

TCAA Bill Summaries

82nd Legislative Session - As of February 16, 2011

HB 44 - Menendez

This bill prohibits a POA from adopting or enforcing a provision in a dedicatory instrument that prohibits or restricts the owner of a lot on which a residence is located from using an adjacent lot also owned by the homeowner for “residential purposes.” “Residential purposes” is defined as the location on the lot of any building, structure, or other improvement customarily appurtenant to a residence, as opposed to use for a business or commercial purpose. The term includes the location on the lot of a garage, sidewalk, driveway, parking area, children's swing or playscape, fence, septic system, swimming pool, utility line, or water well and, if otherwise specifically permitted by the provisions of a dedicatory instrument, the parking or storage of a recreational vehicle. Bottom line, you can't require a residence to be built on an adjacent lot, BUT you also CANNOT RESTRICT any “residential purposes,” presumably this would trump all ACC requirements, etc.

HB 45 - Menendez

This bill amends Chapter 12 of the Property Code, to allow an owner against whom a POA lien is filed to record an affidavit stating that the POA is wrong and the lien is not valid. This affidavit serves as a release of lien unless the POA files a “counter affidavit.” No deadline is given for the filing of the “counter affidavit.” An owner filing an affidavit must give at least 30 days notice, certified or registered mail, to the POA at the address pursuant to the Ch. 209 management certificate.

HB 171 - Raymond

Allows a county with a population of more than 60,000 and less than 300,000 to utilize the urban renewal powers contained in the Local Government Code. Also allows a county to enter into an inter-local agreement with a municipality to conduct an urban renewal project with the city's boundaries.

HB 175 - Jackson

Relates to the on-premises consumption of certain alcoholic beverages. It could be construed to require a POA to obtain a permit in order to allow the consumption of alcoholic beverages in the POAs clubhouse or other common area.

H.B. 190 – Walle

Adds a new section to Chapter 240, Local Government Code, stating that the commissioners court by order may authorize the holding of events at which loudspeakers or sound amplifiers that produce sounds exceeding levels specified by Section 240.062 will be used, if the person holding an event obtains a permit from the county for the event.

HB 211 - Rodriguez

Amends Chapter 39 of the Utilities code to require at least 35% of the state's electric generating capacity to be from renewable sources with at least 2% coming from solar, by the year 2020.

HB 213 - Rodriguez

This bill proposes to add Chapter 397 to Title 5 of the Finance Code. Title 5 concerns Protection of Consumers of Financial Services. Chapter 297 would place additional requirements on mortgage servicers to provide a response with a payment history and other information to debtors requesting general information or disputing the status of the loan. However, Chapter 397 would apply only to mortgage servicers of non-federally related loans secured by a first lien on residential real property. The definition of a mortgage servicer in Section 51.0001 of the Property Code would include an HOA or its management company. Further, there are some assessment liens that are in a first lien position. However, the usual definition of a loan contemplates an advance of money. (There does not appear to be a definition of a

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"loan" in this section of the Finance Code.) Hence, it does not appear that this bill would apply to associations.

HB 232 – White

Chapter 211 of the Property Code is a bracketed statute that provides a procedure to amend restrictions by a two-thirds vote of the community located within the bracketed area if the restrictions do not have an amendatory procedure or require unanimous consent. This bill would also allow the use of this procedure if the restrictions are not operative or effective until a specified period.

HB 283 – Lucio III

Amends the Texas Parks & Wildlife Code by adopting guidelines for wheelchair accessibility of new or renovated park playgrounds for children with disabilities. The bill, however, has no application to private parks owned by POAs, because under Section 27.001 of the Parks & Wildlife Code, the affected parks are only those owned by "political subdivisions." This definition would include a county, municipality, river authority, etc., but not POAs.

