



## **88th Texas Legislative Regular Session**

# **New Legislation Affecting Property Owners' Associations (POAs)**

With a public show of acrimony between the governor and lieutenant governor, a special session called immediately after the regular session ended, and the prospect of an impeachment trial scheduled for September 5, the 88th regular session of the Texas Legislature ended, thankfully, with more of a whimper than a bang for property owners associations (POAs). This Leadership Update summarizes the legislation that passed during the regular session - and highlights some of the more controversial measures that did not pass.

With the exception of HB 614, the effective date of all legislation is September

1, 2023.

(P.S. Click on the *italicized bill number* for a link to a legislative analysis of the bill's background and requirements.)

## **HB 886 - Filing Assessment Liens Against Property Owners**



Under state law, a POA has the power to place a lien on a property that has not paid dues, which can lead to foreclosure. HB 886 seeks to increase property owner protection, by requiring a POA to provide multiple

notices of delinquency before they can file an assessment lien and prohibiting the association from filing the lien before a waiting period has elapsed.

Under HB 886, delinquency notices must be filed as follows:

- The first notice must be provided by first class mail to the property owner's last known mailing address as reflected in records maintained by the POA,

or  
by  
email  
to  
an  
email  
address  
the  
property  
owner  
has  
provided  
to  
the  
POA;  
and

- The  
second  
notice  
of  
delinquency  
must  
be  
provided  
by  
certified  
mail,  
return  
receipt  
requested,  
to  
a  
property  
owner's  
last  
known  
mailing  
address  
as  
reflected  
in  
records  
maintained  
by  
the  
POA,  
not  
earlier  
than  
the  
30th  
day

after  
the  
first  
notice  
is  
given.

The bill prohibits a POA from filing the lien before the 90th day after the date the second delinquency notice was sent to the owner. The bill applies only to an assessment that becomes delinquent on or after the bill's effective date.

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## **HB 619 - Requirement to Adopt a Fining Policy**

According to the bill's proponents, Texas POAs are able to levy disproportionately high fines against property owners for minimal violations.



With current law ambiguous regarding the authority of POAs to levy fines, this legislation seeks greater clarity by requiring POAs to establish a transparent policy regarding fines and related violations.

HB 614 amends the Property Code to require POAs to adopt an enforcement policy regarding the levying of fines by the association. The policy must include:

- General categories of restrictive covenants for which the association may assess fines;
- A schedule of the fine for each

- category  
of  
violation;  
and
- Information regarding hearings before the board to discuss and verify facts and resolve a violation.

The adopted enforcement policy may reserve the board's authority to levy a fine from the schedule of fines that varies on a case-by-case basis.

The legislation includes a provision making the bill's provisions inapplicable to POA's that is not authorized by the association's dedicatory instrument to levy a fine.

These changes take effect January 1, 2024.

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## ***HB 1193 - Prohibiting Housing Discrimination***



In June 2022, a property owners' association in Denton County passed a rule prohibiting tenants who participate in the federal Section 8 housing choice voucher program from renting homes that are governed by the association. HB 1193

seeks to protect residential tenants from housing discrimination by prohibiting POAs from restricting a property owner from renting to a person based on their method of payment. "Method of payment" includes payments made in whole or part by a federal Section 8 housing choice voucher or any other federal, state, or local housing assistance provided to a person or to a property owner on behalf of a person, such as rental vouchers, rental assistance, or rental subsidies from a nongovernmental organization

If violated, the offense would be a Class C misdemeanor, and law enforcement would be able to enforce any infractions.

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### **SB 1668 - Transparency for Condo's - But Clarification on Fences and ACCs as Well**

SB 1668 adds language to the Texas Property Code for condominiums - mirroring the requirements for a website and management certificates filed with Texas Real Estate Commission passed for homeowners associations in 2021.



However, SB 1668 also clarifies requirements on perimeter fencing legislation also passed in 2021, giving POAs the ability to regulate the placement of private fences in certain circumstances to maintain needed access to easements and walkways.

Lastly, it adds a notice requirement to solicit candidates for the POA's ACC committee and provides POA boards the ability to fill an ACC committee if there are not enough qualified candidates who have given the board a notice of intent to serve on the ACC.

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### **HB 998 – Expanded Insurance for Some POAs**

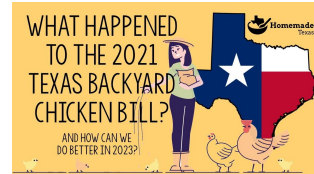
Concerned constituents have asserted that their condominium complexes located just outside the Texas Windstorm Insurance Association (TWIA) catastrophe zone have been unable to obtain property and liability insurance in the voluntary market and are ineligible for the Texas FAIR Plan because their property is not considered residential property.

HB 998 seeks to address this issue by providing for the issuance of an insurance policy under the FAIR Plan for certain homeowners' and condominium owners' associations located in an underserved area near, but outside of, a TWIA catastrophe zone.

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## Legislation That Did Not Pass

*HB 1191* - the infamous "Chicken Legislation" passed the House but failed in the Senate's Local Government Committee. This bill (and other similar bills introduced) allowed residents in POAs to raise 6 or fewer chickens and/or rabbits, subject to reasonable restrictions by the POA. This legislation was introduced in the 87th Legislative Session, passed by the House, but similarly unsuccessful in the Senate.



*HB 899* - as with HB 1191, legislation to give POAs authority to regulate noise levels in Harris County was introduced last session. In the current regular session, it passed the House but failed in the Senate Local Government committee.

*HB 1367* - this legislation would have allowed for owners with 20 percent of all voting interests in a POA to petition and require a special meeting for the sole purpose of conducting a recall election against one board member. Again, the measure passed the House, but failed in the Senate Local Government committee.

HB 3775 – this legislation prohibited POAs from restricting a property owner's or resident's ability to invite a public official or candidate for public office from speaking with association members, residents, or their invitees in association common areas. The measure did not pass the House Business & Industry Committee. A similar bill was introduced in the Senate State Affairs Committee, but no action was taken.

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We've also put together a complete listing of POA-related bills and their status - available at your request - if you wish to dig a little deeper. As always, comments and questions are most welcome.

Respectfully,  
Judith McGlaughlin  
One Creek West, Inc.

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