

# Community Association Newsletter

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## New Gun Laws Coming to An Association Near You

By Marc Markel

It's September of an odd numbered year. For Texans, this means understanding and complying with new laws. On page 5, we cover the changes to the Texas Property Code the property owners association (POA) world needs to be aware of, but in this article we want to highlight the changes to gun laws enacted by the legislature that could have a major impact on POAs for years to come.

SB 741 and HB 302 are the new gun laws coming out of the 86th Texas Legislature affecting POAs. HB 302 only impacts condominium associations, while SB 741 affects both condominium and single-family, townhome associations.

### HB 302

We'll begin our focus on HB 302. HB 302 was initially drafted by Dennis Paul (R), Houston, and filed on November 15, 2018. The bill proceeded through the legislature passing the House on April 11 and the Senate on



May 2, and it was signed by Governor Abbott on May 16.

Coming into law on September 1, the bill amends 30.05, 30.06 and 30.07 of the Texas Penal Code to provide a defense against prosecution for tenants or guests of a Chapter 81 or 82 condominium lawfully possessing or storing a firearm in their vehicle or unit and lawfully transporting a firearm from their vehicle through the parking lot to the unit and vice-versa.

The change that condominium associations need to pay attention to is related to restricting firearms in common areas. HB 302 amends Chapter 82 of the Property Code by adding Section 82.121. The new section states a condominium unit owner, tenant, or guest of the owner or tenant cannot be prohibited from lawfully possessing, carrying, or storing a firearm, part of firearm, or firearm ammunition in the condominium unit or in a vehicle parked on the condominium's property in a space provided for tenants or guests. The new section also allows for the lawful transporting of the firearm through the association's common areas for the purpose of entering or exiting the condominium unit, the vehicle on the property, or the condominium property. This change reaffirms the precedent set forth in *Chiarini v STATE*<sup>[1]</sup> that the common areas of a condominium unit are 'owned in common by all of the Owners of the Condominium Units and shall remain undivided,' thus allowing for a condominium owner to lawfully transport a firearm in the common areas. The introduction of this bill was in response to some condominium boards in the state passing rules to prohibit the carrying of weapons in the common areas. The bill does not address if a restriction can be placed on possession in common areas other than while transporting but the Chiarini case should provide sufficient information for condo boards to not attempt to modify the laws.

HB 302 also amends Chapter 92 of the Property Code to prohibit landlords from restricting the lawful possession of a firearm in the leased unit or in a vehicle on the leased property in the lease agreement.

### **SB 741**

The gun bill with the most sweeping changes for POAs is SB 741. SB 741 was initially drafted by Sen. Bryan Hughes (R), Mineola, and filed on February 11, 2019. The bill proceeded through the legislature passing the Senate

<sup>[1]</sup> <https://caselaw.findlaw.com/tx-court-of-appeals/1642032.html>

on April 17 and the House on May 22. The bill was signed by Governor Abbott on June 14.

SB 741 amends Chapter 202 of the Texas Property Code by adding Section 202.020. The new section changes the way associations can draft or enforce their dedicatory instruments related to firearms. After September 1, associations will no longer be able to include or enforce provisions in their dedicatory instruments “that prohibits, restricts, or has the effect of prohibiting or restricting any person who is otherwise authorized from lawfully possessing, transporting, or storing a firearm, any part of a firearm, or firearm ammunition, as well as the otherwise lawful discharge of a firearm.”

If your association has prohibitions in the dedicatory instruments [which would include rules and regulations promulgated by the board] against the lawful possession of firearms, it will have to immediately stop enforcing these prohibitions.

So many associations have entered into the business of attempting to regulate possession of weapons in the past and those rules and regulations are no longer enforceable if they ever were. Private businesses like management companies can if they desire, continue to regulate gun activity but as we have cautioned in the past if you regulate be sure you can and do enforce. I have yet to come across a management office that has a metal detector that screens employees and visitors.

