



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: *R. Roehrich*
Annisse Roehrich-Patrick
Executive Director

DATE: 20 November 2014

SUBJECT: House Bill 2070—Homeowners Associations

The attached draft report is submitted for review and comment. It 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. Draft recommendations 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.
- 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 Completion of Infrastructure and Maintenance of Common Areas

- 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. The bonds and letters of credit work as long as local governments don't allow them to lapse. Unfortunately, some cities have allowed bonds to expire before infrastructure had been completed. One way to avoid a lapse is to use automatically renewing letters of credit rather than surety bonds.
- A similar problem can arise with common areas when homes in new developments sell too slowly to provide the funds the developer needs to maintain those areas. This is especially problematic when the developer can't complete the development. Florida deals with this problem by enabling transfer of control of HOAs from developers to homeowners when developers abandon their responsibility to maintain the common property or become insolvent. Providing homeowners this option could increase the likelihood that the common areas will not deteriorate.

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 so that emergency vehicles have difficulty navigating them. Limiting HOAs' power to regulate parking on public streets could increase the potential for safety problems and shift the burden for keeping them clear to the local government. 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.

- If the reasonableness limitation on fines for newer condominiums were extended to single-family HOAs, it would provide protection to owners while leaving single-family HOAs some discretion when setting fines.
- HOAs should be required to notify homeowners when liens will 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.

A final report will be submitted for approval at the January 2015 Commission meeting.