HB 316 - Fletcher

Amends Section 1.111(b) of the Tax Code, entitled, "Representation of Property Owner." The changes are intended to allow for appraisal districts in counties with a population of 500,000 or more to implement a system to allow a property owner to appoint an agent by electronic filing in a property tax dispute. The proposed amendments do not appear to have any impact on HOAs.

HB 362 - Solomons

This bill proposes a new section 202.010 to the Property Code to limit the ability of a POA to regulate the use of solar energy devices and a new section 202.011 to limit the ability of a POA to regulate the use of certain roofing materials.

HB 364 - Turner

In the 2009 session, Rep. Turner passed HB 3178 to amend TUCA to make it easier to serve an owner in a condemnation action relating to a distressed condominium property in Harris County. This bill would amend the same section of TUCA to require an owner to give a new address to the appraisal district within 90 days of any change of address for purposes of service of process. The bill also amends the Local Government Code to provide that a taking by eminent domain is proper, notwithstanding that it might have an economic development purpose, as long as such purpose is secondary to the goal of eliminating urban blight.

HB 366 - Orr

Amends Section 209.009, Property Code, to add an application of payments provision, with payments being applied first to delinquent assessments and lastly to attorneys' fees related solely to fines.

HB 368 - Hochberg

Amends Section 52.071, Election Code, by adding new instructions to ballots for public elections in Texas. The Texas Election Code pertains to elections ordered by a "political subdivision" and the definition of a political subdivision does not include a POA. Accordingly, this bill currently has no application to private POAs.

HB 410 - Craddick

Amends Section 302.003 and Section 393.308 of the Texas Finance Code. The new Section 302.003 would prohibit a creditor or third party from collecting a fee to assist a consumer in arranging or extending credit if the credit is used for personal, family or household purposes. If charged, the fee

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apparently is deemed to be a usurious charge of interest. The bill does not appear to be directed at HOAs or the association industry. However, it appears possible that an association or management company could be considered to be in violation of the statute for arranging a payment agreement. The bill also prohibits a "credit services organization" from obtaining an extension of credit for a consumer, however, an HOA does not appear to fit the definition of a credit services organization.

HB 430 - Johnson

Adds Section 20.055 and Chapter 606 to the Business and Commerce Code, Section 509.035 to the Insurance Code, and Section 17.010 to the Utility Code. Allows a consumer to require a business, an insurer or a utility to report the consumer's payment history to credit bureaus, and requires the credit bureau to use such information in computing credit scores. Consumer can be charged a reasonable fee to offset expenses in reporting payment information to credit bureaus.

HB 434 - Parker

Amends Section 42.042(e), Human Resources Code, to require the Department of Human Services to promulgate minimum standards that ensure that a child-care facility follows physician's instruction in providing specialized medical assistance to children.

HB 450 – Lucio III

This bill is very similar to the portion of HB 362 filed by Representative Solomons pertaining to solar energy devices. The bill proposes a new section 202.010 to the Property Code to limit the ability of a POA to regulate the use of solar energy devices.

HB 456 – Lucio III

This bill provides a security service contractor with a lien against premises for which the contractor provided security services. The bill does not appear to have any application to associations or their vendors.

HB 533 – Villarreal

Amends Section 22.28 and Section 22.30, Property Code, to provide the right to protest the imposition of a penalty assessed by the chief appraiser for failing to file a rendition statement or property report required by Chapter 22.

HB 558 – Deshotel

Requires the Finance Commission of Texas to adopt rules governing requests by title insurance companies for payoff information from mortgage servicers related to home loans and the provision of that information, including rules prescribing a standard payoff statement form that must be used by mortgage servicers to provide those pay off statements.

HB 565 - Solomons

Amends Chapter 209 of the Texas Property Code to provide that an association may not foreclose an assessment lien unless it first obtains a court order in an application for expedited foreclosure under rules adopted by the Supreme Court. It also provides that the Supreme Court will adopt rules for such expedited proceedings in like manner as Texas Rule of Civil Procedure 736 regarding foreclosures of home equity loans. The bill would prohibit non-judicial foreclosure unless the required expedited order was first obtained from the court.

