



2023

Legislative Session Update

Edward (Teddy) Holtz
tholtz@winstead.com

Overview

Texas Legislature:

- Two Chambers – The House of Representatives and the Senate
- Four Stages of Lawmaking:
 - Introduction of the Bill
 - Committee Action
 - Floor Action
 - Enrollment

Remainder of 88th Session [Avg. 7k Intr., 1k Enr.]

Default Date Enrolled Bills Become Law – August 28, 2023

One Special Session Completed, Second Special Session Underway

- Purposes of sessions: property taxes

Where Things Stand:

- Gov. Abbott was focused on property tax cuts, vetoing unrelated bills and calling special sessions to force a legislative resolution
- Identical veto statements provided for each bill vetoed: “While [the bill number] is important, it is simply not as important as cutting property taxes. At this time, the legislature must concentrate on delivering property tax cuts to Texans. This bill can be reconsidered at a future special session only after property tax relief is passed.”
- Property tax agreement reached, expected to reach Governor’s desk soon

What are “Companion Bills”?

A true “Companion Bill” is a bill:

- 1) filed in both chambers (House and Senate)
- 2) with identical or very similar language.

Purpose: Show support in both chambers and improve the chance of passage because either bill may become law.

SB 1588 (2021) Cleanup – SB 1668 – Bryan Hughes/HB 3503 – Chris Turner

- [Amend] Ch. 82 TPC – Adds Sec. 82.1142; Amends Secs. 82.116 & 82.157 - Requires condos of at least 60 units to have publicly accessible website with docs recorded, must file management certificate in real property records and with TREC, caps resale fees at \$375 (tracks Chs. 207 & 209 requirements),
- [Amend] Sec. 202.023 - Security Measures
 - May restrict fencing that obstructs a license area, a sidewalk in the public right of way or otherwise installed for public or community use, or a drainage easement
 - May require a driveway gate to be set back at least 10 feet from the right of way if the driveway intersects with a laned roadway
 - If provided by a restrictive covenant, prohibit installation of fencing in front of the front-most building line of a dwelling unless address is exempt from public disclosure under state or federal law or the owner provides documentation to association from a law enforcement agency of the owner's need for enhanced security measures
- [Amend] Sec. 209.00505(c) → Sec. 209.0056 (ARC)
 - POA must provide notice to members soliciting for service on ARC at least 10 days before election/appointment to ARC by same notice methods as Board meeting; notice must contain instructions for person to notify association of person's interest in serving, including date by which notification must be received by association
 - Person may not be appointed or elected to serve on an ARC unless person timely notifies the association of the person's interest in serving in accordance with solicitation
 - If vacancy remains after solicitation, Board member, Board member's spouse, or person residing in a current board member's household may be appointed to ARC
- **Status: Vetoed by the Governor**
- Recommendations: Monitor to see if similar or identical bill will be introduced. If so: all condos of 60 or more units to record management certificates/websites; certificates to be filed with TREC not later than March 1, 2024. POAs may adopt/amend Security Measures Policy

Section 8 – HB 1193 – Chris Turner/SB 570 – Royce West

- [Amend] Chapter 202, Property Code, by adding Section 202.024, which states that a property owner's association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts, or has the effect of prohibiting or restricting:
 - a property owner from renting a dwelling to a person based on the person's method of payment, **including a housing voucher under Section 8**, or any other federal or state or local housing assistance provided to a person, including rental vouchers, rental assistance, or rental subsidies from a nongovernmental organization.
- Status: Enrolled, effective September 1, 2023.
- Recommendation: Nothing proactive. Associations can no longer enforce a restriction that prohibits a property owner from renting a dwelling to a person based on the person's method of payment starting Sept. 1, 2023. Amendments to Leasing Policy may be needed.

HOA Fines – HB 614 Matt Shaheen

- [*Amend*] Chapter 209 of the Property Code to add *Section 209.0061*.
- Mandatory Fine Policy to include: (1) each category of restrictive covenants the association may assess a reasonable fine; (2) schedule of fines for each category of violation; (3) information regarding hearings described in *Section 209.007*.
- The policy would be required: (1) to be filed with the county; (2) provided to each owner within the subdivision; and (3) be made available online.
- Status: Enrolled, effective January 1, 2024.
- Recommendation: Enforcement and Fine Policy required for any Association that levies or desires to levy fines (if authorized by dedicatory instruments) on or after January 1, 2024.

