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2005 TEXAS LEGISLATIVE UPDATE

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The Texas Legislature meets in a regular 140-day legislative session in Austin every two years, convening on the second Tuesday in January of odd-number years. The 79th Legislative Session was adjourned on May 30, 2005, having passed 4961 legislative bills filed during the session. Of these, Governor Rick Perry vetoed 19 bills and 9 bills are joint resolutions proposing amendments to the Texas Constitution that must be approved by a majority of voters on November 8, 2005. Governor Rick Perry twice called the Texas Legislature back into Special Session for the primary purpose of addressing finance of the state's public schools. This update contains a Quick Reference Schedule for House Bills and Senate Bills passed by the legislature in the regular session that we believe are of particular interest to the home mortgage lending industry and summaries of selected bills (√). Full text of these bills may be found on the Texas Legislature Online Website at <http://www.capitol.state.tx.us/>.

Quick Reference Schedule

| HOUSE BILLS | | |
|-------------|--|------------------------|
| H.B. | SYNOPSIS | EFF. DATE: |
| 363 | Prohibits insurers from declining to issue an insurance policy based on customer inquiries regarding general terms or conditions of coverage. | 9/1/05 |
| 525 | Authorizes the creation of homestead preservation districts, reinvestment zones, and other programs to increase homeownership and provide affordable housing. | 9/1/05 |
| √ 637 | Authorizes parents, managing conservators, and guardians to receive, on behalf of a minor, an extension of credit secured by a residence homestead in which a minor or ward has an ownership interest. | 9/1/05 |
| 638 | Authorizes people living in counties with populations of 30,000 or more to establish property homeowners associations. | 9/1/05 |
| 854 | Requires plaintiffs alleging professional negligence of a professional land surveyor to provide an affidavit of a registered professional land surveyor setting forth at least one negligent act, error, or omission claimed to exist and the factual basis for it. | 9/1/05 |
| 873 | Authorizes property owners' associations to regulate certain political advertising on property in a residential subdivision. | 9/1/05 |
| 932 | Authorizes littoral property owners to construct piers on adjacent costal public land | Immediately 5/17/05 |
| √ 950 | Increases county clerk's fees for recording personal property records to \$5.00 for the first page and \$4.00 for each additional page containing visible marks. The fee for real property records is increased to \$5.00 for the first page and \$4.00 for each additional page containing visible marks and \$4.00 for each attachment or rider. | 9/1/05 |
| 951 | Requires anyone wishing to build a structure on a pipeline right-of-way to notify the pipeline operator and give that operator a chance to determine if the construction will cause a safety hazard. | Immediately 6/17/05 |
| √ 955 | Enacts significant revisions to the Finance Code including provisions regarding false advertising, interest rates, commercial and consumer lending, licensing of mortgage brokers, and savings bank charters. | 9/1/05 |
| √ 961 | Amends the Property Code to allow foreclosures sales of real property under a contract lien to take place in an area other than at the courthouse as designated by the commissioner's court of that county. | Immediately 6/17/05 |
| √ 1140 | Prohibits county clerks from imposing additional local requirements or fees for recording a legal paper. | Immediately 6/18/05 |
| √ 1234 | Authorizes the appointment of substitute trustees in certain foreclosures by mortgage servicers and attorneys. | 9/1/05 |
| √ 1235 | Eliminates the requirement that only mortgage servicers may serve the notice of date, time, and place of foreclosure sale on the borrower and amends the notice requirements when a mortgage servicer administers the foreclosure sale. | 9/1/05 |
| √ 1236 | Exempts foreclosure under a power of sale conferred by a contract lien from the Real Estate License Act. | Immediately 5/17/05 |
| √ 1547 | Amends Finance Code to provide that if the terms of a loan were negotiated in Spanish, a copy of a summary of those terms and other pertinent information shall be provided to the debtor in Spanish in a form identical to disclosures required for a closed-end transaction under 12 C.F.R. Section 226.18 (Truth in Lending disclosures). | 9/1/05 |
| 1582 | Requires the Texas Department of Housing and Community Affairs to conduct a study to examine mortgage foreclosure rates in Bexar, Cameron, Dallas, El Paso, Harris, and Travis Counties. | Immediately 6/18/05 |

| HOUSE BILLS (Continued) | | |
|------------------------------------|--|------------------------|
| H.B. | SYNOPSIS | EFF. DATE: |
| 1631 | Allows residential subdivisions in unincorporated areas in counties with less than 65,000 the ability to amend or modify existing covenants and building restrictions. | 9/1/05 |
| 1632 | Permits neighborhoods to change their deed restrictions in order to reflect changes in the community make up. | 9/1/05 |
| √ 1823 | Amends various provisions of Subchapter D, Title 5, Property Code regarding executory contracts for conveyance of residential property including authorization for purchasers to convert their interest to recorded legal title. | Generally 9/1/05 |
| 1919 | Requires the seller of a single-family residence that is subject to a Public Improvement District to give written notice to a prospective buyer of the residence at or prior to placing the residence under an executory contract for the purchase of the property. | 1/1/06 |
| 2179 | Amends Land Surveying Practices Act to clarify that the practice of "professional surveying" includes the acquisition of survey data and the preparation of technical reports when performed in connection with any other regulated Act. Also permits the Texas Board of Professional Land Surveying to regulate activities as necessary in order to protect the public. | 9/1/05 |
| 2254 | Reduces the penalty for failure by a disabled or elderly person to make a timely installment payment of ad valorem taxes imposed on the person's residence homestead. | 9/1/05 |
| 2266 | Prohibits municipalities from enacting requirements establishing the sales price for certain housing units or residential lots | 9/1/05 |
| √ 2438 | Amends various provisions of the Occupations Code regarding conversion, subsequent sales or transfers, changes in use, and abandonment of manufactured homes. | Immediately 6/18/05 |
| 2491 | Amends various sections of the tax code regarding the administration and collection of ad valorem taxes, including the transfer of an ad valorem tax lien and a contract for foreclosure of an ad valorem tax lien. | 9/1/05 |
| √ 2761 | Limits the amount of homeowners insurance lenders may require in connection with residential financing arrangements | Immediately 5/17/05 |
| 3101 | Prohibits a person from filing for record or having recorded a plat or replat of a subdivision if any ad valorem taxes are owed on the real property. | 9/1/05 |
| 3240 | Provides a homestead exemption from ad valorem taxation for residence homesteads held in a court-ordered trust. | 1/1/06 |

