

2023 Texas Legislative Update: Issues Affecting Texas Homeowners' Associations and Condominium Owners' Associations

The 2023 Texas Legislative Session has come to a close. New laws affecting homeowners' associations and condominium owners' associations will take effect on September 1, 2023. Winstead was actively involved in the 2023 Texas Legislative Session, with attorney Teddy Holtz serving as a member of the [CAI Texas Legislative Action Committee](#) (TLAC). TLAC educated legislators concerning unfavorable bills and worked to secure passage of Senate Bill 1668, which acts as a cleanup bill to SB 1588, enacted during the 2021 Texas Legislative Session.

Below is a summary of the changes, or steps, that are necessary to conform your governance documents to the statutory changes resulting from the 2023 Texas Legislative Session. In our analysis, we distinguish between the need to revise existing governance documents vs. the need to adopt a new policy. For example, SB 614 applies only to residential (homeowners') associations subject to Ch. 209 of the Property Code which has the authority to levy fines. The new law requires associations with fining authority to adopt an enforcement policy regarding the levying of fines that includes general categories of restrictive covenants for which the association may assess fines and a schedule of fines for such violations. While most associations currently have a Fine and Enforcement Policy in place, the new requirements resulting from this legislative session likely render those policies outdated and not in compliance with Texas law. As such, an Amended and Restated Fine and Enforcement Policy that complies with the requirements listed in SB 614 should be adopted. For new associations with fining authority or associations that wish to start levying fines, adoption of a compliant Fine and Enforcement Policy will be required.

Finally, SB 1668 provides a carveout that board members, board members' spouses, or persons residing in a board member's dwelling may serve on an architectural review committee if no qualified individuals apply for such position after the Association has solicited applicants. This change was in response to SB 1588's requirement that prohibited board members, board members' spouses, or persons residing in a board member's dwelling from serving as an architectural reviewer, and the change will help associations ensure that their architectural review committees are fully staffed.

House Bill 614 (By Shaheen (R); District 66, West Plano, North Dallas) Effective January 1, 2024

HOMEOWNERS' ASSOCIATIONS: FINE AND ENFORCEMENT POLICY

Change to Chapter 209 of the Texas Property Code

Representative Shaheen filed House Bill 614 mandating that associations that have the authority to fine pursuant to the association's dedicatory instruments must adopt an enforcement policy regarding the levying of fines by the association. The policy must include: 1) general categories of restrictive covenants for which the association may assess fines; 2) a schedule of fines for each category of violation; and 3) information regarding hearings described by Property Code Sec. 209.007. The policy may reserve the board's authority to levy a fine from the schedule of fines on a case-by-case basis. The association must

provide a copy of the policy to each owner of property in the subdivision by either posting the policy on the association's Internet website or annually sending a copy of the policy to the owners by hand delivery, first class mail to the owner's last known mailing address, or email to the email address provided to the association by the owner.

What You Need to Know: Many associations already have fine & enforcement policies in place, yet few policies contain a schedule of fines for categories of violations. Rather, many policies contain fines that are associated with the number of violation notices that are sent. Associations should review their current enforcement and fine policies with their management company and counsel to ensure compliance and update them as needed. This law applies only to fines that become due on or after January 1, 2024, so all associations are afforded time to adopt or update these policies. Fines levied before January 1, 2024 may be valid and enforced regardless of whether the association has a compliant enforcement policy in place.

House Bill 886 (By Shaheen (R); District 66, West Plano, North Dallas) Effective September 1, 2023

HOMEOWNERS' ASSOCIATIONS: ASSESSMENT LIEN REQUIREMENTS

Change to Chapter 209 of the Texas Property Code

Representative Shaheen filed House Bill 886 adding requirements that associations must follow before an assessment lien evidencing the nonpayment of assessments or other charges owed to the association may be filed in the official public records. Though the bill makes the collection process more onerous for associations, we would note that other, more stringent requirements were removed from the bill before passage. Before an assessment lien is recorded, an association must provide two notices of delinquency to the property owner and adhere to a waiting period. The first notice must be provided by first-class mail to the owner's last known mailing address or by email to the email address the owner has registered with the association. Then, no earlier than 30 days after the first notice is sent, the association must send a second notice by certified mail, return receipt requested, to the owner's last known mailing address. Finally, the association must wait 90 days after the date the second notice was sent before the assessment lien may be filed in the official public records.

What You Need to Know: The association's lien encumbering owners' properties for nonpayment of assessments is not affected by this new law, only the association's ability to file a lien notice in the real property records affecting title to the property. Boards, managers, and practitioners all must be aware of these new timing and notice requirements. There is a concern that delinquent assessments may go unpaid if a conveyance occurs during the 120-day minimum waiting period since title companies might not inquire about a delinquency if no assessment lien is identified during the title search and if no resale certificate is requested. It is advisable for associations to update their collection policies to reflect the new requirements. The new law applies only to an assessment that becomes delinquent on or after September 1, 2023.

