

Texas Community Association Advocates (TCAA)

Legislative Update

88th Texas Legislature

April 28, 2023



Introductory Remarks



- ▶ TCAA
 - Purpose
 - Public policy voice of community associations and the professionals who serve them
 - Advocacy, lobby, and educate to effectuate well-balanced POA legislation

Board of Directors

▶ Board:

- Judd Austin: Henry, Oddo, Austin and Fletcher, Dallas
- Stewart Masterson: Kilowatt Partners, Houston
- Rob Koop: Community Management Associates (CMA), Dallas
- Doug Plas: PAMco, Austin
- Connie Heyer: Niemann & Heyer LLP, Austin
- Sean Frates: The Management Trust, Austin
- Dean Riddle: Riddle & Williams, PC, Dallas

▶ Ex-Officio Officers

- Fred Shapiro: SBB, Dallas
- Nina Tran-Moraw: HooverSlovacek LLP, Houston

Lobby Team

Matz and Company, LLC

- ▶ Laura Matz
- ▶ Frances Kurio

Roadmap



- **What TCAA Is Doing Now**

- Reviewed, summarized, and monitoring 152 House and Senate bills
- TCAA opposes bills we think are harmful to communities and management
- We are supporting a few bills which we authored or which are positive for communities

Where are the Bills in Austin?

- This past month has been full of committee hearings in the House and Senate
- We have testified in the various committee hearings in support of some bills, and we have opposed others

- **Important Bill Summary**

- Here is our report on the most important bills affecting us

HOA House Interim

- ▶ **Laws Needing “Fixes” – unintended consequences of last sessions SB 1588 (TCAA met with Realtors, Rep. Turner)**
 - Security measures
 - Fences across sidewalks, in easements, license areas
 - Architectural review authority issues
 - Not enough volunteers; costly to hire third-parties
- ▶ **TCAA Advocacy/TCAA Proposed Legislative Solutions**
 - *Architectural Review candidate solicitation mirroring director candidate solicitation; if insufficient volunteers, then directors may serve
 - *HOAs may restrict fencing over sidewalks, easements and maintenance license areas. Authority to impose consistent setback

Texas Realtors

- ▶ Realtors were the drivers of SB 1588 last session
- ▶ Stakeholder meeting took place in the Fall of 2022 and prior to the start of this session
- ▶ Realtors expressed concern at stakeholder meeting with HOA rental restrictions, resale certificate fees, and transfer fees – we just listened
- ▶ Realtors resisted HOAs being able to disallow fencing in drainage and other easements

ACC, Front Yard Fencing, Condos (HB 3503 Turner/SB 1668 Hughes)

- ▶ HB 3503 (Voted out of House Business & Industry Committee)
- ▶ SB 1668 (Voted out of Senate Jurisprudence; recommended for Local & Uncontested)
 - We provided language addressing security fencing – we gave alternate language so we can control fencing over easements and license areas
 - Condos > 60 units must post governing documents on HOA website
 - Condo management certificate requirements to mirror POA's (from Chapter 209 Property Code)
 - Resale certificate cap to mirror HOA's (\$375)

ACC PROBLEM/VOLUNTEERS

- ▶ We authored language giving HOAs ability to allow board members to serve if no one else volunteers
- ▶ TCAA suggested language to allow board members to serve if other owners fail to volunteer
- ▶ HOAs must also solicit candidates for the committee; Board member and spouse can serve if no volunteers

ACC VOLUNTEER PROBLEM

- ▶ HB 3776 (Jetton – no hearing set)– a second bill to fix ACC volunteer shortage
- ▶ This is a stand-alone bill addressing the Architectural Review Committee Volunteer Problem
- ▶ TCAA suggested language to allow board members to serve if other owners fail to volunteer
- ▶ HOAs must also solicit candidates for the committee; if no volunteers, then Board and spouse can serve

BIG ISSUE – Front Yard Fencing

- ▶ We are working to control front yard fencing
- ▶ We will keep you posted
- ▶ We have encountered resistance to our language