| SENATE BILLS | | |
|---------------------|---|------------------------|
| S.B. | SYNOPSIS | EFF. DATE: |
| 18 | Requires taxing jurisdictions, other than school districts, to publish and hold two public hearings prior to adopting an increase in the effective property tax rate. | Immediately 6/18/05 |
| √ 99 | Prohibits lenders from denying credit to individuals who are victims of identity theft | 9/1/05 |
| √ 335 | Amends the Property Code to add the Uniform Real Property Electronic Recording Act which establishes the validity of electronic documents, provides uniform standards, and clarifies the county clerks' authority to receive and record electronic documents. | 9/1/05 |
| 382 | Streamlines the process for disciplinary proceedings and contested cases involving real estate appraisers and appraiser trainees | 9/1/05 |
| √ 461 | Clarifies that the confidentiality of information notice required by Section 1.008 of the Property Code applies to a deed or deed of trust only when the instrument discloses an individual's social security number or driver's license number. | Immediately 5/13/05 |
| 526 | Amends Section 118.025(e), Local Government Code, to require the county clerk to designate the public documents that are part of the records archive. The designation is subject to approval by the commissioners' court in a public meeting. | Immediately 6/17/05 |
| 644 | Requires purchasers at tax sales in counties of with a population of 250,000 or more to obtain a written statement from the tax assessor-collector. Counties with populations of less than 250,000 have the discretion to require written tax statements | Immediately 5/17/05 |
| 810 | Addresses regulation of real estate agents and real estate inspectors | 9/1/05 |
| 828 | Extends the deadline for certain individuals working overseas to file a late notice to protest with an appraisal district | 1/1/06 |
| 898 | Provides that in when property is omitted from a tax roll under certain circumstances the tax liability for the property is extinguished | 9/1/05 |
| √ 988 | Provides for education courses required for a mortgage broker or loan officer license | 9/1/05 |
| 1018 | Relating to the extension or modification of residential restrictive covenants in certain counties | 9/1/05 |

| SENATE BILLS (Continued) | | |
|--|--|------------------------|
| S.B. | SYNOPSIS | EFF. DATE: |
| 1485 | Relating to providing that the social security number of a living person is excepted from required disclosure under the public information law and may be redacted without the necessity of requesting a decision from the attorney general. | Immediately 6/17/05 |
| √ 1587 | Requires a transferee of a tax lien to notify the holders of all recorded liens on the property prior to foreclosure and requires any contract, with provisions relating to foreclosure of tax liens, to notify the holders of all recorded liens on the property prior to foreclosure | 9/1/05 |
| MATERS TO BE ON NOVEMBER 8, 2005 BALLOT | | |
| SJR 7 | Proposing a constitutional amendment authorizing line-of-credit advances under a reverse mortgage | |

I. Home Equity Reform

In the 79th Legislative Session the Texas House and Senate passed House Bill 637 authorizing extensions of credit secured by a residence homestead in which a minor or ward has an ownership interest.

The Act amends Section 781, Probate Code by adding Subsections (a-1) and (a-2) which authorize guardians of an estate to receive extensions of credit on behalf of a ward secured, either wholly or partly, by a lien on the homestead property of the ward. The extension of credit must be obtained under court order when necessary to make improvements or repairs to the homestead or to pay the ward's education or medical expenses. Proceeds of the home equity loan may only be used for these specific purposes or to pay the outstanding balance of an existing loan.

House Bill 637 also adds Section 889A, Probate Code allowing natural and adoptive parents or managing conservators to receive extensions of credit on behalf of a minor having an interest in a residence homestead with a net value not exceeding \$100,000.00. Specifically the parent or managing conservator must apply to a court for an order authorizing the parent or conservator to receive an extension of credit on behalf of the minor, secured either wholly or in part by a lien on the homestead. Natural and adoptive parents, however, may apply to a court for an extension of credit only if the parent has an interest in the subject property. Moreover, the portion of the proceeds of the home equity loan that is attributable to the minor's interest may only be used to: 1) make improvements to the homestead; 2) pay for education or medical expenses of the minor; or 3) pay the outstanding balance of an existing loan.

The parent or managing conservator must apply to the court under oath for the authority to encumber the residential homestead. Upon receipt, the court will set the application for hearing for a date not earlier than the fifth day after the application is filed. The parent or managing conservator must file a surety bond with the county clerk in an amount at least

equal to two times the amount of the proposed home equity loan. At the time of the hearing, the court, on approval of the bond, shall authorize the parent or managing conservator to receive the extension of credit if it is satisfied from a preponderance of the evidence that the encumbrance is for an authorized purpose and it is in the minor's best interests. Importantly, a minor may not disaffirm a home equity loan authorized by the court.

Lastly, House Bill 637 adds Section 890A, Probate Code, permitting guardians of the person of a minor having a homestead interest with a net value not exceeding \$100,000 to apply to a court for an order authorizing the guardian to receive an extension of credit on the ward's behalf secured wholly or partly by a lien on the homestead. Proceeds of the home equity loan attributable to the minor's interest may only be used to: 1) make improvements to the homestead; 2) pay for the education or maintenance expenses of the ward; or 3) pay the outstanding balance of an existing loan. The procedure and requirements for applying to a court are very similar to those for parents and managing conservators and an application will only be approved if a court finds that the encumbrance is for an authorized purpose and is in the ward's best interest. A minor ward may not disaffirm a home equity loan authorized by the court.

