IN IRVING, TEXAS.** In 2011, the large-scale master-planned mixed-use community of Las Colinas protected itself from parts of the 2011 HOA Reform Laws by pushing through a new chapter of the Property Code devoted to Las Colinas. In 2011, Chapter 215 exempted Las Colinas from parts of Chapter 209. This year's bill exempts Las Colinas from ALL of Chapter 209 and - in its place - adds some governance provisions to Chapter 215 that are similar to Chapter 209. No changes in Senate Committee - passed out 5/16/13.	Amends TPC Ch 215	Mixed-Use	H passed 5/5. S Comm passed 5/16 (no changes) S Consent Cal. 5/21
HB 2075 Anchia	**CONDO - (1) DEFINITIONS, (2) BORROWING, (3) FORECLOSURE REDEMPTION, (4) INSURANCE DEDUCTIBLES, (5) MANAGEMENT CERTIFICATES.** ***THIS IS A BIGGIE FOR CONDOS.*** Don't be misled by short description here. **SEE ATTACHED SECTION-BY-SECTION OVERVIEW** of this mini-omnibus bill. On 5/17 Senate Committee approved the House version of bill, without change.	TPC Chapter 82 - multiple sections	Condo	H passed 5/9, S Comm passed 5/17 (no changes) S Consent Cal. 5/21
SB 1202 West	**ASSESS - FORECLOSE (NON-JUDICIAL).** The bill initially filed was almost completely rewritten - now amends Civil Practice & Remedies Code instead of TPC Chapter 51. Reverses thrust of initial bill. Instead of *encouraging* judges to order mediation on receipt of an application for an expedited foreclosure proceeding, the new version of bill discourages mediation. Bill tries to break the habit of some judges to order mediation as a stalling tactic because they don't cotton to home equity or assessment lien foreclosures. House Committee Substitute add one more prerequisite to mediation - the defendant\homeowner must have timely filed a response to the petition for a court order. (This bill is not POA-specific.) **[*]** The Civ Prac & Rem Code applies without regard to type of property. Expedited judicial proceeding by POAs does not pertain to condos.	Civ Prac & Rem Code - adds 154.028	SF **[*]**	S passed 4/24. H Comm. passed a CS 5/15 (changes) H General Cal. 5/21

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NOT CALENDERED FOR FLOOR VOTE AS OF 6pm 5/20/13 ~ TICK TOC TICK TOC				
HB 2978 Parker	**ASSESS - FORECLOSE (NONJUDICIAL).** The version that passed out of the House Committee and was approved by the House is a complete rewrite of the bill as initially filed. Bill addresses service of citation in a suit for expedited foreclosure - amending the Civil Practice & Remedies Code. Seems innocuous, but I'm not a litigator. (This bill is not POA-specific.) **[*]** Although Civ Prac & Rem Code applies without regard to type of property, the expedited judicial proceeding does not pertain to condos.	Civ Prac & Rem Code - adds 17.031	SF **[*]**	H passed 5/4. S Comm passed CS 5/20 (changes)
SB 1853 Fraser	**BRACKETED TO LLANO COUNTY.** This late-filed Senate Bill initially expanded the bracket for TPC Chapter 211 to include Llano County *(home of Llanite and Cooper's BBQ)*. In the House Committee it was amended to lower the requirement for approving bonds issued by Llano County MUD #1 - from two-thirds to a majority of voters.	TPC 211	SF	S passed 4/17. H Comm passed a CS 5/9. Sent to H Consent Cal.

End of Contenders List. Next 3 pages pertain to condo-specific HB 2075.

REP. ANCHIA'S HB 2075 - TUCA POTPOURRI

This is part of 2013 TEXAS POA-SPECIFIC BILLS (Posted Online Through 5/17/13) ~ PERTAINING TO COMMON INTEREST DEVELOPMENTS (POAs, HOAs, Condos) ~
Prepared by Sharon Reuler

