

Legal Analysis of Highlands Glen HOA Governing Documents and Texas State Law concerning Xeriscaping

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• **Spectrum Association Management, 2016**

Xeriscaping and Your Texas HOA

<https://www.spectrumam.com/xeriscaping-and-your-texas-hoa/>

01 June 2016

Though it might be hard to believe with all of the record-setting rainfall and flooding that has come to the Lone Star state recently, Texas is still considered to be a very drought-prone state. That's why just a few years ago the State of Texas passed a law that gives homeowners living in an HOA community more control over landscaping their yard with water-saving alternatives. If you live in Texas and are part of an HOA, here's what this law means for you:

- HOAs can still enforce guidelines or require prior approval for xeriscaping, but they can't "unreasonably restrict" your ability to conserve water with landscaping, if that's what you choose to do. Typically your HOA management company will accept these requests.
- **If you choose xeriscape options for your yard, your HOA cannot prohibit these choices (like water-conserving turf or drought-resistant landscaping) or force you to undo them.**
- Your HOA's governing documents can't prevent you from installing water-efficient irrigation options like a drip system.
- You have the right to install a rainwater harvesting system, to compost vegetation, and to leave grass clippings uncollected on your lawn.

!! XERISCAPING - The Next Steps - A New Look for Texas, Roberts Markel Weinberg Butler Hailey PC, 2014

Gulf Coast Water Conservation Symposium

January 23, 2014

Presented by: Sipra Boyd

Roberts Markel Weinberg Butler Hailey PC

Attorneys and Counselors at Law

<http://texaslivingwaters.org/wp-content/uploads/2014/01/Sipra-Boyd.pdf>

- What is the Law?
- How has it changed
- What is Xeriscaping?
- What is not Xeriscaping?
- Know the board's authority
- What is reasonable?
- What is aesthetic compatibility?

!→ Kirk Watson, Texas State Senator; The End of the Beginning, 2013

(Senator Kirk Watson brought the bill to the Texas State Legislature)

12 March 2013

<http://www.kirkwatson.com/session/the-end-beginning/>

“Property rights issue: let folks xeriscape their yards: Any time you can protect property rights and the environment, you’ve got to do it, right? **My SB 198 allows for the installation of more drought-proof landscapes by limiting a homeowners association’s ability to block xeriscaped or more efficient yards and landscapes.** Landscaping can make up about 30% of residential water use. People should have the right to save water and money. Here’s more from State Impact Texas.”

State Impact

<https://stateimpact.npr.org/texas/2013/03/19/legislation-to-allow-drought-resistant-yards-in-hoas-moves-forward/>

Senate Bill 198 by State Senator Kirk Watson, D-Austin, would allow homeowners in a HOA to switch to a more climate-appropriate lawn. “It’s about personal property rights,” Watson testified this morning as he presented his bill to the State Senate Natural Resources Committee. “It’s about allowing Texans to protect themselves from drought and manage their water bills.”

The bill would amend the state property code to allow Texans living under HOAs to install drought resistant landscaping or water conserving turf. “It simply ensures that a landowner has a right to choose their plants, their grass, and to do so with water efficiency and their pocketbooks in mind,” Watson said.

But it would still allow HOAs to require that homeowners submit their plans for approval.

On the record in favor of the bill? Real estate and builders associations, environmental groups, and even Home Depot. No one testified against the bill, which got the attention of Natural Resources Chair State Sen. Troy Fraser, R-Horseshoe Bay.

“Where are the against-ers? Everybody’s for it,” Fraser said with a laugh.

“You say that with such surprise,” replied Watson in equally good humor. To which Fraser replied, “We like a little controversy here.”

The bill passed the committee unanimously this morning, and now it heads to the Senate.