House Bill 1193 (By Turner (D); District 101, Arlington, Grand Prairie) Effective September 1, 2023

CONDOMINIUMS AND NON-CONDOMINIUMS: PREVENTION OF HOUSING DISCRIMINATION BASED ON METHOD OF PAYMENT

Change to Chapter 202 of the Texas Property Code

In response to negative publicity for an association that attempted to prohibit renters who utilized housing choice vouchers, also referred to as Section 8 vouchers, as their method of payment, Representative Turner filed House Bill 1193 to prevent associations from imposing restrictions against a renter's method of payment. The new law states that "method of payment" includes payment made in whole or in part by a housing choice voucher under Section 8 or any other federal, state, or local housing assistance provided to a person or to a property owner on behalf of a person, including rental vouchers, rental assistance, or rental subsidies.

What You Need to Know: The vast majority of associations do not have such restrictions in their dedicatory instruments, but nevertheless, boards and managers are encouraged to review their restrictions to ensure any such restrictions against certain payment methods by renters are no longer enforced.

Senate Bill 1668 (By Hughes (R); District 1, Northeast Texas) Effective September 1, 2023

TREC Management Certificate Filing Required before March 1, 2024

Senate Bill 1668 is a "cleanup" bill for the changes imposed by Senate Bill 1588 (2021), and CAI and TLAC pushed particularly hard for SB 1668 to get across the finish line. Though the bill imposes additional requirements on condominiums similar to those SB 1588 imposed on homeowners' associations, it also modifies some of the requirements of SB 1588 to remove some legal uncertainty.

CONDOMINIUMS: MANAGEMENT CERTIFICATES, WEBSITES, RESALE FEES

Change to Chapter 82 of the Texas Property Code

Management Certificates

Condo association management certificates must now include information about declaration amendments, management company contact information, and the fees charged for the transfer of a unit. Any change in the specified information requires an amended management certificate to be recorded within 30 days of the change, and the management certificate must be filed with TREC within 7 days after it is recorded. A unit owner is not liable for attorney's fees incurred by an association relating to collection of a delinquent assessment if the attorney's fees accrue during a period of time in which the management certificate is not recorded.

Websites

Condo associations for condos that contain 60 units or more must maintain an Internet website and make all dedicatory instruments relating to the association and filed in the official public records available on a website maintained by the association or a management company and accessible to association members.

Resale Certificate Fees

A condo association may charge a reasonable and necessary fee, not to exceed \$375, to furnish a resale certificate.

What You Need to Know: Condo associations are now subject to the same requirements that SB 1588 imposed on residential associations. Though practitioners know the drill well by now, condo boards and managers who may not be familiar with these requirements from SB 1588 need to take the requisite action to update and record/file condo association management certificates.

NON-CONDOMINIUMS: SECURITY MEASURES

Change to Chapter 202 of the Texas Property Code

Associations may now prohibit the placement of security fencing that obstructs a license area, as defined by a license agreement or plat; a sidewalk in the public right-of-way or otherwise installed for public or community use; or a drainage easement or drainage area. Associations can also require driveway gates to be set back at least 10 feet from the right-of-way if the driveway intersects with a laned roadway. Finally, associations can prohibit the installation of security fencing in front of the front-most building line of a dwelling if the restrictions allow for such a prohibition. Security perimeter fences or security fencing in front of the front-most building line installed or constructed before September 1, 2023, are grandfathered in and are not subject to enforcement action. An owner may still install or construct perimeter fencing or fencing in front of the front-most building line of a dwelling if the owner's address is exempt from public disclosure under state or federal law; or the owner provides to the association documentation from a law enforcement agency of the owner's need for enhanced security measures.

What You Need to Know: Associations now have greater leverage to regulate security fencing but must adopt updated restrictions that track the new law. Associations are encouraged to adopt amended and restated security measures policies that include these additional, permissible restrictions. Note the grandfather clause and make sure your association does not bring an enforcement action against an approved fence installed before September 1, 2023.

NON-CONDOMINIUMS: ARCHITECTURAL REVIEW AUTHORITY ELIGIBILITY

Change to Chapter 209 Texas Property Code

Associations must now institute a solicitation process providing notice to all owners in the community of the association's solicitation of persons interested in serving on the architectural review authority. The notice must be provided at least 10 days before the association elects or appoints a person to serve on the architectural review authority and it must contain instructions for a person to notify the association of that person's interest in serving, including the date by which the person's notification must be received by the association. If a vacancy remains on the architectural review authority after the solicitation process has been completed, the association may appoint a board member, board member's spouse, or a person residing in a current board member's household.

What You Need to Know: Associations of 41 lots or more are now afforded the possibility of appointing board members and other previously disqualified individuals if any vacancies remain after the solicitation process. The solicitation procedures should be added to an association's governing documents. Boards and managers need to be aware of this solicitation requirement moving forward since, if a board member or otherwise disqualified individual serves and the solicitation process isn't followed, the association and the architectural review authority's decisions may be challenged by an owner.

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