BILL SECTION	SUBJECT - IN NUMERICAL ORDER OF BILL'S SECTIONS	APPLIES TO CONDOS CREATED			TX PROPERTY CODE SECTION AFFECTED
		Pre-TUCA ~ Created before 1994, & didn't amend Declaration to be governed exclusively by TUCA	Pre-TUCA ~ Created before 1994, but amended Declaration to be governed exclusively by TUCA	Post-TUCA ~ Created since 1/1/1994	
1	**TUCA's "Retroactive" Applicability.** SECTION 1 of HB 2075 amends the list of sections that apply to pre-TUCA condos to pick up the changes made in SECTION 3 of the bill.	YES	n/a	n/a	Amends 82.002(c)
2	**TUCA Definitions.** (groan) Bill imposes yet a new definition of "dedicatory instrument" on TUCA. Texas already has several definitions of "dedicatory instrument" - in different laws - each definition is slightly different. And we need yet another . . . why? **BAD IDEA.**	YES	YES	YES	Adds 82.003(a)(11-a)
2	**TUCA Definitions.** ***(Hurrah! Helps Developers & does no harm.)*** Bill fixes a costly problem for developers who market condos pre-construction by removing the word "recorded" from the definition of "declaration". The change conforms TUCA to the model Uniform Act, without affecting the requirement of recording the declaration. The required Condominium Information Statement must contain the declaration, which ~ logically ~ would not be recorded before the units are built and surveyed. This fix allows Texas developers to follow the nation-wide (and common-sensical) practice of distributing the unrecorded proposed declaration during the pre-construction marketing phase of the project. It undoes a mistake made when drafting TUCA in the early 1990s. If this does not become law, developers may be advised to continue playing the game of recording declarations with fictional "as built surveys", to be replaced in the county records when buildings and units can be surveyed.	YES	YES	YES	Amends 82.003(a)(11)
3	**TUCA Board Powers - Borrowing.** Shifts authority for borrowing money from the Declaration to the statute. Current law authorizes the condo board to take a loan in the name of the HOA only if the Declaration so provides. Under the proposed law, the condo board can decide to borrow even if the Declaration is silent. If the Declaration does require a vote of members as a condition for borrowing, this bill provides the mechanism for that.	YES	YES	YES	Amends 82.102
4	**TUCA Insurance Deductibles.** **UNFAIR?** This bill institutionalizes the widespread practice of shifting liability for deductibles on the HOA's property insurance from the HOA to the owner. Insurance deductibles on condo master policies can be large - $5K to $20K. Higher deductibles mean lower premiums, and hence lower assessments for owners to pay. Paying less is good, unless you're the homeowner who experiences the loss and is stuck with the large deductible on the HOA's policy. Since the homeowner has no voice in setting the HOA's deductible, it seems unfair unless there's a way for owners to insure themselves against this potential burden, and they are required to purchase such coverage. Since 1994, TUCA has required stacked units to be insured by the HOA - the theory being that in event of loss it will be too difficult to allocate responsibilities between units and common elements, so the unit owners (collectively) share the cost of the insurance premier (as well as the deductible) through their assessments. It's meant to be a shared risk. Because it's hard to budget for property damage claims, some HOAs resist covering the deductible or uninsured portion of a claim at time of loss.	YES	YES	YES	Amends 82.111

REP. ANCHIA'S HB 2075 - TUCA POTPOURRI

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Prepared by Sharon Reuler (Page 2 of 2)

BILL SECTION	SUBJECT - IN NUMERICAL ORDER OF BILL'S SECTIONS	APPLIES TO CONDOS CREATED			TX PROPERTY CODE SECTION AFFECTED
		Pre-TUCA ~ Created before 1994, & didn't amend Declaration to be governed exclusively by TUCA	Pre-TUCA ~ Created before 1994, but amended Declaration to be governed exclusively by TUCA	Post-TUCA ~ Created since 1/1/1994	
5	**TUCA Foreclosure Redemption.** Somewhat conforms the unit owner's right of redemption following the HOA's foreclosure to the terms of an HOA foreclosure under Chapter 209. As with a Chapter 209 foreclosure, the owner will have a right of redemption no matter who buys his unit at the HOA's foreclosure sale. (Currently, only if the HOA purchases at the HOA's forced sale.) This bill does not change the redemption period - still 90 days for condos, 180 days for single family under Chapter 209.	YES	YES	YES	Amends 82.113
6	**TUCA Management Certificate.** **WHOA! NEW DUTY & EXPENSE FOR CONDOS.** **[See this Report's analysis of HB 3800 by Coleman, which was revised more recently than this description.]** Bill requires every condo regime to re-record a Condominium Management Certificate during the 4 month window between September 1 and January 1. The required contents of the Management Cert haven't changed, so why bother? So the County Clerk can re-index the Management Cert as a new "type" of document. *(LOL! If County Clerks start classifying warranty deeds a new way, will we have to re-record the deeds to our homes? Is there a precedent for requiring the public to re-file docs that are already of record? Verrrry peculiar.)* Don't be misled by "management" in the name of the document. It applies to all condos, not just those with hired management. It applies to Declarant-controlled condos ***(Yoo-Hoo, Developers!)***, as well as do-it-yourself condos ***(You too, Volunteers!)***. It tells the public how to contact the HOA, and has been required since 1994. So, what's the "risk" of the law change? Some leaders and managers of townhouse-style condos and detached single-family condos aren't sure if they're condos or not. And some condo docs don't make it easy to know. If a condo's management certificate is titled "Management Certificate" and gets indexed as a "Property Owners Association Management Certificate" instead of as a "Condominium Association Management Certificate," will it be ineffective for its intended purpose? This bill's operative provision is merely a directive to county clerks about indexing Management Certs. The kicker for condos is in SECTION 7 of the bill - the easily overlooked "Transition Section" - that requires re-recording for every condo in Texas. This part of HB 2075 is similar to HB 3800 for single-family subdivisions subject to Chapter 209.	YES	YES	YES	Amends 82.116
7	Applicability of the law changes to events and circumstances.				
8	EFFECTIVE - September 1, 2013.				