HOA Liens – HB 886 [Formerly HB 3857] Matt Shaheen

- [Amend] 209.0094, Property Code.
- Before a POA files an assessment lien, the association must provide two separate notices of delinquency: the first notice by first class mail or email and the second notice, not earlier than the 30th day after the date of the first notice, by certified mail, return receipt requested, to the property owner's last known mailing address. A POA may not file an assessment lien before the 90th day after the date the second notice of delinquency was sent.
- Status: Enrolled, effective September 1, 2023.
- Recommendation: Adopt or update Collection Policy and change collection procedures accordingly.

FAIR Plan Insurance: HB 998 Dennis Paul

HB 998 expands the coverage area for property and casualty insurance beyond the zone covered by the Texas Windstorm Insurance Association (TWIA).

TWIA provides property and casualty insurance to property owners' associations within the TWIA coverage zone, which covers common areas and facilities of a property owners' association as an insurer of last resort.

However, property owners' associations that exist just outside of the TWIA coverage zone are not eligible for TWIA coverage and are forced to enter the private market to obtain property and casualty insurance. Due to their location near the Gulf Coast, often these property owners' associations are declined coverage or are offered coverage at a significantly increased costs.

The Fair Access to Insurance Requirements (FAIR) Plan provides residential property insurance to underserved areas of the state if residential property insurance is not otherwise reasonably available.

Status: Enrolled, sent to Governor [SIGNED]

DEAD BILLS

- The bills that follow did not become law during the session.
- Trends:
 - Fewer use restrictions for micro farming
 - Fewer use restrictions for energy production and conservation
 - Increasing notice requirements for rules, penalties, and procedures
 - Aligning condo requirements with HOA requirements

Chicken Bill: HB 276 Philip Cortez

- [*Amend*] Chapter 202 of the Property Code to add new *Section 202.024* which would prohibit a property owners' association from adopting and/or enforcing most restrictive covenants prohibiting various activities on a single-family residential lot, including:
 - (1) growing fruits and vegetables;
 - (2) raising or keeping six or fewer domestic fowl or six or fewer adult rabbits; or
 - (3) producing food at a cottage food production operation.

- *Condos Exempt*

- Status: Dead

Another Chicken Bill: HB 92 – Brooks Landgraf

- Similar to HB 276 with additional protections for solar energy devices, rainwater harvesting systems, and standby electric generators
- Status: Dead

Solar Roof Tiles [Tesla]: HB 328 Philip Cortez

- [Amend] Section 202.010(a)(2) of the Property Code to provide that a “Solar Energy Device” has the meaning assigned by Section 171.107 of the Tax Code, and that the term *includes* a solar roof tile.
- Status: Dead



HOA Director Removal: HB 1367 – Cody Vasut

- 209.00595 Recall of Board Members—
- Owners holding at least 20% of all voting interests in a POA may petition the association and require a special meeting to be called within 90 days for the sole purpose of conducting a recall election to recall a board member.
- If the majority of votes received in a recall election are for the recall of the named board member, member's position becomes vacant immediately. Board shall fill according to 209.00593.
- 209.018 Board Member Violation of Chapter or Dedicatory Instrument—
- (a) An owner may bring a JP action against POA for violation of this chapter or a provision of the dedicatory instrument by a board member acting in board member's official capacity.
- (b) If JP court finds that the board member violated this chapter or dedicatory instrument, JP may grant one or more of the following remedies: (1) judgment ordering POA to immediately remove board member; (2) judgment against the POA for damages incurred by owner; or (3) judgment authorizing the owner to deduct the amount awarded to the owner from any future regular or special assessments.
- (c) Prevailing party in action is entitled to a judgment for court costs and reasonable attorney's fees incurred by the party.
- Status: Dead

POA Notices: HB 1786 DeWayne Burns

- [*Amend*] Adds Sec. 202.024 to TPC: Applies ONLY to residential subdivisions whose dedicatory instruments *do not* require membership in a property owners' association.
- Dedicatory instruments encumbering residential subdivisions without mandatory membership in POA cannot be amended unless notice of proposed amendment is provided by certified mail, return receipt requested, to each owner in subdivision at owner's mailing address according to appraisal district records.
- Notice must include 1) text of amendment; 2) ballot that the owner may return to an address stated on the ballot in order to cast owner's vote; 3) state a deadline to return the ballot, which may not be less than 60 days after the date the notice is sent; and 4) identify an individual or entity who will tabulate the ballots and include the individual's or entity's mailing address.
- Ballots must be retained for at least 180 days after deadline provided; owner can request copy of all ballots in electronic or paper form if requested by certified mail, return receipt requested, during ballot retention period
- Amendment can't be filed until 30th day after expiration of ballot retention period
- Status: Dead

