

# TRETA TALK - NOVEMBER 2023

## Texas Real Estate Teacher's Association Meeting – Galveston 2023

TRETA is back! After COVID and Zoom “conventions” TRETA is returning to a more normal pattern of conventions. Last year in Dallas started TRETA forward – this year in Galveston was superb!

TRETA's 2023 was held at the Grand Galvez no less – one of Galveston's most famous hotels. It's named after Governor Galvez – A SPANISH Governor of



Texas who may have launched the 1<sup>st</sup> cattle drive from Texas – cattle were sent to aid the American Revolution for Independence against Great Britain.

First established in 1911 -- The Grand Galvez has served guests for more than 110 years. The AAA, 4 diamond property is historic –it is renowned as the “Queen of the Gulf.”

It's the oldest major hotel in Galveston and yet it is still quite nice. The Grand Galvez has seen a number of renovations that are on-going to keep it in excellent shape. The active renovation schedule actually helped TRETA get the best convention ballroom.

TRETA's officers did a nice job on negotiating the sight. Many conventions could have been there, but the construction / renovation schedule caused many to shy away. Not so TRETA - which took a risk and managed set its date to get the superb front ballroom for its meeting right on seawall boulevard. The ballroom is set forward towards the seawall and Gulf – even closer than the parking and entryway. The windows of the ballroom curve in an arc facing seawall boulevard – the speaker's podium was at the middle. The tables for conventioners faced the windows and looked straight out towards the Gulf. It was a super view – and yet

still on the 1st floor. It was the sort of place we dream about for conventions – but it was quite real.

The Exhibitors were back in force in the hallway leading to the ballroom. One unusual exhibit was from A & M's Texas Real Estate Research Center. (TRERC for short). TRERC and TRETA go back a long way to the very beginning of TRETA. There has been an association ever since. TRETA used to meet not only for its annual convention but also, typically in January-February for a day's lectures up at College Station at A & M – where TRERC's experts gave the talks. That practice went away for several years. Will it return? Stay tuned! Meetings between TRERC's reps and TRETA officers took place at the restaurants and even at the bar.

Love Picou, the new President, proved to be the unofficial photographer of the convention. The photos here are hers.

## Galveston Speakers at the TRETA Convention

There were many strong speakers at Galveston this year.

1. **Arturo Bustamante** – with the Texas Department of Insurance; he's the Director - Financial Regulation Division, Title Examinations.



Arturo Bustamante spoke on the new developments in the industry. There's a lot going on in the financing industry, particularly with interest rates and more affecting loans. Title examinations are a key part for any loan – he explored the tricky angles.

2. **Dr. Adam Perdue, Ph. D--** Research Economist, with the Texas Real Estate Research Center (TRERC) at Texas A&M University.



Carrying on the close connection TRETA has with TRERC, Dr. Perdue gave fresh new insights on the issue of interest rates, versus inflation, versus growth. The statistics and analysis of serious concern for anyone in real estate.

3. Dr. Craig Brown - Mayor of Galveston,



TRETA was very honored to have no less than the Mayor Galveston pay a visit – he not only made an appearance – but he gave quite a talk. He didn't hesitate to hit the tough issues that confront Galveston's Real Estate Economics, such as the planning on possible future hurricanes. As Mr. Spock would say: "Fascinating!"

4. Gregory Lang – TAR's Coordinator & Professional Development - Competency of Geographic Areas.



We all know the three most important words in real estate are location, location, location! It's critical to know the area real estate licensees are working in. TAR is working to keep Realtors up to speed on what's happening in the areas they serve.

5. Mike Sample-Diehl - Texas Real Estate Commission Program Manager in the Education & Examinations Division



TREC continued its tradition – the TREC Education Manager is always a valued speaker at our TRETA conventions. He updated us on TREC's latest in revisions and directions for Texas Real Estate Education.



## 6. James Wiedemer - Texas Attorney



Jim Wiedemer gave an update on some of the newer interesting real estate cases that have come up in the past 3 years – and a brief set on the legislature’s progress - up to that time (The Texas Legislature’s 2023 session wasn’t finished just yet.)