! Legislative Update: Let's Talk About Xeriscaping... 2013

23 July 2013

Owners Association Blog at Lippincott, Phelan Veidt Attorneys at Law

<http://ownersassociation.blogspot.com/2013/07/lets-talk-about-xeriscaping.html>

First we should discuss what, exactly, is xeriscaping. **Xeriscaping is a style of landscape design that requires little or no irrigation.** The style is frequently found in arid regions. Xeriscaping is designed to conserve water and protect the environment. **In Texas, this usually means pebbled ground cover, drought-resistant and native plants, and other water-conserving natural turf.**

The new law, which was proposed by Sen. Kirk Watson and Rep. Dawnna Dukes of Austin, **mandates that Texas homeowners can now xeriscape their properties without being scrutinized by their homeowners association.** HOAs are still

permitted to require preliminary plan approval of new xeriscaping plans, **but the Association's ability to reject plans including xeriscaping is limited.**

→ **Xeriscaping bill passes House preventing HOA's from restricting drought-resistant landscaping, 2013**

The Dallas Morning News

17 May 2013

<http://www.dallasnews.com/news/politics/2013/05/17/xeriscaping-bill-passes-house-preventing-hoas-from-restricting-drought-resistant-landscaping>

The House on Friday approved a bill that would prevent homeowner's associations from restricting drought-resistant landscaping, also known as xeriscaping.

According to the bill by Sen. Kirk Watson, D-Austin, an association could require a plan for review or approval, **but can't unreasonably deny a landscaping design because it doesn't fit with the other lawns in the neighborhood.**

The bill passed quickly and without debate on a voice vote. It will now go to the governor.

In March, East Dallas resident Burton Knight was told by the Dallas Landmark Commission that the water-saving lawn, which included cactuses, was not historically appropriate for the neighborhood.

Many Texans want to do their part to conserve water and **it's outrageous some busybodies in HOAs would stand in the way," said Environment Texas Director Luke Metzger.** "This legislation protects the rights of Texans to respond to the drought through smarter use of our limited water supply."

A report by Environment Texas said that by replacing water-sucking lawns like turf grass that are native to wetter regions with native plants that can survive with the Texas heat without consuming too much water could save 14 billion gallons a year -- enough to meet the water needs of 240,000 Texans by 2020.

! Water Rules, In Texas, conservation is increasingly the law of the Land, 2013

Fall 2013, Texas Water Resources Institute, H2O

<http://twri.tamu.edu/publications/txh2o/fall-2013/water-rules/>

! What HOA Boards Need to Know About Xeriscaping, 2013

December 2013, HOALeader.com

<http://www.hoaleader.com/public/What-HOA-Boards-Need-to-Know-About-Xeriscaping.cfm>

Here's the scoop on the Texas law. It was passed in June 2013 and went into effect Sept. 1, 2013. Its language is pretty simple—which is rare. Generally, it allows home owners in Texas associations to landscape in ways that reduce water consumption without worry that their HOA will prohibit the actions or force them to undo

those measures. Specifically, it prohibits HOAs from enforcing provisions in their governing document that prevent owners from:

- Composting vegetation, including grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass
- Installing rain barrels or a rainwater harvesting system
- Implementing efficient irrigation systems, including underground drip or other drip systems
- Using drought-resistant landscaping or water-conserving turf

"I've lived in the southwest," adds Key, "so I don't understand why some Texans get so upset about this. **My understanding is that HOAs need to put a set of rules in place, like that only 80 percent of an owners' yard can be hardscape or gravel. But I don't think it's going to be as big a deal as people make it out to be unless they're living in large associations with big, lush lawns.** Most associations are OK with this and have already started dealing with this issue."

→ Xeriscaping can no longer be prohibited by homeowners associations, 2013

Community Impact Newspaper

15 July 2013

<https://communityimpact.com/austin/news/2013/07/15/xeriscaping-can-no-longer-be-prohibited-by-homeowners-associations/>

The new law, first proposed by state Sen. Kirk Watson and state Rep. Dawnna Dukes, both Austin Democrats, **prevents HOAs from prohibiting xeriscaping, the process of installing drought-resistant landscaping or other native, water-conserving natural turf.**

• Texas Bills Aim to Douse HOAs' Limits on Xeriscaping Restrictions, 2013

<https://stateimpact.npr.org/texas/2013/01/31/texas-bills-aim-to-douse-hoas-limits-on-xeriscaping/>

31 Jan 2013, StateImpact.com. The Texas Tribune

<https://www.texastribune.org/2013/01/31/texas-legislation-would-restrict-hoas-love-grass/>

Outdoor watering accounts for an average of 50 percent to 80 percent of a home's water use, according to the Texas Water Development Board... San Antonio requires that all builders must allow homeowners the option of using 50 percent or less grass, Guz said, adding that "we have used this provision to discourage a neighborhood that has recently tried to go to 70 percent turf required."