Some of you that live in, or manage, subdivisions in unincorporated areas of counties may be thinking to yourself this is a great bill because I can now hunt from my back porch. This may or may not be the case. Section 235.042 of the Texas Local Government Code gives county commissioners courts the authority to prohibit or regulate the discharge of firearms on lots that are 10 acres or smaller in subdivisions in unincorporated areas of counties. For example, in Atascosa County, which is south of San Antonio, the county commissioners court passed a resolution prohibiting the discharge of firearms on lots 10 acres or less. Violating the resolution could result in a Class C Misdemeanor punishable with up to a \$500 fine.<sup>[2]</sup> The resolution does have some exceptions, one being the removal of a predatory animal, so check with your individual counties to better understand what the rules and regulations are where you live because not every county has adopted such a resolution and hunting on a lot 10 acres or less in an unincorporated subdivision may be permitted. For example, Kendall County has not

<sup>[2]</sup> <https://www.pleasantonexpress.com/articles/hunting-on-small-tracts-of-land-prohibited/>



## Are You Interested in Free Legal Education?

RMWBH is providing a variety of education opportunities to best fit your organization's needs and schedule.

Our knowledgeable HOA attorneys can deliver in-house presentations for your managers, online webinars for your board members, off-site attorney meet-and-greets and much more.

To learn more about our education opportunities and the topics we cover:

[CLICK HERE](#)



promulgated a resolution, so a weapon can be discharged on lots 10 acres or smaller. The one that discharges a weapon is responsible for the effects of the firing of a gun but the association may no longer regulate that activity in areas of the state where the discharge is not regulated by the county.

With the changes to the laws, you or your homeowners may have questions on how your dedicatory instruments and their enforcement are affected. Do not hesitate to reach out to your attorney to ensure you are following the proper procedures and your questions on what you can or cannot do with a firearm in your community are answered.



Marc is an Equity Shareholder with the firm's Real Estate section and is a leader of the Community Association Team. He has actively defended community associations and their volunteers in litigation and frequently assists developers through their due diligence process and creation of community process.

## Firm Highlights

### Rick Butler and Marc Markel Included on Best Lawyers in America for Real Estate Law for Third Consecutive Year.

Rick Butler and Marc Markel, two of Roberts Markel Weinberg Butler Hailey PC's (RMWBH) Founding Shareholders, are once again included on the annual Best Lawyers in America 2020 list for Real Estate Law.

This marks the third consecutive year both Rick and Marc have been included on the list.

Inclusion on a Best Lawyers list is widely viewed across the legal industry as a significant honor because it is an acknowledgment by one's peers that the named person is a top attorney in the United States in your field of practice.

"I strive to provide clients with sound legal advice and quality work product. To the extent that the high peer review suggests that these goals are being achieved, I am grateful" said Rick.

"I am honored to be recognized by my peers for my contributions to the industry. I am looking forward to continuing to serve my diverse real estate clients with their legal challenges and to continue to mentor those that are new to the field of real estate," added Marc.

To become recognized by Best Lawyers an attorney must be nominated for consideration. After nomination, the attorney is placed in a geographic region and evaluated by their peers based on their professional expertise. The attorneys who receive high peer reviews are placed through an additional verification process to ensure they are currently practicing and in good standing.

To find Rick and Marc's listings in the Best Lawyers in America go to [www.bestlawyers.com](http://www.bestlawyers.com) and search by lawyer name, firm, region, and/or practice area.

### Sara Wolfe Joins Terry Foundation Alumni Advisory Board

Congratulations to Associate Sara Wolfe for being chosen to serve on the Terry Foundation Advisory Board. The Terry Foundation is a non-profit organization that provides scholarships to freshman and transfer students at many Texas public universities who have demonstrated the capacity to become outstanding future leaders and who need financial assistance to achieve their goals in higher education.



# New Laws Affecting POAs September 1



Every two years, Texas sees 140 fast and furious days in Austin that would make Hobbs and Shaw envious. Usually, there is bickering on both sides of the aisle, hours of debate and much uncertainty as the sine die deadline and the unknown of a special session approach. But for the 86th Texas Legislature, the session passed without much controversy and for the POA world very few new laws are coming on the books. As the calendar turns to September, we want to remind you of the laws that are coming your way.

The following laws will take effect September 1:

## **Laws Applying to Only Single-Family and Townhome POAs**

Section 209.00591 was revised adding Sections (a)(2) and (a)(3).

SECTION 1. Section 209.00591, Property Code, is amended by adding Subsections (a-2) and (a-3) to read as follows:

(a-2) Notwithstanding any other provision of this chapter, a property owners' association that governs a subdivision comprised of multiple sections may designate in an association instrument governing the administration or operation of the association a specified number of positions on the board, each of which must be elected from a designated section of the subdivision. The instrument may require each board member representing a section to reside in that section.

