



88th Legislative Session Report Card

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The 2023 Texas legislative session is over. The purpose of this newsletter is to give you a quick summary of the 88th Legislative Session's impact on our POA industry. Four major POA bills that directly target POAs passed the legislature. Those bills will soon become law unless the Governor vetoes any of them during the veto period (which lasts through June 18th, 2023). Although a veto is unlikely, the Governor has unexpectedly vetoed a few bills already. We now have to wait and see what happens.

BRIEF OVERVIEW

As you know, before the session began, TCAA met with Representative Turner and representatives from the Texas REALTORS to address some of the unintended consequences created by the 87th Legislature's SB 1588. There were 2 main problems. One was with front yard fencing and the other was the prohibition of board members serving on architectural review committees. We are excited to report that we accomplished a reasonable fix to these problems.

This session also saw a record number of bills filed (TCAA tracked and monitored more than 152 bills), some of which would create onerous mandates and conditions for our communities and stakeholders. Fortunately, **Texas Community Association Advocates**, <https://txcaa.org> was successful in defeating many of the bills that would hurt POAs and their members. Bills that did not pass included legislation that would grant residents the right to: keep chickens and rabbits on their property; maintain a garden; operate a cottage food production facility; file suit in justice court against directors for alleged violations of the governing documents; and install wind power devices. Other bills that failed include those that would restrict a community from enforcing street parking restrictions, prohibit associations from charging a fee for ACC review of solar energy devices, restrict an association's ability to enforce rules concerning meetings and gatherings by owners and residents held on common areas, and require POAs (like the condos have had to do for years) to get an annual audit.

4 POA BILLS THAT PASSED

1. [House Bill 614](#) – Fines - Signed by the Governor 06/12/23 - Effective on 01/01/24

This bill does not apply to condominiums; it is only applicable to HOAs. No later than January 1, 2024, all HOAs that fine must have a fining policy filed of record in order to levy a fine. The policy must include:

- 1) the general categories of restrictive covenants for which fines may be levied,

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- 2) a schedule of fines for each category of violation, and
- 3) information about the owners' right to a hearing in order to contest any fine.

Importantly, the policy may reserve board authority to levy a fine that varies on a case-by-case basis. The fine policy must be posted on the HOA's website, or annually sent to each owner by hand-delivery, first class mail, or email.

As originally filed, this bill would have required the fine policies to expressly list EACH category of restrictive covenant for which a fine could be levied. TCAA was successful in getting "each category" of restrictions for which a fine would be levied replaced with "general category." This modification will make it easier for associations to satisfy the requirements of this statute.

Practice Tip: Before January 1, 2024, any HOA wishing to preserve its ability to fine will need to have a new fine policy prepared and filed of record that satisfies the above requirements.

1. [House Bill 886](#) – Additional Notices Prior to Filing A Lien - Signed by the Governor 06/13/23 - Effective on 09/01/23

This bill does not apply to condominiums; it is only applicable to HOAs. This bill requires two (2) specific notices to be sent to homeowners before a lien can be filed by the HOA.

Currently, pursuant to Section 209.0064 of the Texas Property Code, in order to hold an owner liable for the fees of a debt collector (usually the association's attorney), the association must provide written notice to the owner sent by certified mail that allows 45 days to cure the delinquency before collection action is taken. This notice must contain a fully itemized accounting of all amounts due (it should contain a full copy of the owner's ledger dating back to the last zero balance). This notice also must inform owners of the option for a payment plan, along with other required language. This letter is the only current notice required by law prior to turning an account over to an attorney for collection.

HB 886, effective September 1, 2023, requires associations to send two (2) specific notices prior to filing a lien.

- 1) The "first notice" must be sent via first class mail to the owner's address in the HOA's records, or via email to an email address the owner has provided the HOA. The first notice has no particular requirements other than to notify the owner of the delinquency.
- 2) The "second notice" must be sent at least 30 days after the first notice. This "second notice" must be sent by certified mail, return receipt requested. We recommend boards contact their attorneys regarding how to sync this "second notice" with the 209.0064 letter discussed above.