This Act is effective September 1, 2005. The full text of House Bill 637 may be found at:

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/HB00637F.PDF>

II. SJR 7 proposes a constitutional amendment authorizing reverse mortgage line of credit

Reverse mortgages allow senior homeowners to supplement their incomes by converting their home equity into funds necessary to maintain their independence and an improved quality of life. While a reverse mortgage loan is not generally due until the homeowner moves or dies, under current law

advances may only be made in a lump sum or in regular periodic installments. Since many seniors would prefer to minimize their costs of borrowing and take advances only when funds are needed to pay expenses such as property taxes, medical bills, or other necessities, the options under current law do not meet their needs. S.J.R. 7 adds flexibility by amending Subsection (p), Section 50, Article XVI, Texas Constitution to give senior homeowners the option to draw advances at unscheduled intervals and only in amounts needed during the term of the loan.

Under the proposed constitutional amendment, senior homeowners would have the option to draw one or more advances, under the terms of the loan documents, by one or more of the following methods:

1. an initial advance at any time and future advances at regular intervals;
2. an initial advance at any time and future advances at regular intervals in which the amounts advanced may be reduced, for one or more advances, at the request of the borrower;
3. an initial advance at any time and future advances at times and in amounts requested by the borrower until the credit limit established by the loan documents is reached;
4. an initial advance at any time, future advances at times and in amounts requested by the borrower until the credit limit established by the loan documents is reached, and subsequent advances at times and in amounts requested by the borrower according to the terms established by the loan documents to the extent that the outstanding balance is repaid; or
5. at any time by the lender, on behalf of the borrower, if the borrower fails to timely pay any of the following that the borrower is obligated to pay under the loan documents to the extent necessary to protect the lender's interest in or the value of the homestead property: taxes, insurance, costs of repairs or maintenance (performed by a person or company that is not an employee of the lender or a person or company that directly or indirectly controls, is controlled by, or is under common control with the lender), assessments levied against the homestead property, and any lien that has, or may obtain, priority over the lender's lien as it is established in the loan documents.

The terms of a reverse mortgage would prohibit the homeowner from using a credit card, debit card, preprinted solicitation check, or similar device to obtain an advance. Moreover, after the extension of credit is established, no transaction fee could be charged or collected solely in connection with any debt or advance. Additionally, the lender or holder would be prohibited from unilaterally amending the extension of credit.

The amendment also will clarify that reverse mortgages may be closed or initially funded at any time and not just on the first business day of a month. This proposed constitutional amendment will be submitted to the voters at an election to be held on November 8, 2005 and if approved by a majority of voters will be effective January 1, 2006. The full text of S.J. R. 7 may be found at:

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/SJ00007F.PDF>

III. Amendments to the Mortgage Broker Licensing Act

The Texas House and Senate passed two bills amending the Mortgage Broker Licensing Act. House Bill 955 amends various sections of Chapter 156, Texas Finance Code regarding exemptions from licensing, denial of renewal of a mortgage broker or loan officer license, and discipline of a mortgage broker or loan officer, including suspension or revocation of a license. Senate Bill 988 establishes additional education requirements for licensure of loan officers and mortgage brokers.

House Bill 955 and Senate Bill 988 are both effective on September 1 2005. Summaries of these bills are set out below.

The full text of House Bill 955 found at:

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/HB00955F.PDF>

The full text of Senate Bill 988 may be found at:

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/SB00988F.PDF>

A. House Bill 955 amends licensing requirements for mortgage brokers and loan officers

House Bill 955 amends Section 156.202, Finance Code, to exempt subsidiaries, affiliates, or credit union service organizations of a state or federal credit union from mortgage broker or loan officer licensing. This amendment also clarifies that mortgage bankers registered under Chapter 157, Finance Code, are exempt from mortgage broker or loan officer licensing.

Amended Section 156.208, Finance Code, also contains new provisions regarding when a renewal of a mortgage broker or loan officer license may be denied. Specifically the amendment provides that renewal of a mortgage broker or loan officer license may be denied if: 1) the mortgage broker or loan officer is in violation of Chapter 156, a rule adopted under it, or any order previously issued to the individual by the Commissioner; or 2) the mortgage broker or loan officer is in default in the payment of any administrative penalty, fee, charge, or other indebtedness under this title.

Lastly, the Act amends Section 156.2081(c)-(f), Finance Code to provide that a mortgage broker's license may not be renewed if it has been expired for 91 days or more. In that case the mortgage broker must obtain a new one by complying with the requirements and procedures for obtaining an original license.

B. Senate Bill 988 amends education requirements for mortgage broker and loan officer licensing

Effective September 1, 2005, Senate Bill 988 amends Section 156.204 Finance Code, to provide additional education requirements for loan officers. In this regard applicants for a loan officer license, with less than 18 months experience as a loan officer, must complete 30 hours of approved education courses. The education courses must include the following: ethics, the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. Section 2601 et seq), the Truth in Lending Act (15 U.S.C., Section 1601, et seq.), the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.), and the provisions of Chapter 156, Finance Code.

Senate Bill 988 also amends Section 156.208, Finance Code, to provide additional education courses that may be approved by the Texas Finance Commission. Specifically, the Texas Finance Commission may accept education courses approved by trade related associations as well as the Texas Real Estate Commission, the Mortgage Bankers Association of America, or the National Association of Mortgage Brokers.

The Act also requires the Finance Commission to adopt a rule requiring mortgage brokers or loan officers to attend, during the term of their current license, not less than eight hours of continuing education courses related to residential mortgage lending before renewing a license.

The changes in the requirements for a loan officer license only apply to applications made on or after September 1, 2005. Individuals applying prior to that date must comply with the requirements in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

Changes made to educational requirements for a renewal of mortgage broker or loan officer licenses also only apply to applications made on or after September 1, 2005. Individuals applying for a renewal license before that date must comply with the requirements in effect on the date the application submitted, and the former law is continued in effect for that purpose.

