

2023 Legislative Changes

What Texas Real Estate Professionals Need to Know

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The Texas Legislature passed a number of bills in 2023 that may have a significant impact on property owners or real estate professionals. This article touches on some of the key ones but is not an exhaustive list.

Property Taxes and Appraisal

SB 2 (Second Special Session): Property Tax Changes.

Amends various sections of the Education Code and the Tax Code:

- Increases homestead exemption on school taxes from \$40,000 to \$100,000.
- Provides \$7 billion in tax rate compression. Tax rate compression means school districts receive more money from the state, which in turn reduces tax rates imposed by the school districts. School districts, counties, and cities that have an optional percentage homestead exemption for the 2022 tax year are prohibited from reducing or repealing that exemption until 2028.
- Provides a 20 percent cap on appraisal increases each year for three years on non-homestead properties with an appraised value of less than \$5 million.

Takeaway

Many of the bills passed by the 88th Texas Legislature touch on such areas as property taxes and appraisals, development and construction, local regulations, disclosure notices, and property owners' associations. Real estate professionals need to be aware of what's changed. Here are some highlights.

- Expands the board of directors for appraisal districts in counties with population greater than 75,000 from three to nine directors, three of which are to be elected.
- Reduces property taxes without affecting the funds available to school districts. The difference is made up in state money.

SB 1191: Late Applications for Open-Space Appraisal for Survivors. Amends Tex. Tax Code § 23.541 to allow a surviving spouse, surviving child, executor or administrator of the estate, or a fiduciary acting on behalf of the surviving

spouse or surviving child to file a late application for qualified open-space appraisal on agricultural land. The provision applies if the land was appraised as agricultural land in the preceding tax year, the ownership of the land changed as a result of the death of an owner, and the application is filed not later than the delinquency date for the taxes on the land for the year in which the application is filed. Effective immediately to apply to the 2023 tax year.

SB 2091: Private Tax Sales to Abutting Landowners. Amends Tex. Tax Code §§ 33.43 and 34.02, and adds Tex. Tax Code § 34.0101 to provide that, under certain circumstances, real property seized under a tax warrant or ordered sold due to a tax foreclosure may be sold to an owner of abutting property at a private sale. Procedures are set out, including a process to be followed when there is more than one owner of abutting property. These provisions only apply to certain properties, such as property that is unusable because of its shape or size under current zoning or development ordinances, is landlocked, or is in a floodway or at risk of flooding. Effective Sept. 1, 2023.

SB 1381: Homestead Exemption for Survivor. Amends Tex. Tax Code § 11.43 to allow a surviving spouse to receive the homestead exemption for an individual 65 years of age or older without applying for the exemption if the appraisal district learns of the individual's death from any source and the surviving spouse is otherwise eligible for the exemption. Effective Jan. 1, 2024, and applies to tax years beginning on or after that date.

HB 260: Appraisal of Open-Space Land in Disease or Pest Area. Amends Tex. Tax Code § 23.51 to require that in calculating net to land of open-space land located in or adjacent to a wildlife or livestock disease or pest area, the chief appraiser shall take into consideration the effect that the presence of the applicable disease or pest or the designation of the area has on the net income from the land. "Wildlife or livestock disease or pest area" means an area designated by a state agency as an area in which a disease or pest that affects wildlife or livestock exists or may exist, including a chronic wasting disease containment or surveillance zone and an area subject to a quarantine authorized by Subtitle C, Title 6, Agriculture Code. Effective Jan. 1, 2024, to apply to tax years beginning on or after that date.

HB 4077: Over 65 Homestead Exemption. Amends Tex. Tax Code § 11.43 to provide that a person who receives a residence homestead property taxation exemption in a tax year may receive the mandatory residence homestead property tax exemption for those 65 years of age or older, as well as any local option exemption for those 65 years of age or older, on the same property in the next tax year

without applying for the exemption if the person becomes 65 years of age in that next year. Effective Jan. 1, 2024, to apply to tax years beginning on or after that date.

Development and Construction

HB 14: Third-Party Review. Adds Chapter 247 to the Local Government Code. In the event a regulatory authority fails to conduct a document review or development inspection in a timely manner (within 15 days after the time required by the code), the review or inspection may be conducted by a qualified third party who meets the requirements set out in the statute. Effective Sept. 1, 2023.

HB 3485: Protection for Contractors—Change Orders. Adds Tex. Prop. Code § 28.0091, allowing contractors and subcontractors to elect not to proceed with additional work until they have received a fully executed change order for the work if the value of the additional work exceeds 10 percent of the original contract amount. In the event the contractor or subcontractor elects not to proceed, he is not responsible for damages caused by not proceeding. The act amends Tex. Gov't Code § 2251.0521 to make similar changes with respect to public contracts. Effective Sept. 1, 2023, to apply to contracts entered into on or after that date.

HB 3492: Setting of Municipal and County Fees. Adds Tex. Local Gov't Code §§ 212.906 and 232.901. Under the act, application, review, engineering, inspection, acceptance, administrative, or other fees imposed by a municipality or county related to the acceptance, review, or processing of engineering or construction plans or for the inspection of improvements for construction of a subdivision or lot or a related improvement associated with or required in conjunction with that construction must be set by considering the actual cost to review and process the application or plan or to inspect the public infrastructure improvement. The municipality or county may not consider the cost of constructing or improving the public infrastructure for a subdivision, lot, or related property development in determining the amount of these fees. Effective Sept. 1, 2023.

