



TCAA Legislative Update June 2015

The 84th Legislative Session is over! The Senate and House adjourned Monday afternoon, June 1, 2015. The Governor will be signing and vetoing bills through June 21st and TCAA will be monitoring the Governor's decisions on select bills. With nearly 6,500 bills and resolutions filed this session, it was determined that no less than 200 bills affected community associations either directly or indirectly. Of those bills identified to affect community associations, at least twelve bills will likely become law unless vetoed by the Governor.

The TCAA Board, lobby team, and volunteers reviewed captions of bills filed and then identified which of those bills affected community associations. We crafted alternative legislation for certain bills, drafted amendments where clarification was necessary, testified at committee hearings and monitored floor debates.

The good news is that most of the bills that would have a negative impact on community associations were defeated. Thanks to the work of TCAA volunteers and supporter all across Texas, TCAA's Affirmative Legislation, SB 1168 sponsored by Senator Royce West (Dallas) and Representative Jason Villalba (Dallas), passed the legislature and is headed to the Governor's desk. Please give a big THANK YOU to these sponsors whether or not you live in their districts!

TCAA's Affirmative Legislation Passed and Sent to Governor

SB 1168 (TCAA Affirmative Legislation) Relating to the operation of certain property owners' associations

Some of the bill's more important provisions are as follows:

*Allows members to attend open board meetings held by video conferencing using the same technology.

*Allows more flexibility for boards to take day-to-day action outside of a meeting while clarifying that certain important votes (e.g. selling land or adopting a deed restriction) must be taken at an open meeting.

* Provides privacy protection by allowing associations to adopt rules regarding use of secret ballots, and by making clear that any person who tabulates or recounts votes must not disclose to anyone how an individual voted.

*Allows associations more flexibility in offering payment plans. Currently associations cannot offer payment plans for longer than 18 months; the bill removes that restriction.

*Eliminates confusion and grounds for legal dispute by clarifying that Ch. 207 (applicable to homeowner association resale certificates) does not apply to condominiums. The resale certificate provisions applicable to condominiums are already in Chapter 82 of the Property Code.

*Clarifies the manner in which votes may be cast. Although absentee ballots or proxy voting must be allowed, the association may also elect to offer other methods such as online or electronic voting.

Link to the full text of the bill:

<http://www.capitol.state.tx.us/tlodocs/84R/billtext/pdf/SB01168F.pdf#navpanes=0>

971--This Bill Was Defeated!

TCAA's efforts to fight legislation negatively impacting community associations were critical in ensuring that HB 971, one of the worst bills filed this session, did not pass out of the House.

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

As filed, this bill imposed additional requirements and liability on directors and officers of POAs. For condominiums, 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.

For both HOAs and condominiums, the bill as filed required all candidates for director or officer positions to: (i) review all statutes related to HOAs and condos and review all governing documents for the Association; and, if elected, (ii) swear in writing that this reading assignment had been completed and that the director/officer would comply with those statutes and documents while in office. The association was required to keep the sworn statements for a period of five (5) years. There is no exception in the bill for Declarant appointees. Any director or officer who failed to comply with these requirements was automatically

suspended from office until the requirements were met.

The onerous requirements contained in this bill had the potential to significantly impact the willingness of individuals to volunteer for director and officer positions.

More Key Bills Which Passed

The following are some of the other key bills which have been signed or sent to the Governor for signature. TCAA worked with sponsors on several of these until reasonable and balanced amendments were included.

HB 2489 (*Leach*) Relating to the ability of a property owners' association to enforce certain provisions on the lease or rental of real property. As filed, this bill negated certain rights of a homeowner and condominium associations to obtain basic lease information from landlords. Certain amendments to the bill added in the Senate preserved these rights.

HB 3089 (*Galindo*) Relating to fire protection sprinkler systems in residential high-rise buildings. This bill would have imposed very expensive retrofitting requirements on numerous high rise condominiums throughout Texas. The scope of the bill was ultimately narrowed to apply only to buildings in San Antonio where 50 percent of the occupants were elderly or disabled.

HB 2303 (*Kuempel*) Relating to a landowner's liability for injuries incurred during certain recreational activities. This statute relates to the limits of liability to landowners where their "agricultural land" is being used for various recreational purposes, including for driving "recreational off-highway" vehicles thereon. It also provides further protections to property owners when their property is non-agricultural land and used for recreational purposes (defined to include ATV use.) This limitation of liability could prove helpful to POAs where such recreational use is permitted.

SB 862 (*Birdwell*) Relating to voting methods in a property owners' association election or vote. This bill has been signed by the Governor and provides that a property owners' association is not required to provide an owner with more than one voting method so long as an owner may vote by absentee ballot or proxy, unless a dedicatory instrument provides otherwise.

SB 864 (*Birdwell*) Relating to secret ballots in a property owners' association election or vote. This bill has been signed by the Governor and allows a property owners' association to adopt rules to allow voting by secret ballot by members of the association. The association must take measures to reasonably ensure that: (i) a member cannot cast more votes than the member is eligible to cast in an election or vote; and (ii) the association counts every vote cast by a member that is eligible to cast a vote.

HB 745 (*Bohac*) Relating to the installation of solar-powered stop signs by a property owners' association. This bill adds to a 2011 change to the Transportation Code which allowed a POA to install a speed feedback sign. This bill will now permit a POA to install a "solar powered light-emitting diode (LED) stop sign." The street must be within the POA's jurisdiction, municipal approval is required and the POA is solely responsible for costs and maintenance of an LED powered stop sign.

HB 939 (*Dale*) Relating to unenforceable restrictive covenants regarding standby electric generators affecting residential homes. TCAA was originally opposed to this bill because it removed community association authority over important issues such as location and aesthetics. TCAA was successful in getting the bill amended to restore the authority needed by a POA to protect homeowners.

HB 1072 (*Thompson*) Relating to the eligibility of certain persons to serve on the board of a property owners' association. The absolute prohibition against a person who was convicted of a felony from serving on the board has been modified very slightly by this bill. The absolute prohibition will expire 20 years after the date of conviction.

SB 1626 (*Rodriquez*) Relating to the regulation by a developer of the installation of solar energy devices in a residential subdivision. This bill will require a developer of a subdivision of 51 or more lots to be subject to the same requirements for the installation of solar energy devices that all POAs have been required to follow since 2011.

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.)

HB 1455 greatly restricts a condominium association's ability to file a construction-defect lawsuit or pursue such a claim through arbitration. It requires condominium associations to fulfill a large number of intricate and rather expensive requirements prior to filing a construction-defect lawsuit or pursuing the claim through arbitration.

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 or initiate arbitration for construction defect to hold the responsible party accountable. TCAA is concerned with the significant limitations this bill imposes on condominium associations' ability to seek accountability from the party responsible for construction defects.

TCAA was unable to obtain the necessary changes to cause HB 1455 to be fair and balanced. Powerful interests representing developers made this bill their top priority this session and were relentless in their pursuit for passage. The bill as sent to the Governor for signature was, however, better than the bill as filed originally.

Thanks to all TCAA supporters and volunteers for dedicating your valuable time, helping with a quick turnaround on issues, testifying and drafting letters of support and opposition for our legislative agenda. We spent a lot of time on defense this session and were successful. We expect another wave of bills to be filed next session.

TCAA will continue to work aggressively defending community associations, advocating for important policy issues that impact POAs and defeating legislation that would harm our efforts.

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.

We hope this update has been informative, and welcome your participation and continued support of TCAA:

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