HB 620 - Fletcher

Adds a new Section 82.0651 to Chapter 82, Government Code, entitled, "Liability for Contracts for Legal Services procured as a Result of Certain Prohibited Conduct." Allows individuals or entities who entered

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into contracts for legal services as a result of prohibited conduct (e.g. barratry or illegal solicitation) to sue any persons responsible for ordering, encouraging, or procuring the illegal contract. The successful plaintiff can recover damages and attorney's fees under the proposed statute. This may be helpful in pursuing an improper "kickback" made in connection with legal representation.

HB 635 - Guillen

Amends the non-judicial foreclosure statute contained in Chapter 51 of the Property Code. During the 2009 Session, HB 3857 by Representative Herrero was passed to provide that a foreclosure may not be conducted during a period of a military service member's active duty or for 9 months thereafter, unless the foreclosure is conducted pursuant to a court order or the military service member has waived his or her right pursuant to a specific written waiver.

This bill expands this section to provide that if the property is the residence of a surviving spouse of a military service member killed during active military service, the lien holder must give at least 180 days to cure from the date of default prior to giving notice of foreclosure sale. The surviving spouse may file an action to have foreclosure proceedings stayed until this cure period has expired. Further, if the property is the residence of a surviving spouse of a military service member killed during active military service, the foreclosure may not be conducted for a period of twelve months after the date on which the service member was killed (absent the court order or written waiver).

HB 656 - Farias

This bill is identical to SB 251 filed by Senator West, HB 410 by Representative Craddick, and HB 661 by Representative Rodriguez. It amends Section 302.003 and Section 393.308 of the Texas Finance Code. The new Section 302.003 would prohibit a creditor or third party from collecting a fee to assist a consumer in arranging or extending credit if the credit is used for personal, family or household purposes. If charged, the fee apparently is deemed to be a usurious charge of interest. The bill does not appear to be directed at POAs or the association industry. However, it appears possible that an association or management company could be considered to be in violation of the statute for arranging a payment agreement.

HB 659 - Villarreal

This bill proposes to allow municipalities the right to contractually assess property owners for water efficiency public improvements, in addition to their existing authority to contractually assess lot owners for "energy efficiency public improvements." The proposed amendment simply adds the word "water" into the context of the present statute. The amendments also give the municipalities the right to issue tax statements to include the contractual assessments for these types of programs and to impose a first lien on delinquent owners' properties, the same as any other property tax. It also gives the municipalities the right to contract out with third parties to collect the delinquent assessments. The proposed amendments do not appear to have any direct impact on HOAs.

HB 661 - Rodriguez

This bill is identical to SB 251 filed by Senator West, HB 410 by Representative Craddick, and HB 661 by Representative Rodriguez, and HB 656 by Farias. It amends Section 302.003 and Section 393.308 of the Texas Finance Code. The new Section 302.003 would prohibit a creditor or third party from collecting a fee to assist a consumer in arranging or extending credit if the credit is used for personal, family or household purposes. If charged, the fee apparently is deemed to be a usurious charge of interest. The bill does not appear to be directed at POAs or the association industry. However, it appears possible that an association or management company could be considered to be in violation of the statute for arranging a payment agreement.

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HB 663 – Kleinschmidt

Chapter 211 of the Property Code is a bracketed statute that provides a procedure to amend restrictions by a two-thirds vote of the community located within the bracketed area if the restrictions do not have an amendatory procedure or require unanimous consent. Chapter 211 is bracketed to apply to a subdivision or part of a subdivision located in whole or in part within the unincorporated area of a county with a population of less than 65,000. This bill would further provide that such determination of the population is as of the 2000 federal census or a subsequent federal census.

