

# Real Estate Attys Eye Busy Texas Legislative Session

By **Emma Kennedy**

Law360 (January 15, 2025, 12:26 PM EST) -- With Texas' biennial legislative session underway, the housing and development issues that gummed up 2023 to the tune of multiple special session extensions appear poised to come back fresh in 2025.



Texas lawmakers have already prefiled hundreds of property tax-related bills for the Legislature's 2025 session. (AP Photo/Eric Gay)

More than 1,000 bills were filed on the first day of the prefiling period, setting a record and offering a look-ahead at what issues will likely be top of mind as legislators gather in Austin.

Here are the issues real estate and development attorneys in the state are eyeing.

## Property Tax

One of the most buzzy topics of 2023 was property tax: what to do with it, how to make it more affordable, and asking whether it should be eradicated completely.

Despite four special sessions following the closing of the official session, lawmakers left much of the topic undecided except for allocating \$18 billion of the state's budget surplus to buy down property taxes and increase homestead exemptions for homeowners.

But even with billions behind the effort, the average homeowner didn't see much in overall savings with

competing increases in areas like insurance, according to Haynes and Boone LLP of counsel and state Rep. Rafael Anchía.

"This year we're going to have around \$20 billion in surplus, and if we want to just keep [property] taxes where they were last session, we'd have to dedicate virtually the entire surplus to the rate where nobody felt an impact, but that's difficult with aging infrastructure and increased demands of a growing population like water systems and the grid," he said.

Anchía said he plans to introduce a bill that would address a loophole in the state's Housing Finance Corporation and Public Facility Corporations — programs that allow developers to waive some property tax liability in return for more affordable or workforce housing units — that has resulted in potential abuse.

Some of these corporations have started operating as "traveling HFCs or PFCs," according to Anchía, meaning they have been doing deals outside the jurisdiction where they were originally established without the knowledge or approval of the project sites' jurisdiction.

"That's an obvious misalignment of that interest," Anchía said.

Lawmakers have already prefiled hundreds of property tax-related bills for the 2025 session, including measures to cap assessed value increases, clarifying and limiting taxing authority on certain entities and exempting personal property from ad valorem taxes.

### **Corporate Ownership**

A Texas Democrat has proposed reining in corporate ownership of single-family houses in Senate Bill 443, a move that attorneys say is likely to be an uphill battle in such a red state.

The bill as introduced mandates compiling a database of corporate owners, how many rentals they control, and sales data.

The bill goes on to limit corporate owners from holding an interest in more than 10 single-family homes at any given time.

The move targets the growing housing affordability divide in the state, and while Foley & Lardner LLP attorney and lobbyist David Cabrales said this year's pre-session dialogue has seen even Republicans advocating for stepping up affordability measures, limiting property ownership is going to be a tough sell.

"The gap between what people earn in many parts of the state and what they can afford to buy is getting bigger and bigger, and the minimum income needed to service an average-sized mortgage in a lot of communities is getting higher, and that's being exacerbated by corporate housing purchased by investor groups where they hold and rent them," Cabrales said.

"When you think about a solution in Texas, it's got to be a solution that passes muster with a Republican-controlled House and a Republican lieutenant governor that's signed into law by a Republican governor, so some of the solutions that you might hear in Democrat circles up in the Northeast wouldn't resonate here," Cabrales said.

### **Construction, Zoning**

Multiple bills have already been filed attempting to curb costs and timelines in construction, and attorneys expect these kinds of measures to be a highlight of the 2025 session.

"We've built more housing than any other state, but we've also acquired population at a faster rate than any other state. So the question becomes: what levers can we pull in state government that might accelerate the building of housing stock beyond what the market already had planned?" Anchía said.

House Bill 878 addresses both accessory dwelling units and minimum lot sizes. For example, it would prohibit municipalities with certain population sizes from enforcing minimum lot sizes more than 2,500 square feet, and it would restrict local governments' ability to regulate ADUs.

In contrast, House Bill 369 prohibits municipalities from allowing more than one single-family dwelling on lots zoned for single-family unless all surrounding property owners consent in writing.

Winstead PC shareholder Bob Burton said this contention on density is an expected theme throughout the session as builders struggle to keep costs down and offer an affordable product.

He expects permitting timelines and impact fees to be key areas of focus, too, but it's the preemption in minimum lot size that's likely to draw criticism.

"We have 254 counties in Texas and over 1,000 municipalities, and there's been some discussion about having a state minimum lot size that would apply clear sky across Texas," he said.

"That gets into the prerogatives of different cities and different counties so that's where controversy arises, where you're essentially taking control away locally up to the state, and that's going to be controversial."

Some municipalities, namely Austin, have already reduced or eradicated minimum lot sizes to boost density and hopefully drive down cost, though Burton said it's too early for those cities to serve as a case study in this year's statewide discussions.

## **Foreign Ownership**

Foreign ownership of real estate was a contentious issue in 2023's session, with a standout bill proposing to ban nationals of certain countries from purchasing property.

While that measure ultimately didn't pass, it drew intense criticism and constitutionality concerns. The issue is back this year, and lawmakers have narrowed their approach in three different bills in an apparent attempt to get it across the finish line.

Senate Bill 103 prohibits governmental entities of China, Iran, North Korea and Russia — or companies headquartered there — from buying property in Texas.

House Bills 1566 and 191 are similarly worded except they don't outright define the countries, instead deferring to countries the director of national intelligence designates as security threats.

All three bills clarify that a noncitizen has the same rights to own property as a U.S. citizen does unless they are exempt through the government entity ties.

"The original version of the bill last session was so broad that if you were a permanent resident of the U.S. from one of these countries but hadn't changed your citizenship, there was a question on if owning your own home or the real estate where your business was located might have run afoul of that bill," Cabrales said.

"This [version] has been narrowed, and I think they're taking another crack at a more refined version but trying to address the same issue."

--Editing by Haylee Pearl.