C. Amendments regarding discipline of a mortgage broker or loan officer including suspension and revocation of license

House Bill 955 amends Section 156.303, Finance Code, to authorize the commissioner to order disciplinary action against a licensed mortgage broker or loan officer when the individual enters a plea of guilty or nolo contendere or is convicted of a felony or a criminal offense involving fraud or moral

turpitude in a court of this or another state or in a federal court. A conviction is defined as a sentence imposed on the person, including a sentence in which the person receives community supervision, including deferred adjudication, community supervision, or the court defers final disposition of the person's case.

The Act further provides that a mortgage broker or loan officer license may be suspended if an individual fails to pay an administrative penalty that has become final or fails to comply with a final order of the Commissioner. Prior to suspension the Commissioner must provide at least 10 days' notice to the person and a license may be suspended without a prior hearing. The suspension continues until the person complies with the administrative order or pays the administrative penalty. During the suspension the person may not originate a mortgage loan and compensation received by the person during this time is subject to forfeiture as provided by Section 156.406(b), Finance Code.

Amended Section 156.303, Finance Code, also provides that an order revoking the license of a mortgage broker or loan officer may prohibit the person, without obtaining prior written consent of the commissioner, from: 1) engaging in the business of origination or making mortgage loans; 2) being an employee, officer, director, manager, shareholder, member, agent, contactor, or processor of a mortgage broker or loan officer; or 3) otherwise affiliating with a person for the purpose of origination or making mortgage loans.

IV. Consumer Protections From Identity Theft

Senate Bill 99 amends Subchapter D, Chapter 35, Business & Commerce Code adding Section 35.585 to prohibit lenders from discriminating against victims of identify theft. When notified by an individual that he or she has been the victim of identity theft, lenders may not deny an extension of credit in the individual's name or restrict or limit the amount of the credit extended solely because the person has been the victim of identity theft. Importantly, a license issued under Subtitle B, Title 4, and Finance Code, held by a person who violates Section. 35.585 is subject to revocation or suspension under that subtitle

The Act also provides that insurers that are authorized to write property and casualty insurance in this state may offer and issue insurance coverage for a loss sustained by a policyholder as a result of identity theft. Coverage authorized includes a separate insurance policy or a rider or endorsement to a residential or commercial property insurance policy or a personal or commercial casualty insurance policy, which is underwritten and issued as an individual or group insurance policy. Eligible policyholders include an individual or a group, business, employer, association, trustee, or other entity for the benefit of its members, customers, employees, members, or beneficiaries.

Effective September 1, 2005, the full text of Senate Bill 99 may be found at:

V. Finance Code Amendments

Several amendments to the Finance Code were made by the Texas House and Senate in the 79th Legislative Session. House Bill 955 enacts significant overall amendments to the Finance Code including a new provision regarding advertising, the Mortgage Broker Licensing Act (as discussed above in Section III), a new provision regarding the applicability of Title 4, Finance Code, a name change for the Texas Department of Savings & Loans, the definition of interest, various provisions regarding authorized enforcement actions by the Consumer Credit Commissioner, and a new provision regarding voluntary assurance of compliance. House Bill 1547 amends Section 341.502, Finance Code regarding the form of a loan contract for home equity loans.

Both House Bill 955 and House Bill 1547 are effective September 1, 2005 and are summarized below.

Full text of House Bill 955 can be found at:

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/HB00955F.PDF>

The full text of House Bill 1547 can be found at:

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/HB01547F.PDF>

A. *House Bill 955 prohibits false, misleading, or deceptive advertising*

House Bill 955 amends Subtitle A, Title 4, Finance Code adding Chapter 308 applicable to persons regularly engaged in the business of extending credit under this subtitle primarily for personal, family, or household use. Chapter 308 does not apply to persons extending credit for business, commercial, investment, or agricultural purposes.

New section 308.002 prohibits creditors from advertising or causing to be advertised a false, misleading, or deceptive statement or representation regarding a rate, term, or condition of a credit transaction or from advertising credit terms that the creditor does not intend to offer to consumers qualifying for those terms.

Creditors in compliance with the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and Federal Reserve Regulation Z (12 C.F.R. Part 226) in advertising a credit transaction are considered to have fully complied with this section. An administrative agency or court interpreting Section 308.002 shall be guided by the applicable advertising provisions of: 1) The Truth in Lending Act, Part C of 15 U.S.C. Chapter 41, Subchapter I (15 U.S.C. Section 1601 et seq.); 2) Reg Z, 12 C.F.R. Part 226 adopted by the Board of Governors of the Federal Reserve System; and 3) Official Staff Commentary of Reg. Z and other interpretations of that statute and regulations

of the Board of Governors of the Federal Reserve System and its staff.

The new chapter does not create a private right of action. Moreover, a judgment, consent decree, assurance of compliance, or other resolution of a claimed violation asserted by a federal agency under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) bars a subsequent action or other enforcement with regard to the same act or practice.

An amendment to Section 341.403 (a), Finance Code has created a similar provision regarding advertising. Specifically the amendment adds a provision prohibiting advertising credit terms that a person doesn't intend to offer to consumers qualifying for those terms.

B. *Applicability of Title 4, Finance Code*

House Bill 955 amends Subtitle B, Title 4, Finance Code by adding new Chapter 350. Specifically the Chapter applies to those who extend credit primarily for personal, family, or household use (and not for business, commercial, investment or agricultural purposes). Credit is defined under Chapter 350 as the right granted to a debtor to defer payment of a debt or to incur debt and defer its payment. Creditors are subject to this chapter if the creditor charges a finance charge or extends credit payable in one or more installments. It is not applicable, however, if the creditor is licensed or registered under Title 3 (Mortgage Broker Licensee Act, Chapter 156, Finance Code) or Title 4, Finance Code (Regulated Loan License, Chapter 342), or exempt from licensing under Title 4.

Creditor who are not licensed, registered, or otherwise exempt under Title 4 must comply with 15 U.S.C. Section 45 (Prohibiting Unfair Methods of Competition). Moreover, an enforcement action to compel compliance may include an action to enjoin illegal activities or order restitution.