## TRETA FUNCTIONS – THE NEW BOARD, CREI AWARDS CLOSING

7. Charles Jacobus -- Swearing in New Board 2023-2024 – Before Chuck got to the Swearing In ceremony, he joined with yet a few more of his trenchant insights into the latest real estate legal issues. He of course, as always, conducts a superb swearing in. An article on the officers is coming in the next TRETA Talk issue.

8. Bart McLeroy -- CREI Director -- CREI Awards Presentation. Bart has one of TRETA’s biggest and most important jobs – directing the CREI program. As always, at TRETA, we all get to share by applauding the accomplishment of each teacher who achieves, attends, and receives the honor of a CREI. This year’s CREI recipients include: LaToya Flanigan, Douglas Smith, John Dorie, Pamela Cottrell, Todd Bingham, Raymond Teske, Deborah Bell, Annie Marie Nelson, and Alisha Austin.

9. Tisha Matticks – our outgoing TRETA President gave excellent opening and closing remarks. The convention went very well this year – the venue was sumptuous and gorgeous. The Speakers were excellent, the awards ceremonies went well, and the regular exhibitors – and some new ones – (TRERC) were there in force. TRETA’s 2023 convention ROCKED!

Some of our incoming and outgoing board members:



Our amazing sponsors:



A NEW ARTICLE FOR TRETA –

## CHANGES TO TEXAS LAWS BY THE LEGISLATURE

### 2023 – PART I

I'm always fond of starting my lecture on new legislation with the old adage that: "No one's life or property is safe when the legislature is in session." As always, I'm quick to add – and this year's 2023 legislative session was no exception. Changes occurred in a number of areas of law:

- ☐ More protection for farmers and ranchers against nuisance and related lawsuits
- ☐ More protection for builders against liabilities for construction defects
- ☐ Lenders are now required to promptly release paid off loan liens – "Hooray!"
- ☐ Electronic notarization has been improved as to how to do verification of identity
- ☐ Three bills address insurers making quicker and fairer resolution of wind damage claims
- ☐ Local ordinances are prohibited from interfering with evictions
- ☐ Plats are made easier to get
- ☐ Texas Fair Plan insurance must now cover "common areas" for housing

## MAKING IT HARDER TO SUE FARMING AND RANCHING OPERATIONS FOR DAMAGE TO OTHERS

Several bills make it harder to for city or nearby residential or commercial property owners to sue farmers and ranchers for problems arising out their agricultural operations. For example, sprays of some kind of bug spray or weed killer drifts over and causes problems. Or run off. Or even loose cattle who escape a break in the fence. Or the place stinks & the smell wafts to neighborhoods. The new bills make it harder to sue agricultural operations for nuisance and other actions like negligence in their operations. The preceding was done Bill #1 (of three)

**BILL #1** - House Bill 2308; This bill Amends Agriculture Code, Sections 251.001, 251.002, 251.003, 251.004, 251.006; adds Agriculture Code, Section 251.008 Author: Ashby, Sponsor: Perry.

**BILL #2** - The legislature now gives considerable protection to farms and ranches from city ordinances Amends Agriculture Code Sections 251.002, 251 (c) (1), (2). Adds to Sections 251.055 (a)-(f). Amends Section 251.007 and 251.008; Author: Burns Sponsor: Perry

Cities are now much more limited in what they can do to farmers and ranchers by city ordinances that attempt to regular farms and ranches who now fall within city limits (perhaps due to annexation). Basically, the intent is to limit cities from passing their own independent rules on liability or try to control the farming operations beyond existing state laws and regulations.

**BILL #3** -- House Bill 73 - Amends Civil Practices and Remedies Code Section 75.006; Author: Murr Sponsor: Springer

Previously, Civil Practices and Remedies Code, Section 75.006 limited liability for landowners, lessees and occupants (for brevity collectively called the "protected parties") of agricultural land for damages or injuries that involved entry of firefighters and peace officers onto the land. HB 73 expands the scenarios when protected parties have limited liability. The