HB 668 – Fred Brown

Amends Section 2303.154(a) of the Occupations Code pertaining to Vehicle Storage Facilities. It modifies the timeframe and procedures a Vehicle Storage Facility must follow in connection with notification to the vehicle owner and the law enforcement agency with regard to an abandoned vehicle. Accordingly, it has no direct applicability to associations.

HB 843 - Geren

Allows a property owner to receive property tax bills via electronic means if the local assessor/collector has implemented a system for do so and the property owner or agent for the property owner has submitted a written request to the assessor/collector asking that bills be delivered by electronic means.

HB 893 – Charlie Howard

Amends section 551.0015 of the Texas Government Code. Subjects all POAs who have mandatory membership requirements and mandatory regular assessments to the governmental Open Meetings requirements contained in the Government Code.

HB 897 – Charlie Howard

Adds Chapter 606 to the Business and Commerce Code. Applies to contracts with initial terms of 6 months or less or where price for goods or services is increased under renewed contract. Provides for conspicuous disclosure or renewal clause in contract, written notice to consumer prior to renewal, right to cancellation by consumer and penalties for violation of this chapter. Does not apply to contracts for sale, lease, management of real property.

HB 912 - Dutton

Amends Section 202.010, Property Code, to state that a restrictive covenant may not be adopted that places a lien on real property to secure payment of a debt created by the covenant unless the covenant exempts a homestead, as defined by Section 41.002 from foreclosure of the lien.

HB 953 – Lozano

Amends Title 5, Finance Code, to provide that a military service member who is injured while serving in a combat zone and is hospitalized for treatment more than 21 consecutive days is entitled to defer collection or abate a suit to collect a consumer debt the service member incurred prior to being injured.

HB 958 - Workman

Adds Section 41.014 to the Civil Practices and Remedies Code. Reduces by 10%, for every year of substantial completion of construction or repair to real property, in the event an award is entered against contractor for construction defect.

HB 998 - McClendon

Adds Section 822.008 to Health & Safety Code. Requires owner of certain types of dogs to obtain liability insurance with a per occurrence minimum of \$100,000 to cover damages for personal injury or death caused by the dog. Makes owner liable for death or bodily injury resulting from a dog attack.

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HB 1025 – Phillips

Relating to the trapping and transport of surplus white-tailed deer.

HB 1071 – Sarah Davis

Relating to the extension of deed restrictions in certain residential real estate subdivisions.

HB 1118 – Ritter

Relating to the resale of property purchased by a taxing unit at a tax sale.

HB 1127 – Gutierrez

Amends various statutes by adding language providing notice of possible rights under the federal Service members Civil Relief Act and/or state statutes affording protection to members of the military while on active duty. The bill proposes that such language to a tenant would be required in a notice to vacate and in the citation of an eviction suit pursuant to Chapter 24 of the Property Code, as well as furnishing such notice to a tenant in other situations under Chapter 91 of the Property Code. The language would similarly be required in all notices required under Section 51.002 of the Property Code concerning non-judicial foreclosures. Lastly, the bill proposes that notice of possible rights under the Service members Civil Relief Act would be required in a "209 notice" under Section 209.006 of the Property Code prior to an enforcement action.

HB 1196 – Dutton

Amends Chapter 209, Property Code, to require that before any 209 foreclosure, the association has to obtain and pay for an MAI appraisal of the property and provide a copy of the appraisal to the owner. POAs can't sell the property unless the sales price is at least 80% of the appraised value (regardless of the owner's equity position.) All proceeds from the foreclosure sale have to be applied in a certain priority: any delinquent assessment; any current assessment; any attorney's fees incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure; any fines assessed by the association any attorney's fees incurred by the association that are not subject to Subdivision (3); and any other amount owed to the association.

HB 1218 - Miles

Amends Chapter 24, Property Code, by requiring the purchaser of a residential property at any foreclosure sale to give a tenant 90 rather than 30 days notice to vacate. It still allows for faster eviction if the tenant does not timely pay rent. The bill clarifies that the tenant must pay rent during this 90 day period.