We think it is important for everyone to know that, as originally filed, this bill would have required associations to send 3 separate monthly notices by certified mail, return receipt requested, to the delinquent owner before being entitled to file a lien. The bill would also have precluded associations from filing liens before the 180th day after the third monthly notice is sent. As you can see, associations would have had to wait at least a minimum of 9 months after the first notice of delinquency before taking meaningful collection action. TCAA played a major role in working with the bill's sponsor to reduce the number of notices from 3 to 2, to allow the first notice to be sent first class or email, and to eliminate the 180-day moratorium before being authorized to file liens.

2. [Senate Bill 1668](#) – HOA and Condominium Omnibus Bill – Pending action by the Governor

This bill makes a number of changes to both HOA and condominium law. All provisions take effect September 1, 2023.

Changes applicable to HOAs only:

ACC membership: Last session, SB 1588 was passed, and it prohibited any board members from serving on the ACC if the HOA has more than 40 lots. That has now changed under certain conditions.

Effective 9-1-23, All HOAs with more than 40 lots must perform an ACC candidate solicitation, in the exact same manner as HOAs now perform a board candidate solicitation. HOAs with more than 40 lots must solicit ACC candidates by either mailing a solicitation to all owners, OR *both* emailing a solicitation to each owner for whom the HOA has an address and posting notice on the HOA website or in the common area.

If after sending this notice, HOAs with more than 40 lots still do not have enough interested non-board member candidates to serve on the ACC, the association can appoint board members to the ACC. (For HOAs with 40 or fewer lots, the law is unchanged, board members may serve on the ACC without restriction.)

Changes applicable to condominiums only:

Condominium records posted online: For any condo with more than 60 units, OR any condo of any size managed by a management company, all association dedicatory instruments must be posted on an internet website maintained by the condominium or its management company and accessible to all members (this mirrors current HOA law.)

Practice Tip: no later than 9-1-23, each professionally managed condo association of any size, and each self-managed condo association with more than 60 units, must have all of its dedicatory instruments posted on a website/portal accessible to its members.

Condominium management certificates: Effective 9-1-23, all condo management certificates now must reference not only the declaration information but information for all amendments to it, the phone number and email address of the management company, the website address where the dedicatory instruments are posted, and all transfer fees. These certificates must be filed both with the county clerk, and with TREC. (This also mirrors current HOA law.).

Practice Tip: No later than 9-1-23, record a new management certificate with the county and with TREC, listing all declaration amendments, the management company email, the condo association's website address, and all transfer fees for the association (not just working capital-type transfer fees paid to the HOA, but also including fees charged by the management company associated with transfer.)

[Note, if the condo has a management certificate of record currently, no filing with TREC must be done until 3-1-24. However, TREC filing is recommended to be done in conjunction with the required updated filing with the county clerk – deadline 9-1-23.]

Condominium resale certificate fee cap: Effective, 9-1-23, just like with HOAs, resale certificate fees for condominiums, are capped at \$375.

Changes applicable to both HOAs and Condominiums:

Fencing: Good news on this front! HOAs and condos do not have to make blanket exceptions in order to allow front – yard fencing (this is generally only applicable to condos if the condo owner owns the front yard). Associations may prohibit fencing that obstructs any license area (for example, an area to which the HOA has a landscape license), drainage easement/drainage area (usually identified on a plat), or sidewalk. HOA restrictions may also wholly prohibit front-yard fencing, except in cases (like for judges or other public figures) where an owner's address is exempt from public disclosure, or law enforcement has confirmed a need for enhanced security measures for this particular owner.

Practice tip (discuss adopting rule etc. by 9-1-23 if HOA wishes to prohibit front yard fencing – or best to be silent on that and just leave it to us to tell clients.)

3. [House Bill 1193](#) – Prohibition Against Housing Discrimination By Method Of Payment – Pending action by the Governor

This new law applies to both HOAs and condominiums. Effective 9-1-23, associations are prohibited from enforcing any provision in their dedicatory instruments which restricts or prevents an owner from renting her home to a person based on method of payment. In effect, this bill precludes associations from prohibiting rentals to Section 8 housing recipients. Once again, as originally filed, this bill was more problematic. As filed, an association could not enforce a provision that “*has the effect of restricting*” an owner from renting based on the tenant’s method of payment. As you can see, that verbiage casts an overly broad net and is vague. This broad language, if passed, might have invited lawsuits to test the meaning of that ambiguous verbiage. TCAA convinced the bill’s sponsor to remove this problematic language. The bill does not affect other rental restrictions, rather just those that relate to source of income.