(a-3) A person may not serve on the board of a property owners' association if the person cohabits at the same primary residence with another board member of the association. This subsection does not apply:

- (1) to an association with fewer than 10 residences; or
- (2) during a subdivision's development period to affect the eligibility to serve on the board of:
  - (A) a person who cohabits with a developer of the subdivision regulated by the association; or
  - (B) the developer.

SECTION 2. Section 209.00591(a-3), Property Code, as added by this Act:

(1) does not affect the entitlement of a member serving on the board of a property owners' association immediately before the effective date of this Act to continue to carry out the board's functions for the remainder of the member's term; and

(2) applies only to a member elected on or after the effective date of this Act.

### Laws Applying to Single-Family, Townhome and Condominium POAs

The legislative changes added 2 section 202.020s to the Property Code.

SECTION 1. Chapter 202, Property Code, is amended by adding Section 202.020 to read as follows:

Sec. 202.020. REGULATION OF FIREARMS OR FIREARM AMMUNITION. A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits, restricts, or has the effect of prohibiting or restricting any person who is otherwise authorized from lawfully possessing, transporting, or storing a firearm, any part of a firearm, or firearm ammunition, as well as the otherwise lawful discharge of a firearm.

SECTION 3. Chapter 202, Property Code, is amended by adding Section 202.020 to read as follows:

Sec. 202.020. CERTAIN SALES OF BEVERAGES BY CHILDREN. (a) A property owners' association of a residential subdivision may not adopt or enforce a restrictive covenant that prohibits or regulates, including by requiring a permit or fee, the occasional sale of lemonade or other nonalcoholic beverages from a stand on property located in the subdivision by an individual younger than 18 years of age who has the permission of a property owner in the subdivision for the sale.

(b) A property owners' association:

(1) does not owe a duty of care to persons participating in a beverage sale described by Subsection (a); and

(2) is not liable for any injury to persons participating in a beverage sale described by Subsection (a), except for wilful or wanton acts or gross negligence of the association.

In addition to these laws, the political signage statute is being moved out of Chapter 202 of the Prop Code and into the Elections Code:

SECTION 3. Section 202.009, Property Code, is transferred to Chapter 259, Election Code, as added by this Act, redesignated as Section 259.002, Election Code, and amended to read as follows:

Sec. 259.002 ~~{202.009}~~. REGULATION OF DISPLAY OF POLITICAL SIGNS BY PROPERTY OWNERS' ASSOCIATION.

(a) In this section, "property owners' association" has the meaning assigned by Section 202.001, Property Code.

(b) Except as otherwise provided by this section, a property owners' association may not enforce or adopt a restrictive covenant that prohibits a property owner from displaying on the owner's property one or more signs advertising a ~~{political}~~ candidate or measure ~~{ballot item}~~ for an election:

(1) on or after the 90th day before the date of the election to which the sign relates; or

(2) before the 10th day after that election date.

(c) ~~{(b)}~~ This section does not prohibit the enforcement or adoption of a covenant that:

(1) requires a sign to be ground-mounted; or

(2) limits a property owner to displaying only one sign for each candidate or measure ~~{ballot item}~~.

(d) ~~{(c)}~~ This section does not prohibit the enforcement or adoption of a covenant that prohibits a sign that:

(1) contains roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component;

(2) is attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other

existing structure or object;

- (3) includes the painting of architectural surfaces;
- (4) threatens the public health or safety;
- (5) is larger than four feet by six feet;
- (6) violates a law;
- (7) contains language, graphics, or any display that would be offensive to the ordinary person; or
- (8) is accompanied by music or other sounds or by streamers or is otherwise distracting to motorists.

(e) ~~(d)~~ A property owners' association may remove a sign displayed in violation of a restrictive covenant permitted by this section.

With the new laws coming on to the books on September 1, attention is quickly turning to the next legislative session. We are just over one year away from the start of bill filing and debate beginning again. The 87th Texas Legislature will be gaveling into session on January 12, 2021. As these key dates quickly approach, RMWBH will continue to be here to provide the necessary updates for you as we work with the Texas Community Association Advocates (TCAA) to promote the best interests for all Texas POAs.

## Upcoming Events

### Judicial and Non-Judicial Foreclosures

As the year progresses and delinquencies rise, associations may be considering foreclosure in order to recover past due assessments and other charges pursuant to a judgment and/or the applicable deed restrictions. Join Associate Attorney Paul Gaines as he discusses the judicial and non-judicial foreclosure processes for single-family and condominium associations and answers your questions regarding same.