TCAA Voting Privacy Advocacy

- ▶ Current POA law (Chapter 209)
 - Ballots are privacy protected, proxies are not
- ▶ Current Condo law (Chapter 82)
 - Neither ballots nor proxies are protected
- ▶ **TCAA Advocacy/TCAA Proposed Legislative Solutions**
 - Privacy protection for proxies and ballots in both HOAs and condominium associations

Voting Privacy (HB 3777 Jetton)

- ▶ HB 3777 contains TCAA suggested language
- ▶ Applies to condos
- ▶ Precludes relatives of board members from tabulating votes
- ▶ Mirrors access to ballots from Chapter 209:
 - Prohibits disclosure by tabulator of how owners voted
 - Only people counting can access ballots/proxies
- ▶ Voted out of House Business & Industry Committee – sent to Local & Consent

Electronic Meetings and Voting (HB 3423 Bryant/SB 1767 Creighton)

- ▶ Amends Chapter 82 and 209 Property Code
- ▶ Condos:
 - Allows meetings of owners by electronic voting and telephonic means
- ▶ HB 3423 voted out of House Business & Industry Committee – sent to Local & Consent
- ▶ SB 1767 has not been heard in Senate Business & Commerce

Electronic Meetings and Voting

POAs:

- Allows meetings of owners by electronic voting and telephonic means
- Owners must be allowed to vote by one of the following methods: absentee ballot, proxy, or electronic ballot (electronic ballots was added)

Chickens, Rabbits, AND A Garden

- ▶ LOOK at all the related bills below
- ▶ HB 92 (Landgraf – Passed the House 137–11, referred to Senate Local Government); HB 276 (Cortez – Passed to third reading in the House 107–34); HB 1191 (Cain – no committee hearing to date); SB 326 (Hall – no committee hearing to date): Food production; chickens; rabbits
- ▶ Note: A cottage food production operation has been added since last session.

Chickens, Rabbits, AND A Garden

- ▶ Restricts Municipalities and POA's from **prohibiting**, applies to HOAs and NOT condos (condos carved out of the as-filed bill):
 - A cottage food production operation
 - The growing fruits and vegetables (in the back yard)
 - The as-filed bill allowed growing in front and side yards (at least that is out for now)
 - The raising or keeping of six or fewer domestic fowl
 - The raising or keeping of six or fewer rabbits

Chickens, contd.

- ▶ Six chickens and six rabbits allowed for “residence homesteads” (townhomes patios – any homestead residence) or “lot”



Chickens, ETC.

- ▶ Association can adopt and enforce covenants that:
 - Require growing area to be maintained in good condition if visible from street or adjoining lot;
 - Impose reasonable requirements to control odor, noise, safety, and sanitary conditions that don't prohibit keeping chickens and rabbits:
 - Can limit number beyond statutory minimum (6)
 - Can ban roosters
 - Can require fencing or shelter to contain within a lot
 - Can have requirements for sanitary conditions
 - Can regulate size, shielding and materials of shelter

FINES

HB 614 (Shaheen – pending in House Calendars) Relating to property owners' association fines

- ▶ As filed, bill would require a POA board to adopt a fine policy which must:
 - List each category of violation for which the board may assess a fine
 - State the amount of the fine for each violation

FINES

- **TCAA Win:** The author agreed to replace “each” category with “general category” of covenants for which HOA may assess fines, and
- The community must have a fine policy and fine schedule (board may reserve right to fine on case-by-case basis)
- Must post policy on HOA website OR annually email or send first class mail to all owners.

Assessment Collection

HB 886 (Shaheen – sent to House Local & Consent) 209 Assessment Delinquency Notice

- ▶ As filed – would add three certified mail notices to statutory collection protocol prior to filing a lien
- ▶ Would also prohibit lien filing before 180 days after the 3rd notice:
 - Assessments would increase to cover the non-payers
 - Collection costs would increase
 - Cashflow problems

Assessment Collection

▶ A Win For TCAA

As now agreed, does not alter our practices:

- Association must wait 90 days from the second delinquency notice before it can file lien – we already do
- Association's first letter can be sent by regular mail or email – deleted certified

Amendments (HB 1786 Burns)

