

Lien Filing under Texas Law

May a non-attorney, such as a property manager or board member, file liens against owners under Texas law? Many associations, under state law and their dedicatory instruments, have a lien for nonpayment of certain amounts. Who may legally file this lien?

The short answer is that under State law, a lawyer must prepare the lien. This is not only a requirement of state law, but a practical necessity – otherwise the liability for the association, as well as the manager or board member who filed the lien, is simply too great.

Texas Govt. Code §81.101 provides that “practice of law” includes “preparation of a document incident to an action or special proceeding, or the management of the actual proceeding on behalf of a client . . . including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined”. There is little question that a lien is an “instrument”.

A standardized lien form prepared by an attorney doesn’t suffice in this setting. Dedicatory instruments (deed restrictions that are unique to each homeowner’s association) have different requirements as to what a lien filed by that association must contain. And, the association may file liens only for amounts on which the association’s dedicatory instruments give it a lien – and this can only be determined by a legal analysis of the association’s unique dedicatory instruments.

Case law is clear that preparation of a lien is practicing law. In a case involving the filing of mechanics liens, a Texas court found that in preparing liens, a business by implication, by the act of filing the lien, advised its clients of their legal rights and entitlements, and procured settlements in exchange for releases of liens. (*Crain v. Unauthorized Practice of Law Committee of Supreme Court of Texas* (App.1Dist.1999), 11 SW 3rd 328.) *Hexter Title and Abstract Co. v. Grievance Committee*, 142 Tex 506, 179 SW2d 946 is also relevant. This case held that the simplicity or complexity of a legal instrument is irrelevant when determining whether a non-lawyer has practiced law without a license.

Firm information

Niemann & Heyer LLP has been representing POAs and specializing in POA law for more than 20 years. Our lawyers have been instrumental in drafting virtually all POA law in Texas, including the Texas Uniform Condominium Act (Property Code Chapter 82) and the Texas Residential Property Owners Protection Act (Property Code Chapter 209). Connie Niemann Heyer is a past president and current board member of the Austin chapter of the Community Associations Institute, and is a lobbyist for the Texas Community Associations Institute Legislative Action Committee.

This article represents the opinion of our attorneys. Other attorneys may have different opinions.