Persons may not use any device, subterfuge, or pretense to evade application of this section. Lastly, Chapter 349 regarding liability for civil penalties for charging excessive amounts applies to violations of this chapter and rules adopted under it.

C. *Limits on lender liability for construction defects*

House Bill 955 amends Subchapter A, Chapter 59, Finance Code adding Section 59.011 to provide that for purposes of Chapter 27, Property Code (Residential Construction Liability) and Title 16, Property Code (Texas Residential Construction Commission Act), federally insured financial intuitions regulated under the Finance Code are not builders. As such lenders that acquire a home through foreclosure, or other legal means when the loan is in default, are not liable to a subsequent purchaser for construction defects created prior to foreclosure that were unknown to the lender.

Builders hired by the lender to complete construction after foreclosure are not liable for construction defects unknown to the builder which existed prior to the lender's acquisition of the home. Builders are, however, are subject to Chapter 27, Property Code and Title 16, Property Code for work performed for the lender's subsequent acquisition of the home.

D. Regulation of Interest, Loans and Other Financed Transactions

House Bill 955 amends Section 301.002(4), Finance Code, to exclude certain amounts or charges from the definition of interest. It does not include compensation or other amounts identified by the Finance Code, or other applicable law, as not constituting interest or may be contracted for, charged or received in addition to interest in connection with an extension of credit.

E. Name change for the Savings and Loan Department

House Bill 955 amends Chapter 13, Finance Code to provide that the Savings and Loan Department is renamed the Department of Savings and Mortgage Lending. The savings and loan commissioner is renamed the savings and mortgage lending commissioner.

F. House Bill 955 authorizes Consumer Credit Commissioner to enjoin violations of statute and to increase the annual amount of aggregate penalties assessed against a person

House Bill 955 amends Section 14.208, Finance Code to provide the consumer credit commissioner with additional enforcement powers when there is reasonable cause to believe that that a lender is violating the a statute to which this chapter applies. Specifically when there is reason to believe that a violation is occurring the commissioner may issue a cease and desist order or an order to take affirmative action. The order is appealable to the finance commission or directly to district court in accordance with Chapter 2001, Government Code (Administrative Procedure).

A person against whom an order is made may request a hearing not later than 30 days after the date the order is served and the consumer credit commissioner shall set and give notice of hearing before a hearings officer. If a request for a hearing is not timely made, however, the order is final and becomes enforceable.

The Act also amends Section 14.252(b), Finance Code to increase the aggregate amount of penalties that the consumer credit commission may access against a person during a calendar year. Specifically the penalties now may not exceed the lesser of: 1) \$100,000; or 2) an amount that is equal to the greater of five percent of the net worth of the creditor or \$5,000.

G. Acceptance, effect, and revocation of Voluntary Assurances of Compliance

House Bill 955 adds Subchapter F, Chapter 14, Sections 14.261-14.264 authorizing the Consumer Credit Commissioner to accept written assurance of voluntary compliance from a person violating this Chapter. Specifically the Consumer Credit Commissioner may accept an assurance of voluntary compliance if a person has engaged in an act or practice in violation of: 1) Chapter 14 or a rule adopted under it; 2) Chapter 394 (Debtor Assistance); or 3) Subtitle B, Title 4 (Loans and Financed Transactions, Chapter 343, Home Loans) or a rule adopted under it. Additionally acceptance of the assurance may be conditioned on repayment of interest that may have been acquired by the act or practice described above.

An assurance of voluntary compliance is not an admission of a violation. However, unless it is rescinded by agreement or voided by a court for good cause, subsequent failure to comply with the assurance is prima facie evidence of a violation of 1) Chapter 14 or a rule adopted under it; 2) Chapter 394; or 3) Subtitle B, Title 4 or a rule adopted under it.

Matters closed by filing of assurance of voluntary compliance may be reopened at any time. Furthermore, assurance of voluntary compliance does not, except as provided in Chapter 349, Finance Code, affect the right of an individual to bring an action. Moreover, the right of an individual in relation to money received according to a stipulation under Section 14.261 (c) is governed by the terms of the assurance.

Not later than 60 days after date of filing of the assurance, the person entering into it may correct the violation under Section 349.201, Finance Code (Correction Resulting in No Liability). Amounts paid as restitution and other acts taken in accordance with the assurance will be considered in determining whether the obligor has made a correction under Subchapter C, Chapter 349, Finance Code. With respect to corrections of violations or possible violations relating to the assurance, the date of filing of the assurance is the date that: 1) the actual discovery of the violation or possible violation; 2) written notice; and 3) filing of the action alleging the violation.

H. House Bill 1547 provides new requirements for the form of home equity contracts and related documents

Effective September 1, 2005, House Bill 1547 amends Section 341.502, Finance Code to provide that if the terms of a retail installment agreement or home equity loan were negotiated in Spanish, a copy of the summary of the terms and other pertinent information must be provided to the debtor in Spanish in a form identical to the disclosures required for a closed-end transaction under 12 C.F.R. Section 226.18 (Truth In Lending Disclosures Act).

VI. Insurance Code Amendments

House Bill 2761 re-codifies Section 2, Article 21.48A subsection (g), Insurance Code as Section 549.0551 of the Insurance Code to provide that lenders may not require insurance in an amount exceeding the replacement value of a dwelling and its contents as a condition of financing a residential mortgage or providing other financing arrangements for residential property, including a mobile or manufactured home. Moreover, the fair market value of the land on which the dwelling is located may not be included in the replacement costs of the dwelling and its contents.

The Act also clarifies Sections 549.056(a) and (d), Insurance Code, which state that except as provided by Section 549.0551, lenders may require evidence of insurance upon the commencement or renewal of a risk, or upon the lender's providing insurance if the borrower fails to maintain insurance on the property.

