

TEXAS STUDIES A UNIFORM PLANNED COMMUNITY ACT

1/07

While it is still too early to know how the Texas session will progress, some indications can be found in the interim House and Senate committees studies of the proposed Texas Uniform Planned Community Act (TUPCA).

In the House, the study was a joint effort by the Business and Industry Committee and the Land & Resource Management Committee. Recommendations include:

- A new chapter in the Texas Property Code, with statewide and general application, should be enacted that addresses the creation, governance, obligations and rights of property owners' associations. Although the Committee supports the enactment of certain provisions proposed in TUPCA, the committee does not support the wholesale enactment of TUPCA.
- The new chapter should generally be directed at protecting the interests of homeowners, with the balance of power and presumptions in their favor and not that of the associations that represent them.
- The new chapter should include provisions that encourage, to the greatest extent possible, member participation in the discussions and actions of the association as a whole.
- The new chapter should include provisions that encourage non-legal and inexpensive resolutions to the conflicts that occur between the association and its members.
- The new chapter should limit remedies allowed to associations to the least extreme necessary to enforce obligations due to it.
- Non-judicial foreclosure by HOAs should be prohibited by law.
- Judicial foreclosures by HOAs, if continued in law, should be authorized only under limited circumstances and in accordance with procedure allowed by law.
- Foreclosure proceedings by HOAs, if continued in law, should be allowed to be instituted only when a homeowner owes the association an amount that surpasses a high threshold dollar amount. A meaningful right of redemption should also be authorized

A copy of the entire House Business and Industry Committee or Land and Resource Management Committee reports (their recommendations on homeowners associations are the same) can be found at:

<http://www.house.state.tx.us/committees/reports/79interim/welcome.htm>.

In the Senate, TUPCA was studied by the Intergovernmental Relations (IGR) Committee. Recommendations include:

- Resale certificates should be provided to prospective home buyers prior to closing, and the cost of the resale certificate should be limited
- An association should be able to amend its declaration by a vote of two-thirds of its homeowners.
- The legislature should require associations to offer payment plans for assessments if the homeowner shows a “substantial change in personal circumstance.
- Fines should be capped and the legislature should enact a homeowner payment prioritization schedule to prevent circumvention of existing law prohibiting foreclosure based on unpaid fines or attorney’s fees.
- Subdivision plats and marketing materials should be required to clearly show the location where utility infrastructure will be built.
- The need for association members to have access to information about the enforcement practices of their board should be balanced with the privacy interest of individual homeowners by requiring association records of assessments, fines, foreclosures, etc., to be made available in redacted form.
- Associations should be prohibited from having a “right of refusal” to purchase property within a subdivision.
- Homeowners should have to option to choose judicial or non-judicial foreclosure.
- The legislation should examine title problems which arise with respect to common areas when a declarant/developer goes bankrupt or simply and abandons a project before completion.
- To ensure confidence in contested elections, an association could be required to retain a disinterested party to count votes.

The entire Senate Intergovernmental Affairs Committee interim report can be found at: <http://www.senate.state.tx.us/75r/Senate/commit/c520/c520.htm>.

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