Common Area Use: HB 2450 – Mike Schofield /SB 468 – Lois Kolkhorst

- [Amend] Chapter 202, Property Code by adding new Section 202.013 which aims to regulate the assembly, association, and speech of a property owner's association.
- POA may not enforce a covenant that:(1) prohibits or restricts a property owner or resident from:(a) peacefully assembling or meeting with POA members, residents, or their invitees or guests at property owned or maintained by a POA or owned in common by the POA members; or (b) inviting guest speakers, including public officials and candidates for public office, without prior approval by the POA to address or meet with POA members, residents, or their invitees or guests; or (2) regulates or restricts the content of a property owner's or resident's speech.
- This new Section 202.013 would not prohibit the enforcement or adoption of a provision in a dedicatory instrument that (to the extent allowed by state and federal law):(1) threatens the public health or safety;(2) violates a law; or(3) contains language, graphics, or any display that is patently offensive to a passerby.

Status: Dead

winstead.com

Common Area Use - HB 3775 – Jacey Jetton

- [Amend] Chapter 202, Property Code by adding new Section 202.013 which aims to regulate the assembly and association of a property owner's association.
- Much more limited than HB 2450/SB 468 – POA may not prohibit owner or resident from inviting governmental officials and candidates who have been qualified in the appropriate election to run for public governmental office to address or meet with POA members, residents, or their invitees in common areas
- Status: Dead

Private Transfer Fees: HB 2447 – Drew Darby

- Lengthy Bill – Essentially adds additional filing and notice deadlines and limits the amount of time after a transfer the fee can be collected. It also adds penalties (DTPA violation).
- Status: Dead

Wind Power: HB 330 Vicki Goodwin

- [*Amend*] Chapter 202 of the Property Code to add *Section 202.024* which would prohibit a property owners' association from including/enforcing most provisions in a dedicatory instrument that prohibits or restricts a property owner from installing a wind power facility of an appropriate residential scale.
- Status: Dead



HOA Audits – HB 1252 Matt Shaheen

- [*Amend*] *Chapter 209* of the Property Code by adding a new *Section 209.00501*.
- An HOA must obtain an annual independent audit of the association's financial records and to provide a copy of the audit to each member of the association.
- Further, the audit must be conducted by a certified public accountant if required by: (i) the association's bylaws; (ii) a vote of the board; or (iii) a majority vote of members at a meeting of the association
- Status: Dead

Companion Chicken Bills - HB 1191 Briscoe Cain/SB 326 – Bob Hall

- HB 1191 as amended removes Ch. 202 component; SB 326 remains the same
- *Chapter 202*, Property Code, by adding *Section 202.024*: Six Chickens Allowed on Single-Family Residential Lot.
- The section only applies to restrictive covenants “created after September 1, 2023” [???
- A property owners’ association may not adopt or enforce a restrictive covenant that prohibits the raising or keeping of six or fewer chickens on a single-family residential lot.
- A POA may adopt and enforce a restrictive covenant imposing reasonable requirements on the raising or keeping of poultry on a single-family residential lot that do not have the effect of prohibiting the raising/keeping of six or fewer chickens, including: (1) a limit on the number of chickens that may be raised or kept in excess of six; (2) a prohibition on breeding poultry; (3) a prohibition on raising or keeping roosters; or (4) the minimum distance between a chicken coop and another lot.
- Status: Dead

Street Parking: HB 1799 – Brooks Landgraf

- *[Amend] Chapter 202, Property Code, by adding Section 202.008 to state:*
- A POA may not adopt or enforce a provision in a dedicatory instrument to the extent the provision would have the effect of prohibiting a property owner or resident from parking on a street adjacent to the owner's or resident's dwelling a vehicle that is: (1) owned by this state, an agency, or political subdivision of this state, or the US; (2) operated by a property owner/resident in regular course of their employment; and (3) required by property owner's/resident's employer to be parked in the immediate vicinity of the property owner's/resident's dwelling when the property owner/resident is at that location.
- Status: Dead

HOA Declaration Amendments: HB 2428 – John Raney

- Amends *Section 209.0041(h)* of the Property Code:
- Strikes: “total votes allocated to”
- Adds: “present in person or by proxy at the time the vote is taken”
- ***Effect: Quorum plus 67% is sufficient to amend a Declaration.***
- Status: Dead

Questions?



Edward (Teddy) Holtz
tholtz@winstead.com