This Act is effective immediately. Full text of House Bill 2761 may be found at:

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/HB02761F.PDF>

VII. Local Government Code Amendments

Two amendments to the Local Government Code were made in the 79th Legislative Session, including House Bill 950 which authorizes an increase in recording fees charged by a county clerk for recording a document in the personal and real property records and House Bill 1140 which prohibits a county clerk from imposing additional requirements or fees for filing or recording a legal paper.

A. County Clerks authorized to charge increased fees for recording a document in personal and real property records

House Bill 950 amends Section 118.001(a), Local Government Code to authorize an increase in county clerks' fees for personal property records filing to \$5.00 for the first page and \$4.00 for each additional page containing visible marks. Real property record filings are increased to \$5.00 for the first page, \$4.00 for each additional page containing visible marks, and \$4.00 for each attachment or rider.

Other charges by a county clerk authorized by Section 118.011(a), Local Government Code, for indexing in excess of five names and providing certified and non-certified copies and other documents remain unchanged.

Effective September 1, 2005, the full text of House Bill 950 may be found at:

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/HB00950F.PDF>

B. County clerks may not impose additional local requirements or fees for recording legal documents

Currently Section 191.007(a), Local Government Code, provides that to be accepted by a county clerk for recording legal documents must meet the following requirements set out in 191.007(b)-(g): the paper size must be no larger than 8 ½ x 14; the paper must have sufficient weight and substance so that the printing, typing, or handwriting will not bleed through; pages must be printed in type not smaller than eight point and be suitable for photocopying or microfilming; pages must have a clearly identifiable heading at the top of the first page to identify the type or kind of legal paper; the printing, typing, and handwriting must be clearly legible; names must be legibly typed or printed immediately under each signature; copies must have black printing, typing, or handwriting on a white background; and riders and attachments must comply with the foregoing size requirements and may not be larger than the size of the page to which it is attached.

House Bill 1140 amends Section 191.007(a), Local Government Code to provide that legal papers submitted for recording in any county must meet the requirements set out in Section 191.007(b)-(g), and a county clerk may not impose additional local requirements or fees for filing or recording the papers.

Effective immediately, the full text of House Bill 1140 may be found at:

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/HB01140F.PDF>

VIII. Property Code Amendments

The Texas House and Senate made several amendments to the Property Code during the 79th Legislative Session, including Senate Bill 335 amending Title 3, Property Code by adding Chapter 15, the Uniform Real Property Electronic Recording Act, which establishes standards for recording of electronic documents in the real property records; Senate Bill 461 which clarifies the content and type of instrument to which the Confidentiality Notice required under Section 11.008 must be attached and clarifies that a county clerk may not reject an instrument solely because it fails to comply with Section 11.008, Property Code; House Bill 961 which authorizes the foreclosure sale of real property under a contract lien to take place at an area other than at the courthouse as designated by the county commissioners of that county; House Bill 1235 which amends Section 51.0025, Property Code to make changes to the notice requirements for sale of real property under a contract lien; and House Bill 1823 which amends Sections 5.062, Property Code, to include as executory contracts options to purchase real property which are combined with residential leases and amends Section 5.081, Property Code to authorize purchasers of real property under

executory contracts to convert the contract into recorded legal title.

A. Uniform Real Property Electronic Recording Act

In response to uncertainty regarding whether or how electronic documents may be recorded in land records offices, Senate Bill 335 amends Title 3, Property Code by adding Chapter 15, to be known as the Uniform Real Property Electronic Recording Act. The Act establishes the validity of electronic documents, provides for uniform standards, and clarifies the authority of a county clerk to receive and record documents in electronic form.

Section 15.004 establishes the validity of electronic documents by addressing the various conditions required by law for recording. The requirements that a document be an original, be on paper or another tangible medium, or be in writing are satisfied if an electronic document is in compliance with Chapter 15, Property Code. If the law establishes a condition for recording that the document to be signed, an electronic signature satisfies this requirement. A requirement that a document, or a signature associated with a document, be notarized, acknowledged, verified, witnessed, or made under oath, is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. Physical or electronic images of a stamp, impression, or seal don't have to accompany an electronic signature.

The Act provides for uniform standards in recording by authorizing the Texas State Library and Archives Commission, by rule, to adopt standards implementing Chapter 15, Property Code. Moreover, a county clerk implementing any of the functions described by Section 15.005(b) must comply with the rules adopted by the Texas State Library and Archives Commission under Chapter 195, Local Government Code and standards established by the Texas State Library and Archives Commission under Section 15.006.

A county clerk's authority to receive and record electronic documents is provided by Section 15.005(b). Specifically, this section of the Act authorizes a county clerk to take a variety of actions such as to receive, index, store, archive, and transmit electronics documents. In addition to authorizing the functions, the Act requires a county clerk who accepts electronic documents for recording to continue accepting paper documents and place entries for paper documents and electronic documents in the same index.

This Act is effective September 1, 2005 and applies only to documents filed for recording on or after the effective date. Documents filed for recording before the effective date are covered by the law in effect when the documents are filed. Rules adopted by the Texas State Library and Archives Commission apply to electronic documents filed in accordance with Chapter 15, Property Code, as added by the Act, on or after the effective date of the Act.

The full text of Senate Bill 335 may be found at:

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/SB00335F.PDF>

B. Clarification regarding the confidentiality Notice required by Section 11.008, Property Code

Senate Bill 461 amends Property Code Section 11.008 (a), (b), (d), (e), and (f) to clarify that the confidentiality of information notice required by that section applies only to deeds and deeds of trust in which the social security number or driver's license number is actually disclosed on the document. The Act also modifies the notice which must appear at the top of the deed or deed of trust.