- ▶ HOAs and condos must give notice of all covenant amendments
 - Published in a local newspaper OR mailed certified mail to all owners
- ▶ 60 day delay in effectiveness
 - Already must post on website
 - Already must adopt at noticed meeting
- ▶ TCAA Amendment: Make applicable only to amending restrictive covenants where no POA exists – was accepted by the bill's author
- ▶ Voted out of House Business & Industry– sent to Local & Consent

Voting (HB 2428 Raney)

- ▶ Would amend Chapter 209 of the Property Code re: amending the Declaration by HOAs
- ▶ Would remove ability to vote by absentee ballot on votes to amend the Declaration
- ▶ Good news – this bill is dead

Recall of Board Members (HB 1367 Vasut)

- ▶ Refiled from last session
- ▶ **TCAA Strongly Opposes**
- ▶ Owners with 20% of voting interest may petition for a meeting to vote on recalling (removing) a director
- ▶ Petition may not name more than one board member for recall
- ▶ If a majority of votes received are for removal, then that director is removed

HB 1367 Also Authorizes Suit in Justice Court

- ▶ Owners may bring actions against HOAs for violations by board members of deed restrictions or Chapter 209 in Justice Court
- ▶ Some Justice Court judges are not attorneys
- ▶ The Rules of Evidence do not apply
- ▶ Limit on awards has risen to \$20,000

HB 1367 – Authorizes Suit in Justice Court

- ▶ Justice Courts can grant:
 - Removal of director
 - Judgment against HOA for damages
 - Judgment authorizing owner to deduct amount of award from future assessments
- ▶ TCAA discussed concerns with bill author
- ▶ Voted out of House Business & Industry Committee

Mandatory HOA Audits (HB 1252 Shaheen)

- ▶ Would require TUCA-like audits for POAs every year
- ▶ From duplexes to 5,000+ home communities
- ▶ Audits may cost \$5,000 – \$10,000 – who knows
- ▶ Lawyer food – what if an audit is not performed by a CPA?
- ▶ TCAA has given alternative language; bill author has committed to work with stakeholders
- ▶ Voted out of House Business & Industry Committee

Assembly and Signage, Chapter 202 (SB 468 Kolkhorst)

Prohibits HOAs (including condos) from restricting speech or political assembly

- *no charge for renting the clubhouse
- *no hour restrictions
- *no location restrictions
- *no signage (speech) restrictions

TCAA has offered alternative language

The bill has not received a hearing



No Municipal Height Restrictions (SB 491 Hughes)

Applies to cities with > 725,000 residents

- ▶ Bans most all municipal ordinances imposing building height restrictions, including zoning height restrictions
- ▶ Does not capture HOAs as written
- ▶ TCAA is monitoring in case amended
- ▶ Passed the Senate 31-0



Access to Food, Water and Shelter (HJR 9 Landgraf)

- ▶ HOA cannot prohibit an owner's right to secure access to food, water, electric power and shelter on their property
 - Subject only to laws protecting public health and safety
 - Can owners breed animals and build a water/power plant?
 - Would override prohibition against commercial uses
- ▶ TCAA opposes
- ▶ Bill pending in House Calendars

Political Gatherings (HB 3775 Jetton)

- ▶ Bill prohibits Assoc. from banning candidates from meeting on common areas to address owners
 - TCAA provided alternative language that:
 - Allows political gatherings if and under same rules as other gatherings
 - Association can charge deposit, enforce hours of use, require written agreement

Short Term Rentals (HB 2665 Gates)

- ▶ Applies to Cities and Counties
- ▶ Ban on prohibiting short term rentals
- ▶ Cannot regulate duration of rental
- ▶ Cannot limit number of occupants
- ▶ Does not mention POAs as currently drafted
- ▶ TCAA opposes
- ▶ There was significant testimony at the hearing in OPPOSITION
- ▶ Committee Substitute changed the bill to a study
- ▶ Voted out of House Land & Resource Management

POA Street Parking (HB 1799 Landgraf)

- ▶ Bans HOAs from prohibiting resident from parking a vehicle on street adjacent to owner's home if vehicle is:
 - Owned by state or government
 - operated by resident in course of employment
 - and required by employer to be parked in immediate vicinity of home
- ▶ This bill is the result of a parking issue during the pandemic
- ▶ Voted out of House Business & Industry Committee
- ▶ TCAA is monitoring