HB 3697: Plat Approval. Makes various changes to the Local Government Code to regulate county plat approval. Amends Tex. Loc. Gov't Code § 232.001 to prohibit a commissioners court or the county authority responsible for approving plats from requiring an analysis, study, document, agreement, or similar requirement to be included in or as part of an application for a plat, development permit, or subdivision of land that is not explicitly required by state law. Adds Tex. Loc. Gov't Code § 232.0022, allowing the commissioners court or the court's designee to delegate

plat approval to one or more officers or employees of the county, with a right to appeal in the applicant. Amends Tex. Loc. Gov't Code § 232.0025 to require counties to issue a written list of all documentation and other information that must be submitted with a plat application, and to maintain the list on its website. Amends the same section to strengthen timing requirements on the approval process and provide remedies if the county fails to meet the requirements. The remedies include a partial refund of the fee, approval of the application by operation of law, the ability of the applicant to petition the district court for a writ of mandamus, and attorney fees and court costs. Amends Tex. Loc. Gov't Code § 232.0033 to prohibit refusal for failure to identify a corridor, as defined by Section 201.619, Transportation Code, unless the corridor is part of an agreement between the Texas Department of Transportation and the county under that section. Effective Sept. 1, 2023, to apply to plat applications submitted on or after that date. The written list required by Section 232.0025 must be adopted and published by Jan. 1, 2024.

Liability

HB 73: Enhanced Landowner Liability Protection.

Amends Tex. Civ. Prac. & Rem. Code § 75.006 to expand liability protection for landowners and occupiers. Owners and occupiers are protected from liability for the acts or omissions of trespassers, third parties who enter without express or implied permission and damage fences or gates, wildlife, and acts of God. The liability protection applies regardless the damage occurs on or off the property. The landowner must cure any resulting defect on the land within a reasonable time. Effective Sept. 1, 2023, to apply to causes of action that accrue on or after that date.

Local Regulations

HB 1217: State Preemption of Local Rules. Adds numerous sections of various codes that prohibit municipalities and counties from adopting, enforcing, or maintaining ordinances or rules inconsistent with state law. Such an ordinance or rule is void. Allows persons to bring civil suits against municipalities and counties for violations, waives governmental immunity, and allows attorney fees and court costs. The act contains other provisions and exclusions. Effective Sept. 1, 2023.

Disclosures

HB 697: Changes to the Required Seller's Disclosure.

Amends Tex. Prop. Code § 5.008 to require inclusion of fuel gas piping, black iron pipe, copper, and corrugated stainless steel tubing on the required seller's disclosure

form. Effective Sept. 1, 2023, to apply to all transfers for which the parties enter into a binding contract on or after that date.

Property Owners' Associations

HB 886: Notices for Filing Property Owners' Association Assessment Liens.

Amends Tex. Prop. Code § 209.0094, involving notice procedures for filing property owners' association assessment liens. The first notice must be given by first class mail or email. A second notice must be given by certified mail, return receipt requested, at least 30 days after the first notice. The assessment lien may not be filed until 90 days after the second notice. Effective Sept. 1, 2023, to apply only to assessments that become delinquent on or after that date.

HB 1193: Discrimination by Property Owners' Association Based on Method of Payment.

Adds Tex. Prop. Code § 202.024, prohibiting a property owners' association from discriminating against a tenant based on the tenant's method of payment (i.e., vouchers, rental assistance, or subsidies). Effective Sept. 1, 2023.

HB 614: Fine Enforcement Policy of Property Owners' Association.

Adds Tex. Prop. Code § 209.0061, requiring that a property owners' association with authority to levy fines must adopt an enforcement policy including categories of violations and a schedule of fines for each. The policy must be provided to property owners and be made available on the association's website. The policy may reserve the association's authority to levy a fine from the schedule that varies on a case-by-case basis. Effective Jan. 1, 2024, and applies only to a fine that becomes due on or after that date.

Landlord/Tenant

SB 1259: For Landlord's Failure to Make Repairs, Tenants May Seek Money Judgment Up to \$20,000 in Justice Court.

Amends Tex. Prop. Code § 92.0563 to raise the maximum judgment amount that may be awarded by a justice court to a tenant in a suit involving a landlord's failure to make certain required repairs after notice from the tenant. The maximum is raised from \$10,000 to \$20,000. Effective Sept. 1, 2023, and applies only to causes of action that accrue on or after that date.

Business Organizations

SB 1514: Documents to Be Considered Company Agreement.

Amends several sections of the Business Organizations Code and the Business and Commerce Code. Notably, it amends Tex. Bus. Org. Code § 101.001(1) to provide that

a “Company agreement” means any agreement—written, implied, or oral—of the members concerning the affairs or the conduct of the business of a limited liability company. A company agreement of a limited liability company having only one member is not unenforceable because only one person is a party to the company agreement. A written company agreement may consist of one or more agreements, instruments, or other writings and may include or incorporate one or more schedules, supplements, or other writings providing for the conduct of the business and affairs of the limited liability company or of a series of the limited liability company. In this day and age of constant digital communication, people produce “writings” all the time.

Courts may have to determine whether these writings are part of the company agreement. Effective Sept. 1, 2023.

For a more in-depth look, download the *Report on the 88th Texas Legislature* by scanning the QR code. Neither this article nor the report is comprehensive. Nothing in this article should be considered legal advice. For advice on a specific situation, consult an attorney. 📌



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