Effective immediately, Section 11.008, Property Code is amended to require that a deed or deed of trust transferring an interest in real property to or from an individual **and disclosing that individual's social security number or driver's license number** must include a notice appearing at the top of the first page of the instrument in 12-point boldfaced type or 12-point uppercase letters that reads substantially as follows:

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

The Act also provides that a county clerk may not reject an instrument solely because it fails to comply with the requirements of Section 11.008(b), Property Code regarding the confidentiality notice. Moreover, a county clerk may not increase a fee under 191.007 (h), Local Government Code, because the instrument failed to include: 1) type not smaller than 8 point to comply with the requirements of to Section 191.007 (b)(3), Local Government Code; and 2) a clearly identifying heading provided that the legal paper contains the confidentiality notice as required by Section 11.008(b), Property Code.

The full text of Senate Bill 461 may be found at:

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/SB00461F.PDF>

C. Designation of location other than courthouse for foreclosure sale of under a deed of trust or contract Lien

House Bill 961 amends Section 51.002, Property Code by adding Subsection (h) to allow the sale of real property by a

power of sale conferred by a deed of trust or other contract lien to take place in an area other than at the courthouse if designated by the commissioners court.

As provided by Subsection (h), the sale of the property may be held in an area other than the courthouse if it is designated by a commissioners court. The designated area must be a public place within a reasonable proximity to the county courthouse and in a location as accessible to the public as the county courthouse door. Additionally the commissioners court must record the designated location in the real property records of the county. Posting of required notices of sales to take place at the designated area remains at the courthouse door of the appropriate county.

The Act becomes effective immediately. A link to the full text of House Bill 961 appears below.

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/HB00961F.PDF>

D. Notice required for a foreclosure sale of real property under a contract lien by a loan servicer

House Bill 1235 amends Section 51.002(b), Property Code, by eliminating the requirement that only mortgage servicers may serve the mandatory notice of the date, time, and place of the foreclosure sale on the borrower. As a result the notice may also be served by the mortgagee or an attorney.

The Act also amends Section 51.0025, Property Code, by making additional requirements for the notice required by Section 51.002(b) when a mortgage servicer administers the foreclosure of property. Specifically, the notice must additionally disclose that the mortgage servicer represents the mortgagee pursuant to a contract, the name of the mortgagee, and includes the address of the mortgagee or the address of the mortgage servicer.

The Act is effective September 1, 2005, and only applies to the notice required and administration of a sale of real property on or after this date, unless otherwise provided by a security instrument or other contract executed before the effective date. If a security instrument or other contract executed before the effective date of this Act conflicts with this change in the law made by Section 51.0025, Property Code, as amended by this Act, the security instrument or other contract prevails and is governed by the law in effect at the date of execution.

A link to the full text of House Bill 1235 is provided below.

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/HB00961F.PDF>

E. House Bill 1823 amends the applicability of Subchapter D, Chapter 5, Property Code and authorizes conversion of executory contracts for residential property into recorded, legal title

H.B. 1823 amends Section 5.062(a), Property Code, regarding the applicability of Subchapter D, Chapter 5, Property Code, to executory contracts for conveyance of residential property. In particular Section 5.062(a) is amended to provide that options to purchase property that are included, combined, or executed concurrently with a residential lease agreement are executory contracts subject to Subchapter D. This subchapter, however, does not apply to sales under an executory contract by the State of Texas or a political subdivision of it and instrumentalities, public corporations and other entities created to act on behalf of this state or a political subdivision.

This Act also amends Subchapter D, Chapter 5, Property Code, adding Sections 5.081 through 5.085 to authorize purchasers under an executory contract to convert their interests in the property into recorded legal title. New Section 5.081 provides two options for purchasers to elect to convert their interest at any time without additional penalties or charges of any kind. Section 5.081(b), Property Code, provides the first option by which purchasers may convert their interests by paying the seller the balance owed under the contract and the seller is then required to transfer recorded, legal title to the property to the purchaser.

The second option, Section 5.081 (c), Property Code, allows purchasers to convert their interest by delivering to the seller a promissory note equal to the amount owed under the contract containing the same interest rate, due dates and late fees as the executory contract. On or before the tenth day after receipt of the promissory note, the seller must provide the purchaser with either: 1) a written explanation of why the purchaser's interest cannot be converted into recorded, legal title; or 2) schedule a mutually agreeable day and time for the parties to execute a warranty deed and deed of trust. If parties agree to convert the executory contract, Section 5.081 (c) requires the purchaser and seller to simultaneously execute a deed and deed of trust. Specifically the seller must execute a warranty deed containing any warranties required by the executory contract and conveying to the purchaser recorded, legal title to the property. At the same time the purchaser must execute a deed of trust: 1) containing the same terms as the contract regarding each parties duties covering the property; 2) secures the purchaser's payment and performance under promissory note and deed of trust; and 3) conveys the property to the trustee, in trust, along with a power of sale if the purchaser defaults on the promissory note or the terms of the deed of trust.

With either option of converting the contract, sellers who violate Section 5.081, Property Code, are liable to the purchaser in the same manner and amount as a seller who fails to transfer title within 30 days of final payment under an executory contract as provided by Chapter 5.079, Property Code. More importantly, on the last day that that all conveyances under 5.081 (b) and (c) are executed, the executory contract is considered completed and has no further effect.

The amendment to Section 5.062, Property Code applies to an executory contract for conveyance entered into on or after January 1, 2006. The amendment to Section 5.081, Property

Code applies to a conversion of title initiated on or after the September 1, 2005 effective date of the Act.

The full text of House Bill 1823 can be found at:

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/HB01823F.PDF>

IX. Occupations Code Amendments

The Texas House and Senate made two amendments to the Occupations Code in the 79th Legislative Session, including House Bill 1236 which exempts sales of real property under a power of sale conferred by a deed trust or other contact lien from the Real Estate Licensing Act and House Bill 2438 which makes changes in procedures for an election to treat a manufactured home as real property, provides procedures for changes in use, and creates new procedures for declaring a manufactured home abandoned.

A. Exemption from Real Estate License Act for persons conducting foreclosure sales

House Bill 1236 amends Section 1101.005, Occupations Code, to provide that the Real Estate Licensing Act does not apply to transactions involving foreclosure sales of real property under a power of sale conferred by a deed of trust or other contract lien

The Act is effective immediately. A link to the full text of House Bill 1236 is provided below.