This course is approved by the Community Association Managers International Certification Board (CAMICB) to fulfill 1 hour of continuing education requirements for the CMCA certification.

**September 18, 2019**

**RMWBH Training Room  
4630 N. Loop 1604 W., Suite 311  
San Antonio, TX 78249  
4:00 p.m. - 6:00 p.m.**

\*Appetizers and drinks will be provided.

[Register Here >>](#)

### Deed Restrictions

With fall on the horizon, home improvement projects and landscaping will turn the page like leaves falling from the trees. It follows that associations will experience an uptick in compliance-related matters. Yard lawns may be neglected, and Architectural Control Committee procedures may be ignored. Adherence to statutory notice requirements and a careful consideration of the provisions supporting the compliance issue remain germane throughout the compliance process. Shareholder Clint Brown will present strategies on how to handle deed restriction issues and enforcement.

This course is approved by the Community Association Managers International Certification Board (CAMICB) to fulfill 1.5 hours of continuing education requirements for the CMCA certification.

**September 25, 2019**

**RMWBH Training Room  
317 Grace Lane, Suite 140  
Austin, Texas 78746  
4:00 p.m. - 6:00 p.m.**

\*Appetizers and drinks will be provided.

[Register Here >>](#)



## Handling Your First (or Next) POA Client

Do you need CLE hours? If the answer is yes, join Shareholders Marc Markel, Sipra Boyd and Clint Brown as they present on a variety of POA related topics during the State Bar of Texas's Handling Your First (or Next) POA Client: Basics of Representing Condominium and Homeowners Associations.

**September 11, 2019**  
**Texas Law Center**  
**1414 Colorado Street**  
**Austin, TX 78701**  
[Register Here >>](#)

## 2019 DFW CAI Trade and Expo Show

Join RMWBH Dallas for a fun day of networking at the 2019 DFW CAI Trade and Expo Show. Equity Shareholder Clayton Hearn and Associates Ashley Koirtyohann and Brittan Johnson will be there throughout the day speaking with attendees about the services RMWBH can provide to you or your business. We will be in booth 208, be sure to stop by and say hello!

**September 11, 2019**  
**Plano Event Center**  
**2000 E. Spring Creek Parkway**  
**Plano, TX 75074**  
[Register Here >>](#)

## Don't Sign That Proposal

Was a vendor's proposal signed? Now there is a default but the association does not seem to have a remedy. You are stuck and the association is looking for someone to compensate it. Could the board be looking at the manager or management company? Make sure you are not placed in this situation. This seminar will teach you how to avoid this situation and more about the following topics:

- Know what should be in an association contract with its vendors.
- What is a reasonable indemnity?
- What happens with non-compliant work?
- Can the association terminate the contract?
- How do I get the association out of this contract?
- How much insurance should the association require of its vendors?
- What things should an Association never agree to?

Join Shareholder Marc Markel as he takes you through what you need to know to avoid placing you and the association in this predicament.

This course is approved by the Community Association Managers International Certification Board (CAMICB) to fulfill 1 hour of continuing education requirements for the CMCA certification.

Space is limited. Sign up today for your chance at this great education opportunity!

**September 25, 2019**  
**RMWBH Training Room**  
**2800 Post Oak Blvd. Floor 57**  
**Houston, Texas 77056**  
**11:30 a.m. – 1:00 p.m.**

\*Lunch will be provided.

[Register Here>>](#)





# HIGH-RISE FORUM

## A POWER DAY OF EDUCATION

September 19, 2019  
Seaholm Residences - Club Room  
222 West Avenue  
Austin, TX 78701

Join RMWBH and CAI Austin at the High Rise Manager Workshop for a day of fast-paced, fun education.

Attendance to this event is open to CAI MANAGERS AND COMMUNITY ASSOCIATION VOLUNTEER LEADER members only. Attendance is FREE. You do NOT have to be a high-rise manager to attend.



**30 Minutes**

Fast, informative education sessions

**6 Hours**

Earn CEU credits for attending the full day

**1 Day**

All it takes to enjoy this fun experience

### RMWBH Attorneys Appearing



Marc Markel



Clint Brown

### Topics covered include:

- Communication during emergency situations, and tools for monitoring moisture due to leaks and water intrusion
- Finding the right insurance policies for the condominium type and navigating Texas Property Code requirements
- Loans and rental caps affect on condominiums and their governing documents
- and much more!



[Register Here >>](#)





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