**Additional scenarios now include:**

- (i) acts or omissions of trespassers (example: a trespasser leaves a fence open and livestock escapes),
- (ii) actions of third parties that enter without permission and damage enclosures, and
- (iii) acts of god. Hurricanes, floods, wildfires, disease, et al. Notably, limited liability applies to damages to property or injuries to persons that “involve” livestock, whether the damage occurs on or off the subject property. Limited liability does not apply if the protected party acted willfully, wantonly, or with gross negligence. Applies only to causes of action that accrue after September 1, 2023. Effective Date: September 1, 2023

## **MAKING IT HARDER TO SUE RESIDENTIAL CONSTRUCTION CLAIMS**

Texas makes it hard to sue builders. During the last session of the legislature, THREE bills added a great variety of additional “hoops to jump through” to recover damages against builders for construction defects. There are many new deadlines, opportunities to inspect and expenses builders can force the angry homeowner to pay. The first 2 of 3 strong bills are:

**BILL #1** House Bill 2024 - Relating to statutes of limitation and repose for certain claims arising out of residential construction. This bill Amends Civil Practice and Remedies Code, Section 16.009(a) and Section 16.009(c); adds Civil Practice and Remedies Code, Section 16.009(a-2), Section 16.009 (a-3), and Section 16.009(a-4) Author: Leach Sponsor: Patterson ; Effective Date: Immediate

**BILL #2** House Bill 2022 - Relating to residential construction liability. (see below) Amends Property Code Sections 27.001, 27.002(b), 27.003, 27.0042(a), and 27.006; Adds Property Code Sections 27.008 and 27.009; Repeals Property Code Sections 27.004(l), 27.0042(b), and 27.007(c); Author: Leach Sponsor: King; Effective Date: September 1, 2023

Texas wants to make it tough on home buyers who try to sue their homebuilder for construction defects. The laws were already fairly rugged. Builders must be given notices within certain deadlines – which the bill increased in several places – and they must be given opportunities to inspect (now by the new bill, up to three times), and they builder has to given time (increased by the new bill) to make offers to settle. The new bill stops recovery If the homeowner interferes (by making the repair without consulting the original builder) with the builder’s ability to remedy the problem, then the homeowner may lose the right to recover damages. Damages under the new bill must be shown to be CAUSED by the builder. Statutes of limitation are shortened – 6 years instead of 10 on certain claims. If a homeowner fails to consult an attorney very promptly following construction defect problems, then they may miss all manner of deadlines and procedures. It’s now harder than ever to sue a builder for construction defects.

**BILL #3** - House Bill 3485 -- Adds Government Code Section 2251.0521; Adds Property Code Section 28.0091; Author: Bell Sponsor: Johnson – Eff. Date: September 1, 2023

This third bill makes a law change that allows contractors and subcontractors under public and private contracts to not proceed with additional work/change under a construction contract if they have not received a fully signed change order for the work. NOTE: The TREC Contract provides for change orders. Of course, so many builders use their own or an association contract form rather than a TREC form. Further, under this bill, contractors and subcontractors can stop



work if the value of all additional work not covered by a signed change order exceeds ten percent of the original contract amount. The final protection for builders and their subs in this the bill is that, in such cases, the contractor or subcontractor who doesn't proceed with additional work is not responsible for damages caused by not proceeding. The obvious push of these laws is to – give timely notice to builders, then let the builder take care of problems.

It would be best to take care when suing a builder for defects – it's no easy lawsuit. That's to say nothing of the many additional protections many builders insert into their contracts – they are builder sided contracts – often heavily so.

## LENDER'S PROMPT RELEASE OF MORTGAGE LIENS UPON PAYOFF IS NOW REQUIRED BY LAW – Hooray!

**Bill** --House Bill 219-Adds Finance Code, Section 343.108; Author: Noble Sponsor: Johnson; Requires a mortgage *servicer* or mortgagee to file a release of lien, on a deed of trust or other contract lien securing a home loan securing a home loan within 60 days of the loan payoff, or earlier if requested by the mortgagor in writing on or before the 20th day after the payoff date.