OTHER BILLS OF INTEREST

1. [House Bill 1558](#) – Authorizing voluntary associations to amend/extend their deed restrictions – Signed by Governor 06/12/23 – Effective immediately

This bill does not apply to condominiums or POAs with mandatory membership. This bill provides a mechanism for pre-1947 subdivision plat communities without mandatory association membership to amend or extend their deed restrictions. This bill will only impact communities subject to deed restrictions that have no mandatory membership and no procedure to extend or amend the restrictions.

2. [House Bill 2022](#) – Residential Construction Liability – Signed by the Governor 06/09/23 – Effective on 09/01/23

While this bill is not targeted specifically at condos or HOAs, it will affect most all communities that experience problems with new construction or remodeling/reconstruction projects. The bill provides that a contractor is only liable for defective construction to the extent a plaintiff can prove the defect causes: actual physical damage, actual failure of a building component to perform its intended purpose, or a verifiable danger to the safety of residents.

3. [House Bill 2024](#) – 6 Year Limitations If Contractor Provides Written Warranty – Signed by the Governor 06/09/23 – Effective immediately

This bill reduces the limitation period to file suit for construction defects to 6 years from the date of substantial completion if the contractor provided a written warranty for a minimum period of: 1 year for workmanship and materials; 2 years for plumbing, electrical, heating, and air-conditioning systems; and 6 years for major structural components.

88th LEGISLATIVE SESSION STATS AND HIGHLIGHTS:

Bills Passed in the 88th Legislative Session:

1,259 (Sent to Gov) of 8,345 (Filed)

HB’s/HJR’s passed – 751

SB’s/SJR’s passed – 508

GENERAL OBSERVATIONS

- More bills were filed this session than ever before but a smaller percentage of them passed – only 15% passed.
- The House filed more than twice as many bills as the Senate.
- The Senate passed 29.9% of their bills, while the House passed 28% of their bills.
- 51% of House bills died without ever getting a hearing in the House, and more than 60% of Senate bills died without getting a hearing.
- The House passed 63% of the bills sent to them by the Senate; the Senate only passed 48% of the bills sent to them by the House.

In total, the legislature passed a state budget that appropriated \$321.3 billion in All Funds and \$144.1 billion in General Revenue for the FY 24-25 biennium. In addition, the supplemental budget bill, SB 30, appropriated an additional \$13.2 billion in All Funds and \$7.35 billion in General Revenue for the current biennium.

GOVERNOR ABBOTT

Governor Calls Immediate Special Session – On May 29, Governor Greg Abbott announced special session #1 and issued a proclamation identifying agenda items for the Special Session that began at 9:00 p.m. on Monday, May 29.

Per Governor Abbott, special session #1 will focus only on cutting property taxes and cracking down on illegal human smuggling. Governor Abbott feels strongly that Texas must cut property taxes.

Governor Abbott's Special Session specific goals are:

- Legislation to cut property-tax rates solely by reducing the school district maximum compressed tax rate in order to provide lasting property tax relief for Texas taxpayers.
- Legislation solely for the purpose of increasing enhanced penalties for certain criminal conduct involving the smuggling of persons or the operation of a stash house.

COMING SOON

TCAA will soon present a webinar to more fully discuss and answer questions regarding the new laws that will impact our communities and homeowners later this summer. TCAA plans to conduct live, in-person education sessions in some of our major metro areas as well. Stay tuned for more updates and future education sessions.

THANK YOU

TCAA would like to thank all the witnesses and volunteers that committed their time and expertise this session. A special thank you to Senator Bryan Hughes (R-Mineola) and Representative Chris Turner (D-Grand Prairie) for their commitment to passing legislation to address some of the unintended consequences created by the 87th Legislature.