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/HB01236F.PDF>

B. House Bill 2438 amends conversion, changes in use, and abandonment of manufactured homes

The Texas House and Senate amended various provisions of the Occupations Code relating to manufactured homes, including conversion of manufactured homes to real property, conversion from real property to personal property, subsequent sales or transfers, changes in use, and abandonment of manufactured homes.

1. Conversion of manufactured home from personal property to real property

Recent law required the owner of a manufactured home to file an application for statement of ownership and location, with the Texas Department and Community Affairs (the "Department"), indicating an election to treat the home as real property. If the Department issued a statement of ownership and location to an owner who had elected to treat a manufactured home as real property, the manufactured home was not real property until a certified copy of the statement of ownership and location had been filed in the real property records of the county in which the home was located. If a real

property election had been made but a certified copy of the statement of ownership and location has not been filed in the real property records the home continued to be treated as personal property until the certified copy was filed.

House Bill 2438 changes the former procedure by amending Section 1201.2055, Occupations Code, which continues to require that the owner elect to treat the home as real property by filing an application for statement of ownership and location with the Department. However, not later than 60 days after the Department issues a certified copy of the statement of ownership and location with an election to treat the manufactured home as real property on its face, the owner must 1) file the certified copy in the real property records of the county in which the home is located; and 2) notify the department and the tax assessor-collector that the certified copy has been filed. The manufactured home will not be treated as real property until a certified copy of statement of ownership and location has been filed and the Department and the tax-assessor-collector have been notified of the filing.

If notified in a timely manner, the Department and the tax-assessor collector must note in their records that a real property election has been perfected and the home is considered real property for all purposes. If the Department and the tax assessor-collector are not notified, a real property election is not perfected and the home remains personal property.

2. Conversion of manufactured home from Real property to personal property

House Bill 2428 amends Subchapter E, Chapter 1201 Occupations Code, by adding Section 1201.2076 regarding conversion of a manufactured home from real property to personal property. In particular this section provides that the Department will not issue a statement of ownership and location for a manufactured home that is being converted from real property to personal property until it has inspected the home and determined that it is habitable, notified the tax assessor-collector of the conversion, and each lien, including a tax lien, on the home has been released by the lienholder or each lienholder, including a taxing unit, has given written consent, to be placed on file with the Department.

3. Subsequent sales or transfer

The Act amends Section 12.01, Occupations Code to change the procedure regarding subsequent sales or transfers. The amendment provides that not later than 30 days after a subsequent sale or transfer of a home considered to be personal property, the seller or transferor must provide the Department a completed application for the issuance of a new statement of ownership or location.

4. Change in use

The Act amends Section 1201.216(a), Occupations Code, so that changes in purpose for a manufactured home are no longer limited to business purposes. Specifically this

amendment provides that the owner of a manufactured home may change its use by notifying the Department that the owner intends to treat the home as real property, to reserve its use for a business purpose, or salvage. Upon receipt of the owner's notification the Department will indicate the change in use on the statement of ownership and except as provided by Section 1201.2055(h) (provisions of this chapter regarding manufactured home construction, installation, or warranties apply) will no longer consider the home to be a manufactured home for purposes of regulation under this Chapter 1201.

The Act also amends 1201.216(b) to provide that subject to the requirements of Section 1201.2076 (conversion from real property to personal property) and Section 1201.209 (refusal to issue, suspension, or revocation of statement of ownership and location) the Department shall issue a new statement of ownership location restoring the structure's designation as a manufactured home only after an inspection and determination that the structure is habitable.

5. *Abandoned manufactured home*

Lastly, the Act amends Subchapter E, Chapter 1201, Occupations Code, by adding Section 1201.217 to provide procedures for declaring a manufactured home abandoned. The new section provides that an owner of real property on which a manufactured home, owned by another person, is located may declare the home abandoned if the home is been continuously unoccupied for at least four months and indebtedness secured by the manufactured home is also delinquent.

Prior to declaring the home abandoned, the real property owner must send a notice of intent to the owner of the manufactured home and all lienholders at the addresses listed on the statement of ownership and location. Notification sent by certified mail, return receipt requested, postage prepaid, to the person required to be notified constitutes conclusive proof of compliance. On receipt of a notice of intent to declare a manufactured home abandoned, the owner of the home or a lienholder may enter the real property on which the home is located to remove the home.

If the manufactured home remains on the real property for at least 45 days after the date the notice is postmarked: 1) all liens on the home are extinguished; and 2) the real property owner may declare the home abandoned and may apply to the Department for a statement of ownership and location listing the real property owner as the owner of the manufactured home. If there is evidence of the United States Postal service of return, a new statement of ownership and location issued by the Department transfers, free of any liens, title to the manufactured home to the real property owner.

This Act is effective immediately. A link to the full text of House Bill 2438 is provided below.

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/HB02438F.PDF>

X. Notice to lienholders prior to foreclosure of tax lien by third-party transferee

Senate Bill 1587 amends Section 32.06(g), Tax Code to require that in a suit to foreclose a tax lien, transferees of a tax lien, or any successor in interest, must notify all holders of recorded liens on property, prior to foreclosure in the same manner and timeframe as the transferee must notify the owner of the property under Section 51.002, Property Code (Sale of Real Property Under Contract Lien).

The Act also amends Section 32.065; Tax Code to require contracts for the payment of taxes to provide that the holder of the tax lien will notify all holders of recorded liens on the property before foreclosure in the same manner and time frame as the lienholder must notify the owner of the property under Section 51.002, Property Code.

The Act only applies to contracts entered into under Section 32.075, Tax Code, on or after the effective date of September 1, 2005. A contract entered into before the effective date is governed by the law in effect on that date the contract was entered into.

A link to the full text of House Bill 1236 is provided below.

<http://www.capitol.state.tx.us/data/docmodel/79r/billtext/pdf/SB01587F.PDF>

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