NOTE (by the Jim Wiedemer) - This particular situation has come up a number of times – way too many. For example, there was a loan on a home which a foreign national owner came up with the funds to pay off in full. (Some foreign investors like to do that). They didn't make payments for years. Later, they tried to sell the home – bang! The title company spotted the unreleased lien. The owners said they never got one. The title company even offered to look at records of payments – cancelled checks and so on. They had been trashed years ago. RESULT: A lawsuit was needed - a year's time, and substantial legal expenses. I've taught many a class - when a loan is paid off, GET a release. Even my Dad & Mom (great TRETA members) paid off their home loan at 30 years. (Yes, the full 30 – not so many go the distance – earlier payoffs are much the larger percentage of loans – usually under 10 years depending on the stats) We caught the no release and I started to get after the lender– and when my Dad mentioned it to Chuck Jacobus, he joined in and hit it hard – a release - quick. A further note – deeds of trust all too frequently contain a clause that says the lender has no obligation on the release but may do so at buyer's request. Hopefully, the appeals courts will not find that to be a waiver and instead, uphold this new law. Get it done lenders!! It's also cost a fair number of licensees a commission when the sale comes apart.

## ELECTRONIC NOTARIZATION IMPROVED

**BILL** - Senate Bill 1780, Relating to online notarizations; Amends Government Code, Sections 406.101(11), 406.108(a), 406.110 (heading only), 406.110(b) and (d); adds Government Code, Sections 406.101(1-a), (13), (14), 406.108(d), 406.109(f), 406.1103 and 406.1107; Author: Parker Sponsor: Capriglione. Effective Date: January 1, 2024

We've already been using some electronic notarization. This bill also provides for the online notarization by an online notary public of tangible instruments or electronic documents but clarifies verification of principal's identity. A key newer aspect: the bill establishes the framework

under which an online notary public shall authenticate, administer, and document online notarizations for tangible documents.

## WHEN THE TEXAS WIND BLOWS THE HOME TO OZ OR DAMAGES IT – THE LEGAL WIND NOW REQUIRES QUICKER ACTION BY INSURERS

The legislature passed not one but THREE BILLS related to insurance payoffs/appraisals by insurers in the wake of wind damages.

**BILL #1** - House Bill 3310; Relating to deadlines for the claims appraisal process of the Texas Windstorm Insurance Association. Amends Insurance Code Section 2210.574(d); Adds Insurance Code Section 2210.574(d-1); Author: Lozano Sponsor: Middleton - Effective Date: September 1, 2023.

This first of three bills sets a deadline (to be determined by Insurance Commissioner) by which Texas Windstorm Insurance Association must complete a claimant demanded appraisal. Requires the Insurance Commissioner to adopt rules necessary for implementation that allow flexibility for adequate 25 investigation and that preserve appraiser independence. Applies to appraisals demanded on or after January 1, 2024.

**BILL #2** - House Bill 3310 - Relating to deadlines for the claims appraisal process of the Texas Windstorm Insurance Association. Amends Insurance Code Section 2210.574(d); Adds Insurance Code Section 2210.574(d-1); Author: Lozano Sponsor: Middleton-- Effective Date: September 1, 2023

This bill sets a deadline (to be determined by Insurance Commissioner) by which time the Texas Windstorm Insurance Association must complete a claimant demanded appraisal. The bill also requires the Insurance Commissioner to adopt rules that are necessary for this law's implementation that allow flexibility for adequate investigation and yet that preserve appraiser independence. This applies to appraisals demanded on or after January 1, 2024.

**BILL #3** - Senate Bill 2232-- Relating to requirements for insurance agents offering windstorm and hail insurance policies issued by the Texas Windstorm Insurance Association. Adds Insurance Code Section 2210.016; Author: LaMantia Sponsor: Hinojosa -- Effective Date: September 1, 2023

This bill allows TWIA (Texas Windstorm Insurance Association) to establish new requirements which agents offering or selling TWIA policies must comply with. The bill allows TWIA to audit agents for compliance with the new requirements, and further, authorizes TWIA to limit or prohibit a noncompliant agent from offering or selling TWIA policies. The bill also clarifies that an insurance agent offering or selling TWIA policies is not a TWIA agent.

## LOCAL ORDINANCES CANNOT INTERFERE WITH EVICTION

Particularly during COVID, local ordinances began to interfere with the eviction process. The legislature is now clarifying with this new law that such entities are not to do that.

