



2020 Legislative Session in Review

Bruce Jenkins, LAC Chair

Once again, association issues were in the crosshairs during this 2020 legislative session. That is, individuals and groups outside the homeowner association industry took aim at what they saw as abuses occurring within the homeowner association industry.

A clear example of this was S.B. 183, sponsored by Senator Curtis Bramble. Senator Bramble was dissatisfied with a couple of associations where he owns property. In his words, there are “bad actors” within the homeowner association industry that need to be reined in. Senator Bramble was frustrated with at least one of his association’s apparent unwillingness to take care of their responsibilities, so he stopped paying his assessments. Perhaps that was not the way to deal with the problem. However, the association commenced non-judicial foreclosure and Senator Bramble felt it was retaliatory. All this led to Senator Bramble running S.B 183, which as first drafted would have eliminated non-judicial foreclosures entirely from association collection rights. Fortunately, the Legislative Action Committee (LAC) was able to negotiate concessions and keep non-judicial foreclosures, but with added restrictions and limitations.

Another example of associations under fire was H.B. 155, sponsored by Representative Cheryl Acton. Apparently, one of Representative Acton’s constituents had requested records from an association and the request was met with significant resistance. As a result, Representative Acton responded with a bill requiring more documentation and more disclosures from associations prior to the sale of dwelling unit.

These situations are reflective of a national trend where disgruntled homeowners are seeking relief through the legislature. Unfortunately, much of this legislative effort is spurred on by misinformation. However sometimes bad acting associations are the cause. It has been said that absolute power corrupts absolutely. This should be guarded against in an association. Members, even though challenging at times, should be treated with respect and civility. If

members fall delinquent in their assessments, reasonable opportunities to workout the debt should be given. Fines must be reasonable and not looked at as a revenue source.

Wayne S Hyatt, Esq., a recognized leader in community association law, identified four essential elements for dealing with people and enforcement:

- professionalism and integrity;
- the ability to read and understand people;
- the ability to solve, not just spot, problems; and
- an understanding of the [multifaceted] nature of most [problems].

(Wayne S. Hyatt, *A Lawyer's Lament: Law Schools and the Profession of Law*, *Vanderbilt Law Review*, Vol. XX, p. 108).

I agree with Mr Hyatt that the foregoing may be missing at times in our associations. It is my hope that association members, boards, managers, and attorneys will continue to act with civility even in the face of adversity. In so doing, we may be able to slow the rush to the legislature by disgruntled owners. In sum, we either police ourselves or someone will do it for us.

Finally, despite the challenges of this 2020 legislative session, there was much good. The LAC continues to gain recognition and respect from lawmakers and lobbyists. To be effective in the legislative process relationships must be built. Gratefully, the LAC continues to improve its presence and relationships at the Capital. As a result of the positive relationships the LAC has formed, the LAC had significant and meaningful impact on every bill affecting associations this session.