

# Looking in on the Legislature: What CRE needs to watch in the 2021 session

BY BRANDI SMITH

“The saying goes ‘No man's life, liberty or property are safe while the Legislature is in session,’ and it's true.”



Reid Wilson

Nearly two years after their last meeting, Texas state lawmakers are gathering in Austin for the 87th Legislature's regular session. For 140 days, they will debate, discuss and ultimately decide on measures of importance to Texans.

“The saying goes ‘No man's life, liberty or property are safe while the Legislature is in session,’ and it's true,” said Reid Wilson.

If anyone would know, it's Wilson, preeminent land use attorney and chairman of Wilson Cribbs + Goren, one of the go-to real estate boutiques in Texas. Along with being a Fellow of the American College of Real Estate Lawyers (ACREL) and one of few practicing real estate attorneys holding the Counselors of Real Estate designation (CRE), he's also currently serving as the chair of the Real Estate Probate and Trust Law section of the State Bar of Texas (REPTL), the bar's largest section.

“This session, REPTL's presenting several bills to the Legislature on what we call ‘good government,’ such as cleanup, clarification and updates of real estate statutes,” Wilson said. “We say that REPTL is the keeper of Texas real estate statutes and we want to make them clear, up-to-date and unambiguous, benefiting our attorney members, the industry and the public.”

For example, one bill changes provisions in the Landlord and Tenant section of the Texas Property Code. When it comes to certain tenant-made repairs, current text dictates repair services found in the Yellow Pages!

“I think we can all agree that we no longer should reference Yellow Pages in our state statutes,” said Wilson.

Beyond those minor tweaks, Wilson said he doesn't see many proposals that could have a profound impact on the Texas real estate industry. That could change, though, since lawmakers are still organizing the Legislature, appointing committees and their chairs, and filing new bills daily.

“It remains to be seen how this Legislature will play out because it's going to be a strange session,” said Wilson. “Lawmakers are dealing with COVID, but we

also have a new speaker, so there's a transition. Everyone is kind of trying to figure out who's on first, who's on second.”

Here's a quick review of bills under consideration and Reid's take on them:

**HB 1101** - Relating to mandatory sales price disclosure in real property sales; providing a civil penalty

“This bill would require a seller to declare the sales price of a property for taxation purposes,” Wilson said. “This comes up almost every session, but has never passed, and is unlikely to pass this session.”

**SB 314** - Relating to notice requirements for leased residential property, manufactured home lots or commercial property located in a flood zone

“This bill would require a landlord to disclose whether a property has flooded in the past or is in the 100-year flood plain,” said Wilson, adding that it's about consumer protection, and a vestige of the Harvey flooding in Houston.

**HB 948** - Relating to the authentication and recording of instruments conveying real property

“This one has little probability of success,” Wilson said. “It's mandating a physically imprinted seal for any notarization. It's old news, especially since we're moving away from paper documents anyway, and the new news is the possibility of remote notarization.”

**HB 216 & SB 43** - Relating to residential mortgage loans, including the financing of residential real estate purchases by means of a wrap mortgage loan; providing licensing and registration requirements; authorizing an administrative penalty

“Wraparound mortgages are a minor area of real estate law, but these bills are an effort to regulate them, in a way similar to our regulation of contracts for deed,” said Wilson, adding that this bill is aimed to protect naïve consumers

who have reduced or no access to legal assistance.

**HJR 8** - Proposing a constitutional amendment authorizing the legislature to provide that the appraised value of a residence homestead for ad valorem tax purposes is the market value of the property for the first year that the owner qualified the property for a homestead exemption or, if the owner purchased the property, the purchase price of the property

“Though it is Republican-sponsored, I think this has very low likelihood of passing,” Wilson said, explaining that the proposed constitutional amendment would freeze a home’s appraised value at the amount for which it was purchased. “It would be a tremendous shift to the tax burden from residential real estate to commercial real estate because you would artificially reduce the values of all homesteads.”

**HJR 43** - Proposing a constitutional amendment providing that a residence homestead is not subject to seizure or sale for delinquent ad valorem taxes

“Were this to pass, you could never lose your house because you haven’t paid your taxes,” said Wilson. “I expect there will be a lot of subtle opposition to this bill. Seniors are already protected, and local governments will be very protective of their tax revenue streams.”

While those bills’ passage would directly impact Texas real estate, Wilson adds he’s keeping an eye on a not-as-obvious related topic: marijuana legalization.

“There are at least eight bills dealing with the legalization of marijuana in Texas, whether it’s broadening medical access, decriminalizing possession or permitting recreational use of the drug,” he said.

Over the years, Wilson has watched many such proposals from lawmakers perish, so he doesn’t expect a different outcome for this year’s batch. However, if the federal attitude toward marijuana changes and the drug were to become legalized nationwide, he predicts benefits for the commercial real estate industry as a whole.

“Retail landlords are desperate to fill space,” said Wilson. “Maybe these dispensaries don’t go in a Class A space, but marijuana purveyors would be able to fill some of the vacancies we’re seeing in retail.”

On the land front, he points out marijuana has proven to be a high-value crop in Colorado, adding, “There’s a lot of money to be made.”



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Once grown, the crop would need to be processed and distributed, requiring industrial facilities, too.

“Right now, the industrial industry is enamored with anything from 500,000 square feet and up,” Wilson said, “but I could see smaller buildings—say, 50,000 to 200,000 square feet—to find a good use if the marijuana industry was legalized.”

Again, that’s a big IF, he stresses, and one he doesn’t expect to come out of the Texas Legislature.

But, as that old saying points out, who knows what could happen while the Legislature is in session?