Owners Right to Speak in POA Board Meetings (HB 3064 Bailes)

- ▶ Amends Chapter 209: N/A to condos
- ▶ Members have right to speak at all meetings, including board meetings
- ▶ Does not include executive session
- ▶ Board may impose time and manner limits

Solar Roof Tiles (HB 328 Cortez)

- ▶ Amends Chapter 202 of the Property Code
- ▶ Includes solar roof tiles in the definition of solar energy device
- ▶ Accordingly, solar roof tiles are treated the same as solar panels
- ▶ Voted out of House Business & Industry Committee
- ▶ Recommended for Local & Consent Calendar

Electric Vehicle Charging (HB 4195 Zwiener)

- ▶ Amends Chapter 92 of the Property Code (Landlord Tenant)
- ▶ Tenant at multiunit complex may install EV charge station at tenant expense
- ▶ Multiunit complex defined as two or more dwellings in one or more buildings:
 - Under common ownership;
 - Managed by same owner, agent, or management company; **AND**
 - Located on the same lot or adjacent lots
- ▶ While the definition excludes condos, TCAA is still monitoring in case the bill is amended
- ▶ Pending in House Business & Industry Committee

Construction Defect Claims (HB 2022 Leach)

- ▶ Voted out of House Judiciary & Civil Jurisprudence Committee 5 – 4
- ▶ Amends Chapter 27 of the Property Code (Residential Construction Liability)
- ▶ Places additional limits on the damages a contractor is liable for:
 - Actual damage to residence
 - Failure of component to perform
 - Verifiable danger to safety of occupants

Construction Defect Claims (HB 2022 Leach)

- ▶ Adds proof requirements for claimant to maintain breach of warranty of habitability
- ▶ Contractor must be given opportunity to conduct up to 3 inspections
- ▶ Adds arbitration filing fees and claimant's share of arbitrator's compensation to claimant's economic damages

Construction Defect Claims (HB 2024 Leach)

- ▶ Passed the House 100–40
- ▶ Referred to the Senate Business & Commerce Committee
- ▶ Amends Chapter 16 of Texas Civil Practice and Remedies Code (Limitations)
- ▶ Keeps the repose limitation at 10 years
- ▶ For written warranties, establishes minimum periods:
 - 1 year for workmanship and materials
 - 2 years for plumbing, electricity, heating, and A/C
 - 6 years for major structural defects

Protection of Community Association Living

- ▶ What should managers and directors do from an operational standpoint?
 - Be reasonable in decision-making
 - Educate themselves on the laws and their community governing documents
 - Consult with knowledgeable experts

How Do We Protect Community Association Living?

▶ Join In TCAA's Advocacy Efforts

- Become a member of TCAA
- Contribute annually to TCAA
 - Advocacy, lobbying, and educating require FUNDING
 - Include a line item in POA budget
- Develop and foster relationships with your legislators, including inviting your legislators to speak at your community meetings
 - Who you know matters!
- Respond to Calls to Action that TCAA will coordinate
 - Need directors to reach out to their legislators in writing, by calling and even attending IN PERSON in Austin, as needed
 - Need participation from LARGE and SMALL communities

Protection of Community Association Living

TCAA NEEDS YOUR SUPPORT– Funding, volunteering, engaging!

- ▶ Checks may be remitted to:
 - Texas Community Association Advocates, Inc
3616 Far West Blvd., Suite 117– PMB 365, Austin, TX 78731
- ▶ To make a contribution online:
 - www.txcaa.org, log in and complete the donation form.
 - Suggested donations visit our website at www.txcaa.org/levels-of-support

That's a Wrap – Until we meet again

Dates of Interest | 88th Legislature

Monday, May 8, 2023 (119th day):

Last day for House committees to report HBs and HJR

Thursday, May 11, 2023:

Last day for the House to consider 2nd reading HBs and HJR on the calendar

Wednesday, May 24, 2023 (135th day):

Last day for the House to consider local and consent SBs on 2nd and 3rd reading Last day for the Senate to consider all bills and joint resolutions on 2nd and 3rd reading

Monday, May 29, 2023 (140th day): Sine die