HB 1222 - Anchia

Companion to SB 141. This is a 67 page bill about debt management service providers. "Debt management services" are defined as services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions. Since neither POA managers nor attorneys role in any payment plan process is "for the purpose of obtaining concessions", the bill appears inapplicable, but should be monitored.

HB 1228 - Dutton

The bill amends Chapter 209, Property Code to require that prior to a POA foreclosure (whether judicial or nonjudicial) the POA must give notice of total amount due to any holder of a first lien (or if the assessment lien is first lien, then to the next priority lienholder.) The POA must provide notice to recipient 60 days to cure the delinquency. Notice must be sent to the address of the lienholder "shown in the deed records."

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HB 1278 – Coleman

Bill prohibits a POA restriction from being adopted or enforced if it "prohibits a property owner or resident from displaying or affixing on the entry to the owner's or resident's dwelling one or more religious items that are expected to be displayed by a tenet of the owner's or resident's religion." POAs can prohibit a display if it: (1) threatens the public health or safety; (2) violates a law; (3) contains language, graphics, or any display that is patently offensive to a passerby; (4) is in a location other than the entry door or door frame or extends past the outer edge of the door frame of the owner's or resident's dwelling; or (5) individually or in combination with each other religious item displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches. Further language: (c) Except as otherwise provided by this section, this section does not authorize an owner or resident to use a material or color for an entry door or door frame of the owner's or resident's dwelling or make an alteration to the entry door or door frame that is not authorized by the restrictive covenants governing the dwelling. (d) A property owners' association may remove an item displayed in violation of a restrictive covenant permitted by this section.

HJR 64 – Pickett

Proposing a constitutional amendment limiting the uses of revenues from motor vehicle registration fees, taxes on motor fuels and lubricants, and certain revenue received from the federal government.

SB 95 - Lucio

Requires TDI to adopt and policy writers to use, absent permission otherwise, standardized forms to be used in all residential insurance policies.

SB 101 – Van de Putte

Amends Section 51.002, Property Code, to require language to be added to all non-judicial foreclosure notices, to the effect that "if you or your spouse is active duty military, please send notice of active duty military service to the sender of this notice immediately." 51.015(b) is amended to make Chapter 51 expressly applicable to assessments (as defined in 209).

SB 141 - Eltife

This is a 67-page bill about debt management service providers. "Debt management services" are defined as services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions.

SB 142 – West

Omnibus Bill. This is basically HB 1976 as it existed at the end of last session.

SB 238 – West

Appears to be a repeat of HB 25 from last session. This bill prohibits restrictions against "solar energy devices" defined as follows: a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.

Only restrictions allowed are: restrictions found by a court to threaten health or safety or violate a law; restrictions disallowing items in common area; restrictions disallowing devices in places other than on roof or in fenced yard or patio maintained by property owner.

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SB 251 – West

Amends Section 302.003 and Section 393.308 of the Texas Finance Code. The new Section 302.003 would prohibit a creditor or third party from collecting a fee to assist a consumer in arranging or extending credit if the credit is used for personal, family or household purposes. If charged, the fee apparently is deemed to be a usurious charge of interest. The bill does not appear to be directed at HOAs or the association industry. However, it appears possible that an association or management company could be considered to be in violation of the statute for arranging a payment agreement. Further review of this issue is needed. However, no bill analysis was initially available to check into this. Monitoring is also needed due to the broad caption.

SB 253 – Davis

This bill is identical to SB 251 filed by Senator West and HB 410 filed by Representative Craddick. It proposes to amend Section 302.003 and Section 393.308 of the Texas Finance Code. The new Section 302.003 would prohibit a creditor or third party from collecting a fee to assist a consumer in arranging or extending credit if the credit is used for personal, family or household purposes. If charged, the fee apparently is deemed to be a usurious charge of interest. The bill does not appear to be directed at HOAs or the association industry. However, it appears possible that an association or management company could be considered to be in violation of the statute for arranging a payment agreement. Further review of this issue is needed. However, no bill analysis was initially available to check into this. Monitoring is also needed due to the broad caption.