THE CONDO MINI-OMNIBUS BILL ~ REP. ANCHIA'S HB 2075

BY WAY OF INTRODUCTION . . . .

A BIT OF BACKGROUND

Unlike subdivisions, condominium creation is dependent on an "enabling" State law. Texas has two enabling condominium laws - both in Title 7 of the Texas Property Code. One pertains to condos created between 1963 and 1993 (the "Old Condo Act" - TPC Chapter 81). The other pertains to condos created after 1993 - and all future condos created in Texas (the Texas Uniform Condominium Act aka **TUCA** ~ "too-kah" - TPC Chapter 82) .

But, some provisions of TUCA apply to every condo - even the old ones. Or, said another way, every condominium in Texas is subject to some parts of TUCA - the parts listed in TUCA's Sec. 82.002(c) - also referred to as "the retroactive provisions." Also, some of the old condos have amended their declarations to adopt TUCA in its entirety, and are no longer subject to the Old Condo Act.

CHAPTER 81 - THE "OLD CONDO ACT"

Enacted in 1963, The Texas Condominium Act is a typical first generation enabling condo statute ~ characterized by brevity, rigidity, and a distinct lack of consumer protections. Since its adoption in 1963, the Old Condo Act was codified once and amended only a few times. Not much activity for a 50-year run. Chapter 81 holds no interest for condominium developers or for condos created since 1994.

So, why are amendments proposed for 2013? Hmmmm. Amending Chapter 81 seems like an awkward alternative to amending TUCA to make the new laws "retroactive" to pre-TUCA condos. The amendments to Chapter 81 more than double the size of tiny Chapter 81. Different strokes for different folks.

CHAPTER 82 - TEXAS UNIFORM CONDOMINIUM ACT (TUCA)

Unlike the Property Code's Chapter 209 for subdivisions, which grows like a patchwork quilt, Chapter 82 (TUCA) is a "comprehensive" statute that covers the creation, operation, and termination of condo developments, and the sale and resales of condo units. Its concepts are consistent with Uniform Acts in other states, but are not used elsewhere in Texas law and hence are unfamiliar to the drafters of these bills. Pasting parts of Chapter 209 into TUCA tears at TUCA's finely woven fabric and weakens TUCA's carefully constructed scaffolding.

Enacted in 1993 (after a decade of bill filings and hearings), Chapter 82 is based on the model Uniform Condominium Act promulgated in 1977 by the National Conference of Commissioners on Uniform State Laws and offered to the states for adoption. Although customized for use in Texas, in 1993 TUCA retained enough of the fabric and earmarks of the model Uniform Act to legitimately classify Texas as a "Uniform Act State" for condominium law. In 2008, the National Law Commissioners produced a Homeowners Bill of Rights Amendment for use in updating the Uniform Condominium Act with more consumer protections. Texas has not considered adoption of the Bill of Rights Amendment.

Of course TUCA needs to change with the times. The much-lauded consumer protections of 1993 pale in comparison to the ones now in demand. BUT changes should be made within the context of TUCA, with respect for TUCA's sophisticated concepts and interrelated provisions. Instead, Texas is now on the path of turning Chapter 82 from a "Uniform Act" into a version of Chapter 209. Unfortunately, TUCA has no defenders at the Capitol - no one is looking out for TUCA's integrity.

CHAPTER 209 (SUBDIVISIONS) AND CHAPTER 82 (CONDOS) ARE NOT COMPARABLE

Issue 1 - Commercial Condos. The proposed amendments to TUCA apply to **commercial condos**, as well as residential. Whereas the same requirements in Chapter 209 apply only to residential subdivisions.

Issue 2 - Different Concepts. Because TUCA has its own concept-based terminology, it takes more than changing "lots" to "units" to successfully integrate parts of Chapter 209 into TUCA.

Issue 3 - Adios Flexibility. 20-year old TUCA has (until now) dodged the bullet of State micro-management of condo operations by providing standards and leaving the details to the documents of the individual condo regimes.

Issue 4 - Hello Uniformity. Because some condos are physically and practically indistinguishable from residential subdivisions, it makes sense to have them play by the same rules. The model uniform acts encourage comparable treatment of all common interest communities. The devil is in the details.