**BILL** - House Bill 2127 - Relating to state preemption of and the effect of certain state law on certain municipal and county regulation. Adds Agriculture Code, Section 1.004; adds Business and Commerce Code, Section 1.109; adds Civil Practice and Remedies Code, Chapter 102A; adds

Finance Code, Section 1.004; adds Insurance Code, Section 30.005; adds Labor Code, Section 1.005; adds Local Government Code, Section 51.002 and Chapter 229, Subchapter Z; adds Natural Resources Code, Section 1.003; adds Occupations Code, Section 1.004; adds Property Code, Section 1.004 ; Author: Burrows Sponsor: Creighton -- Effective Date: September 1, 2023

This bill prohibits ordinances that regulate evictions or otherwise prohibit restrict, or delay delivery of a notice to vacate or file suit to recover possession of the premises with respect to forcible entry and detainer. (Massage parlors are excepted and can still be regulated locally! The legislature seems to have a running dislike of massage parlors that go too far; is there a particular reason? Hmm)

## PLATS ARE EASIER TO GET, HARDER TO REJECT – i.e. “PLATMAIL” IS LESS FEASIBLE

**BILL** - Relating to county regulation of subdivisions and approval of subdivision plans or plats. Amends, adds or repeals various sections in Local Government Code, Chapter 232; Author: Wilson Sponsor: Bettencourt -- Effective Date: September 1, 2023

Cities have long practiced what is nicknamed: “Platmail”. (If you want your plat approved, we want a few extras..) This process of making a lot of “extra” demands to get the plat approved is now harder for the county to pull off. The new bill tightens the rules governing the issuance of plats by the county. The new bill now regulates county plat approvals. It also tightens “shot clock” rules (time to approve - including time extensions – perhaps a delay if something the county wants but can’t be required is not being given voluntarily). It appears owners are now allowed to decide whether or not to dedicate “streets, alleys, squares, parks, or other parts of the tract,” which could trigger the requirements for a plat. The new bill defines when a plat is considered “filed” and requires county to issue and post “a written list of all documentation and other information that must be submitted.” Filers do not have to proceed blind anymore. The new law makes a big change by forbidding requirements for “an analysis, study, document, agreement, or similar requirement ... that is not explicitly required by state law.” The law allows more delegation of plat related authority. (Appeals can now be made more easily to commissioners court). The law even authorizes recovery of attorney’s fees in lawsuits seeking a court order and issuance of “a writ of mandamus to compel the commissioners court to issue documents” recognizing a plat approval. The county can’t try to get road (likely to be paid for by developer – “platmail”) by disapproving a plat “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.”

## FAIR PLANS FOR INSURANCE MUST NOW OFFER COVERAGE FOR COMMON AREA DAMAGE

**BILL** - House Bill 998 Relating to the provision of property owners’ association insurance by the FAIR Plan Association in certain areas. Amends Insurance Code Sections 2211.054(1), 2211.153(1), 2211.154(a), 2211.155, and 2211.201; Adds Insurance Code Sections 2211.001(6-a), 2211.051(b), and 2211.1515; Author: Paul Sponsor: Middleton--Eff. Date: September 1, 2023

Broadens the Fair Access to Insurance Requirements Plan (“FAIR Plan”) to include coverage of homeowners’ association’s common areas and facilities and condominium owners’ association’s common elements - collectively referred to as property owners’ association insurance (“POAI”) - in underserved areas; previously, only the residential dwelling units within a property owners’ association could be insured under the FAIR Plan. Requires the FAIR Plan-designated area to be within ten miles of a TWIA catastrophe area, as practicable, and requires the property owner’s association to have been twice declined for coverage in the voluntary market before being eligible for POAI under the FAIR Plan. Gives the FAIR Plan until September 1, 2024 to begin providing POAI.

## FUTURE TRETA MEETINGS / CONFERENCES

### **Embassy Suites by Hilton Dallas Love Field**

[3880 West Northwest Highway Dallas, Texas 75220 USA](#)

#### THE DATES:

Thursday - April 25 PM Presidents Reception

Friday – April 26 All Day - Lunch – Speakers

Saturday – April 27 (Half Day) Speakers/Closing