SB 299 – Wentworth

Adds Section 12.0012, Property Code. Requires an instrument conveying an interest in real property to disclose the sales price. Failure to do so will result in the imposition of a civil penalty in the amount of 5% of the sales price.

SB 302 – Wentworth

Identical to SB 238 by West.

SB 409 – Estes

Relating to the appraisal for ad valorem tax purposes of open-space land devoted to water stewardship purposes on the basis of its productive capacity.

SB 425 – Carona

Add Chapter 1811, Insurance Code. Property and casualty certificates of insurance and approval of property and casualty certificates of insurance forms by the Texas Department of Insurance.

SB 446 - Jackson

This bill proposes to amend Chapter 41 of the Property Code concerning homestead to provide that an encumbrance may be properly fixed on the homestead to secure the payment of association fees or fines, but the homestead property is exempt from seizure and the association may only collect the debt upon transfer of the property. The proposed bill would take effect on January 1, 2012, but only if a related proposed constitutional amendment (SJR 19) passes per an election of the voters on November 8, 2011.

SB 447 – Jackson

This bill is identical to the portion of HB 362 filed by Representative Solomons that pertains to solar energy devices. It proposes a new section 202.010 to the Property Code to limit the ability of an HOA to regulate the use of solar energy devices. It is also similar to HB 456 filed by Representative Lucio.

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SB 459 - Seliger

This bill proposes an amendment of Chapter 376 of the Local Government Code, by attempting to add a new Sec. 376.0001, entitled, "Findings," and other modifications of the statutes on "Contractual Assessments for Energy Efficiency Improvements." The proposed new section simply adds that the legislature finds that the contractual assessment of property to finance water or energy efficiency public improvements serves public purposes of economic development and conservation of resources. The amendments make other refinements to the existing legislation. The proposed amendments do not appear to have any direct impact on HOAs.

SB 472 - West

This bill proposes to add five new sections to Chapter 209 of the Property Code. The proposed amendments are identical to the similar amendments included in SB 142 also filed by Senator West. The bill proposes to: eliminate the need for ballots in uncontested races; make void any provision disqualifying an owner from voting in most association matters, including elections of directors; eliminate proxy voting; make void any provision restricting an owner's right to run for the board, but it could be made known to the board if the member had been convicted of a felony or crime of moral turpitude; provide for absentee or electronic voting, along with required language warning the owner of the potential loss of the ability to vote if an amendment is made at the meeting (unless the owner attends in person); and providing for other rules and procedures to govern the use of absentee and electronic ballots; as well as providing that these provisions supersede any language in the dedicatory instrument.

SB 492 - Fraser

Relating to the creation of a distributed solar generation incentive program.

SB 498 - Jackson

Relating to the trapping and transport of surplus white-tailed deer.

SB 555 - Watson

Relating to the regulation of LP-gas utility companies.

SB 608 - Rodriguez

Provides for additional county fees on firework sales for purposes of providing additional firefighting capacity.

SB 619 - Rodriguez

Requires homebuilders building new homes in subdivisions of 50 homes or more to offer a solar installation package to homebuyers.

SJR 16 - Estes

Proposes a constitutional amendment providing for the appraisal for ad valorem tax purposes of open-space land devoted to water stewardship purposes on the basis of its productive capacity.

SJR 19 - Jackson

This joint resolution provides for an election of the voters on November 8, 2011, to pass a constitutional amendment to Section 50, Article XVI of the Texas Constitution concerning homestead. The amendment provides that an encumbrance may be fixed on the homestead to secure association fees and fines, but the homestead is protected from forced sale of such debt. The passing of this proposed constitutional amendment is a prerequisite to the ability of the related HB 446 to become law. HB 446 provides that the association may only collect the debt upon transfer of the property.