- **Summary from Roberts Markel Weinberg Butler Hailey PC, 2013**

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OVERVIEW OF POA SPECIFIC 2013 TEXAS LEGISLATION

01 Sep 2013

<http://www.rmwbhlaw.com/Publications.html> / [in .pdf](#)

Description: A POA may not include or enforce a provision in a dedicatory instrument that prohibits or restricts an owner from using drought-resistant landscaping or water-conserving natural turf (collectively “xeriscape”), except as permitted by this new law.

Specifics: **A POA may require an owner to submit a detailed description or a plan for the installation of the water-resistant landscaping or water-conserving natural turf to ensure “to the extent practicable, maximum aesthetic compatibility with the landscaping in the subdivision.”**

HOWEVER, a POA may not unreasonably deny or withhold approval or unreasonably determine the proposed installation is aesthetically incompatible with the other landscaping in the subdivision.

Action Item: 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 a POA has rules that govern xeriscape, the POA may not be able to restrict xeriscape. In most cases, rules are recommended that (at a minimum) require prior submission and approval.

- **[Summary] Texas Homeowners Association Law, 2013**

Senate Bill 198 – Protection of Drought-Resistant Landscaping and Water-Conserving Natural Turf

2013

<http://texashoalaw.com/2013-legislative-update/>

2013 Legislature SB 198 modifies Section 202.007 of the Texas Property Code. Section 202.007 restricts HOAs from enforcing a provision of a Dedicatory Instrument that would prohibit or restrict a Homeowner from using drought-resistant landscaping or water-conserving natural turf on his or her property.

A HOA may still require a Homeowner to obtain pre-approval of such landscaping or turf from the HOA to ensure, to the extent practicable, maximum aesthetic compatibility of such landscaping or turf with other landscaping in the subdivision, but a HOA’s approval may not be unreasonably denied or withheld.

- **NIEMANN & HEYER, L.L.P. 2013**

- **May 13, 2013 TEXAS POA LEGISLATIVE UPDATE - XERISCAPE / LANDSCAPE**

http://www.pfcona.org/documents/2013Heyer_Legislation_updateMay13.pdf

SB 198 – (Sen. Kirk Watson; Rep. Dawna Dukes): Applicable to condos and HOAs. As-originally filed this bill would have prohibited POAs from placing any restrictions on the installation of “drought- resistant landscaping or water-conserving turf.” Thus, it would have given owners the statutory right to install artificial turf or cover the yard with lava rocks (both of which I have witnessed and dealt with in the past for POA clients!) **TCAA brought these concerns to Sen. Watson, who worked with TCAA and filed a committee substitute that retains a POA’s ability to require submittal and approval of plans to ensure aesthetic compatibility with other landscaping, and specifically references “natural” turf to be clear that artificial turf is not contemplated.** This bill has passed the Senate and has been voted out of its House committee on April 22nd. It still needs to be approved by a full House vote but appears to be on its way to passage.

• **June 5, 2013 TEXAS POA LEGISLATIVE UPDATE, XERISCAPE / LANDSCAPE**
http://www.pfcona.org/documents/2013Heyer_HOALegislation_june52013.pdf

SB 198 – (Sen. Kirk Watson; Rep. Dawna Dukes): Applicable to condos and HOAs. This bill prohibits an association from restricting an owner from using “drought-resistant landscaping or water-conserving natural turf”. But it still allows for meaningful controls by the HOA. Bottom line under this new law:

- * all communities need to adopt xeriscaping rules to ensure that controls can be maintained (e.g. no artificial turf)
- * rules may restrict installation of rock, gravel, and cacti (e.g. they may prohibit certain rock, prohibit more than x% of area being covered with rock, etc.)
- * rules may require plan submittal and prior architectural approval, and aesthetic compatibility with other landscaping to the extent “practicable.”

Talk to your POA attorney and get your xeriscaping rules in the works! The bill becomes effective September 1.

[end doc]