



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



9

226 Capitol Boulevard Bldg., Suite 508
Nashville, Tennessee 37243-0760
Phone: (615) 741-3012
Fax: (615) 532-2443
www.tn.gov/tacir

MEMORANDUM

TO: Commission Members

FROM: Lynnise Roehrich-Patrick
Executive Director

DATE: 29 January 2015

SUBJECT: Homeowners Associations (House Bill 2070 by Farmer)—Final Report

The attached report is submitted for your approval. The report was prepared in response to House Bill 2070 by Farmer, which the House Local Government Committee sent to the Commission for study. The bill as introduced would have required sellers to disclose whether their property is located in a planned unit development (PUD), and if so, whether the PUD is complete. The report meets the intent of House Resolution 170, referred to the Commission by the 107th General Assembly, which called on the Commission to study Homeowners Associations' (HOAs) rules and regulations and the responsibility of HOAs to insure their obligations. The report also considers issues raised by Senate Bill 2198 by Johnson and its companion, House Bill 2060 by Durham, which would have prevented HOAs from placing restrictions on parking on public streets and banning political signs on private property without the approval of the city or county legislative body and from imposing fines in excess of the monthly dues owed by property owners within the HOA. Recommendations presented are summarized below.

Requiring Adequate Insurance

- The Condominium Act of 2008 requires HOAs for condominiums created after January 1, 2009, to maintain property and liability insurance on common areas. Adopting such a provision for condominiums built before January 2, 2009, and for single-family developments would help ensure that adequate funds are available to make necessary repairs and pay liability claims for these developments as well as for condominiums built after that date, should the need arise.
- The Condominium Act of 2008 requires all condominium HOAs to provide notice of coverage to all residential condominium owners upon request, but

there is no similar requirement for single-family developments. Adopting such a provision for single-family developments in Tennessee would ensure that all homeowners have access to information about the insurance carried by their HOAs.

Ensuring Maintenance of Common Areas and Completion of Infrastructure

- In order to protect their investment, developers maintain control over HOAs during construction until a date or event specified in the declaration, the governing document of the community. If a developer has become insolvent and does not maintain the common areas, taking it to court might not work because an insolvent developer won't have the resources. Florida, a state with a long history of HOA developments, deals with this problem by requiring transfer of control of HOAs from developers to homeowners when developers abandon their responsibility to maintain the common property or become insolvent. While this gives homeowners control over the common areas, it does not ensure that they have the financial means to maintain them. Nevertheless, providing homeowners this option could increase the likelihood that the common areas will not deteriorate.
- In order to ensure that funds are available to complete infrastructure when homes in new developments don't sell rapidly enough to pay for it, counties and municipalities routinely require developers to guarantee that funds will be available, usually through letters of credit or surety bonds, to avoid having to use taxpayers' dollars to complete the development. Unfortunately, there have been several instances where developers were unable to finish the infrastructure and local governments had allowed the bond or letter of credit to lapse. One way to avoid a lapse is to use automatically renewing letters of credit rather than surety bonds.

Regulating Homeowners' and Others' Conduct

- Because they are not subject to the constraints placed on governmental entities by the Constitution, HOAs can ban or regulate political signs. A number of states restrict their right to do this. Any prohibition against HOAs banning political signs should include authorization to determine the time, place, size, number, and manner of display of those signs. In order to avoid entangling Tennessee's cities and counties unnecessarily in the business of HOAs, any such prohibition should not be subject to local government control.
- Some HOAs forbid parking on the streets within their boundaries, even where those streets are public, for safety and aesthetic reasons. Vehicles parked along the street obscure the view of drivers, potentially endangering pedestrians, and narrow streets are difficult for emergency vehicles to navigate. Forbidding HOAs to prohibit all parking on public streets would shift the burden of keeping

them clear for safety reasons to local governments. Only two states limit HOAs' power to regulate parking on public streets. HOAs in Nevada can prohibit parking only of certain large vehicles, while HOAs in Arizona cannot prohibit any parking on public streets. Restrictions like these would seem to increase the potential for safety problems. Allowing local governments to decide whether HOAs can restrict parking on public streets would seem more prudent.

Imposing and Collecting Fines and Other Assessments

HOA members may be subject to fines if they fail to pay assessments or otherwise don't comply with rules and regulations. Failure to pay fines or assessments can lead to liens or even foreclosures on owners' property. For condominiums governed by the Condominium Act of 2008, fines must be reasonable, but liens for nonpayment of fines or assessments attach automatically and without notice. In other developments governed by HOAs, the same thing may be allowed by the declaration. An HOA could foreclose on a property for failure to pay even a small fine, and the ease with which liens are attached may lead to abuse.

- Extending the reasonableness limitation on fines for newer condominiums to older condominiums and single-family HOAs would protect owners while leaving some discretion to HOAs setting fines.
- HOAs should also be required to notify homeowners when liens attach for unpaid fines and assessments.
- Foreclosure on liens for unpaid fines and assessments should be limited to some minimum amount and some minimum length of time unpaid.

Local Governments Owning Property Subject to HOA Dues

When property owners fail to pay taxes, local governments must hold a tax sale, and if no one bids on the properties, the local governments are required to purchase them for the taxes owed and related costs. Although liens attached for HOA assessments, like all non-tax liens, are extinguished when a property is purchased at a tax sale, the requirements of the declaration, including the requirement to pay assessments, apply to the new owner, even if the new owner is a government. In some communities, paying these assessments has become burdensome for local governments.

Bills that attempted to empower local governments to deal with this issue in different ways failed to pass in 2012 and 2013. One would have exempted state and local governments from HOA assessments. The other was much broader and would have allowed local governments to force the sale of tax delinquent properties for less than the amount of taxes owed and related costs. Allowing local governments to do this would increase the likelihood that they could avoid buying them and assuming responsibility for future HOA assessments.