



## **TCAA LEGISLATIVE UPDATE**

### **April 17, 2015**

The Texas legislative session is in high gear as it winds down to its last 45 days, with marathon hearings and sessions of the House and Senate making for long days and nights at the Texas Capitol. Texas Community Association Advocates Board members, lobbyists, volunteers, and team members are spending many hours advocating for positive legislation and opposing negative legislation.

More than 6,000 bills have been filed in the Texas Legislature for the 2015 legislative session. The TCAA Board, lobby team, and volunteers have analyzed all the bills that were filed and we are currently monitoring proposed legislation, crafting alternative legislation for certain bills, crafting amendments where clarification is necessary, and monitoring and attending committee hearings for nearly 200 bills that may affect community associations.

On April 14, fifteen (15) community-association bills were heard in one day, in four different committees. TCAA was well represented, with testimony on numerous bills. Many volunteers came to testify and explain why particular bills help or hurt community associations.

Thanks to everyone who took the time to travel to Austin to testify.

#### **TCAA's Affirmative Legislation**

TCAA's Affirmative Legislation is being sponsored in the Senate by Senator Royce West (SB 1168) and sponsored in the House by Rep. Jason Villalba (HB 2797). These are identical (a/k/a companion) bills.

The Senate Business & Commerce Committee heard SB 1168 on Tuesday and passed it out of committee Thursday on a 6-0 vote. HB 2797 was also heard in the House Business and Industry Committee.

Most of the changes contained in TCAA's Affirmative Legislation are procedural or technical in nature, such as: (i) clarifying voting requirements for POA Subdivision

Sub-Associations; (ii) clarifying the ability of a POA Board to take action on certain minor issues outside of a meeting; (iii) clarifying the ability of a POA Board to meet by electronic or telephonic means for minor issues; (iv) clarifying the voting rights of all owners at POA meetings; and (v) clarifying that ballots are “secret” – not available for inspection by POA members (this is current law but the proposed wording is much more clear). The bill does not affect the duty of POAs to provide all owners notice of a board meeting at which the board will be voting on enforcement action or any other item on the current statutory laundry list of items that must be voted on at an owner-noticed meeting.

The proposed legislation also clarifies the procedure for a recount of votes on a matter determined at a POA meeting, a procedure which is confusing under the present law, and it authorizes (but does not mandate) the members of a POA to amend the bylaws to require all or a portion of board members to be residents in the residential community that they serve.

The following committees heard other bills which TCAA is tracking and either supporting, opposing, or seeking amendments:

### **Senate Business & Commerce**

**SB 862** (*Birdwell*): Relating to voting methods in a property owners' association election or vote.

**SB 864** (*Birdwell*): Relating to secret ballots in a property owners' association election or vote.

**SB 1626** (*Rodriguez*): Relating to the regulation by a developer of the installation of solar energy devices in a residential subdivision.

### **Urban Affairs**

**HB 3089** (*Galindo*): Relating to fire protection sprinkler systems in residential high-rise buildings.

### **House Judiciary & Civil Jurisprudence**

**HB 1455** (*King*) Relating to procedures required before a condominium association files a suit or initiates an arbitration proceeding for a defect or design claim. (Applicable to Condos.)

This bill greatly restricts an association’s ability to file a construction-defect lawsuit. It requires condo associations to jump through a large number of intricate and rather expensive hoops prior to filing a construction-defect lawsuit. Often a

condominium community's choice in addressing a construction defect boils down to: (i) pass a large special assessment to fund the repairs (very difficult on owners, especially owners on a fixed income, and does not hold the responsible party responsible), or (ii) file suit for construction defect to hold the responsible party accountable. TCAA is concerned with the significant limitations this bill imposes on an association's ability to hold a responsible party responsible and have its day in court.

## House Business & Industry

**HB 971** (*Bohac*) Relating to requirements governing officers and directors of condominium unit owners' associations and property owners' associations. (Applicable to HOAs and Condos.)

This bill imposes additional requirements and liability on directors and officers of POAs. For condos, this bill increases the legal standard of care applicable to condominium directors and officers for developments created prior to 1994. Officers and directors of condominiums created before 1994 are currently not subject to a "fiduciary duty" standard of care, but rather to a standard of good faith/ordinary care. Currently the higher "fiduciary" standard is the standard of care for condominiums created on or after January 1, 1994. This bill would subject officers and directors for pre-1994 condos to a fiduciary standard of care.

For both HOAs and condos, the bill requires that all candidates for director or officer positions must: (i) review all statutes related to HOAs and condos and review all governing documents for the Association; and (ii) swear in writing that this reading assignment has been completed and that the director/officer will comply with those statutes and documents while serving. The sworn statements must be kept for five (5) years. There is no exception in the bill for Declarant appointees. Any director or officer who fails to comply with this requirement is automatically suspended until the requirement is met.

The bill also creates a statutory duty for all directors and officers to uphold and comply with the deed restrictions (declaration, bylaws, rules etc.). Under current law, community associations themselves can be held liable for statutory violations, but generally speaking directors and officers are not liable unless they acted in bad faith (without good faith). This statute would change that standard and impose additional liability on the directors and officers themselves.

The requirements in the bill have the potential to significantly impact the willingness of individuals to volunteer for director and officer positions.

**HB 1178** (*Issac*) Relating to the enforceability of certain restrictive covenants governing the use of fuel on and supply of fuel to property in certain subdivisions or other planned developments. (Applicable to HOAs and Condos.)

This bill would add Section 202.008 to the Property Code to void any deed restriction provision that requires an owner to exclusively use a particular fuel (such as propane) on the owner's property. Any opt-out fee provision would also be void.

**HB 2681** (*Smith, Wayne*) Relating to information required in a notice of sale of real property under contract lien.

**HB 2594** (*Parker*) Relating to the modification or termination of restrictions by petition in certain real estate developments with certain amenities.

**HB 3460** (*Murr*) Relating to provisions in the dedicatory instruments of property owners' associations regarding display of flags.

**HB 2148** (*Keffer*) Relating to voting methods in a property owners' association election or vote.

**HB 2147** (*Keffer*) Relating to secret ballots in a property owners' association election or vote.

**HB 3539** (*Dukes*) Relating to the regulation by a developer of the installation of solar energy devices in a residential subdivision.

Our next Legislative Update will inform you of other bills TCAA is tracking and those that pass out of committee.

**If you are interested in the full text of these bills, visit the Texas Legislature's website at:**

<http://www.capitol.state.tx.us/>

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**Texas Community Association Advocates (TCAA) is the public policy voice of community associations and the professionals who serve them.**