

LIENHOLDER CROSSROADS: POAs and Mortgagees Can Use the Law to Keep Debtors Out of Foreclosure

UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

49th Annual William W. Gibson, Jr. Mortgage Lending Institute

Presented by:

Brady E. Ortego

Roberts Markel Weinberg Butler Hailey PC

Attorneys and Counselors at Law

Houston - Austin - San Antonio - Dallas - Sugar Land

Copyright © 2015 by Roberts Markel Weinberg Butler Hailey PC, All Rights Reserved

SCOPE OF PRESENTATION

- ♦ Lien priority and/or POA subordination
 - Purchase money and first mortgages
 - Senior POAs
- ♦ POA notice to mortgagees
 - Mandatory
 - Permissive
- ♦ Right of redemption
 - Owner and mortgagees
 - Owner only
- ♦ Preliminary Matters
 - Names and forms of POAs



Copyright © 2015 by Roberts Markel Weinberg Butler Hailey PC

2

RMWBH
ROBERTS MARKEL WEINBERG BUTLER HALEY

PROPERTY CODE NAMING

- ♦ Texas Property Code Section 202.001
 - Applicable to *all* restrictive covenants
- ♦ Defines “Property Owners Association” (POA)
 - Associations which are composed primarily of owners of property covered by the dedicatory instruments
 - Through which the owners or board manage or regulate the property
- ♦ Condominiums and single-family associations are POAs



CHAPTER 202 TEXAS PROPERTY CODE

- ♦ Section 202.001 TPC
- ♦ Applicable to all restrictive covenants
 - “Restrictive covenant” means any covenant, condition, or restriction contained in a dedicatory instrument
 - Whether mandatory, prohibitive, permissive, or administrative



CHAPTER 209 POA—SINGLE-FAMILY

- ♦ Section 209.002(7) of TPC
- ♦ Property owners' association is an incorporated or unincorporated association that:
 - Is representative of owners of property in residential subdivision;
 - Its members consist of the owners of the property covered by the dedicatory instrument for the residential subdivision; and
 - Manages or regulates the subdivision for the benefit of owners in the residential subdivision



Copyright © 2015 by Roberts Markel Weinberg Butler Hailey PC

5



CONDOMINIUM POA

- ♦ Created before January 1, 1994
 - Chapter 81 of TPC—condominium regime
 - Section 81.101 of TPC, creation
 - A condominium regime created before January 1, 1994, to which Chapter 81 applies is also governed by Chapter 82 as provided by Section 82.002
 - “retroactive provisions”
 - Chapter 202 general provisions



Copyright © 2015 by Roberts Markel Weinberg Butler Hailey PC

6



Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Lienholder Crossroads: POAs and Mortgagees Can Use the Law to Keep Debtors Out of Foreclosure

Also available as part of the eCourse

[Residential Lending Hot Topics: POA's, Reverse Mortgages & Truth in Lending](#)

First appeared as part of the conference materials for the
49th Annual William W. Gibson, Jr. Mortgage Lending Institute session
"Hot Property Owner Association (POA) Topics for Lenders' Lawyers"