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## 2007 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 80<sup>th</sup> Legislative Session was adjourned on May 28, 2007, having passed 5851 legislative bills filed during the session. Of these Governor Rick Perry vetoed 53 bills and 17 are joint resolutions proposing amendments to the Texas Constitution that must be approved by a majority of voters on November 6, 2007. 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 have been provided. Full text of these bills may be found on the Texas Legislature Online Website at <http://www.capitol.state.tx.us/>.

### Quick Reference Schedule

| BILL NUMBER                                       | RELEVANT SECTION OF TEXAS LAW AFFECTED AND BRIEF DESCRIPTION  | EFFECTIVE DATE |
|---|---|----------------|
| <b><i>BUSINESS &amp; COMMERCE CODE</i></b>        |   |                |
| <a href="#">SB 222</a>                            | Allows consumer to obtain a security freeze on credit report without the requirement of police report and allows a credit bureau to charge a reasonable fee for the security freeze.  | 9/1/07         |
| <b><i>CIVIL PRACTICES &amp; REMEDIES CODE</i></b> |   |                |
| √ <a href="#">HB 1787</a>                         | Authorizes a boundary dispute to be resolved through a declaratory judgment.  | Immediately    |
| <a href="#">HB 2566</a>                           | Requires that an instrument concerning real or personal property recorded by a prison inmate, or on behalf of an inmate, must include a statement indicating that the instrument is recorded by an inmate or on behalf of an inmate (also amends Government Code).  | 9/1/07         |
| √ <a href="#">SB 1781</a>                         | Provides that an instrument affecting an interest in real property containing a defective acknowledgment that has been filed for record more than 2 years is lawfully recorded and provides notice on and after the date the instrument is filed.   | Immediately    |
| <b><i>FINANCE CODE</i></b>                        |   |                |
| √ <a href="#">HB 716</a>                          | Requires notifying home loan applicants of penalties for making false or misleading written statements to obtain a mortgage loan, reporting of suspected fraudulent activity, establishes a residential mortgage fraud task force, and provides for criminal penalties (also amends Government Code, Penal Code & Code of Civil Procedure). | 9/1/07         |
| <a href="#">HB 944</a>                            | Prohibits a state bank, a savings bank, or a depository institution from establishing or maintaining a branch on the premises of an affiliate that engages in commercial activity.  | Immediately    |
| √ <a href="#">HB 1716</a>                         | Permits registered financial services company to conduct mortgage broker activities through its exclusive agents.   | 9/1/07         |
| <a href="#">HB 2007</a>                           | Updates Texas banking law and requires the Texas Department of Banking to establish and implement a financial literacy educational program for consumers.   | 9/1/07         |
| √ <a href="#">HB 2138</a>                         | Requires property tax lenders to be licensed under Chapter 156, Finance Code (also amends Tax Code).  | 9/1/07         |
| <a href="#">HB 2219</a>                           | Authorizes service of process on a financial institution's registered agent or if a registered agent has not been appointed, then service may be made on the president or branch manager at any office located in the state. (also amends Civil Practices & Remedies Code).   | 9/1/07         |
| √ <a href="#">HB 2783</a>                         | Amends Chapter 156, Finance Code regarding mortgage broker and loan officer licensing.  | 9/1/07         |
| <a href="#">SB 884</a>                            | Amends Chapter 394, Finance Code to remove the requirement that debt management services may only be provided by a non-profit, tax exempt organization.   | 9/1/07         |
| <b><i>GOVERNMENT CODE</i></b>                     |   |                |
| <a href="#">HB 1196</a>                           | Prohibits taxpayer-subsidized job creation grants or tax abatement to be given to any Texas business entity hiring immigrant workers in violation of federal immigration law.   | 9/1/07         |
| <a href="#">HB 1637</a>                           | Relating to the operation and administration of the Texas First-Time Homebuyer Program by the Texas Department of Housing and Community Affairs and to certain down payment assistance under that program.  | 9/1/07         |
| <a href="#">HB 2188</a>                           | Exempts from disclosure under open record laws real property sales prices, descriptions, and characteristics received by an appraisal district from an MLS service.   | Immediately    |
| <a href="#">SB 57</a>                             | When occurring in a rural county, gives ad valorem tax disputes priority and expedited handling in district court.  | 9/1/07         |
| <a href="#">SB 1185</a>                           | Relating to certain low-interest home loans programs offered by the state.  | 9/1/07         |
| <a href="#">SB 1908</a>                           | Relating to affordable housing and to the receivership and rehabilitation of certain property; providing an administrative penalty (also amends Local Government Code).   | 9/1/07         |



| <b>BILL NUMBER</b>                   | <b>RELEVANT SECTION OF TEXAS LAW AFFECTED AND BRIEF DESCRIPTION</b>  | <b>EFFECTIVE DATE</b> |
|--------------------------------------|--|-----------------------|
| <b><i>INSURANCE CODE</i></b>         |  |                       |
| √ <a href="#">HB 3271</a>            | Relating to the biennial hearing concerning title insurance and related information.   | 9/1/07                |
| <a href="#">HB 3358</a>              | Prohibiting property and casualty insurers from appealing a rate disapproved by the Texas Department of Insurance and using a higher rate until the appeal is resolved.  | 9/1/07                |
| <a href="#">SB 382</a>               | Requires credit insurance policies to include a statement regarding a consumer refund if underlying debt is paid off early and for current holders of the loan to notify insurer of early payment of debt covered by the credit insurance. | 9/1/07                |
| <a href="#">SB 611</a>               | Requiring the Texas Department of Insurance to post information regarding residential property and personal automobile insurance rates on the internet so that its available to the public.  | Immediately           |
| <b><i>LOCAL GOVERNMENT CODE</i></b>  |  |                       |
| <a href="#">HB 1100</a>              | Relating to cancellation of a subdivision plat, in Cameron County, under certain circumstances.  | Immediately           |
| <a href="#">HB 2281</a>              | Authorizes administrative approval of replats involving minor plat revisions.  | Immediately           |
| √ <a href="#">SB 580</a>             | Amends the Local Government Code to provide that if an instrument was recorded electronically the clerk may note the recording information, including the date and time, on the first page of the instrument.                              | Immediately           |
| <a href="#">SB 1867</a>              | Allows a filing of an amended subdivision plat with a county to correct certain errors or omissions without requiring notice, hearing and the approval of other lot owners.  | 9/1/07                |
| <b><i>NATURAL RESOURCES CODE</i></b> |  |                       |
| <a href="#">HB 1853</a>              | Exempts the General Land Office, the Veterans Land Board and the School Land Board from current and future laws relating to real estate transactions unless the statute specifically applies to the agency.                                | Immediately           |
| <a href="#">HB 2819</a>              | Requires sellers of coastal real property near a beach to provide written notices to buyer of potential risks of economic loss.  | 9/1/07                |
| <a href="#">HB 3140</a>              | Relating to the review and functions of the Veterans' Land Board.  | 9/1/07                |
| <b><i>OCCUPATIONS CODE</i></b>       |  |                       |
| √ <a href="#">HB 1460</a>            | Relating to the licensing, acquisition, regulation, and taxation of manufactured housing providing administrative and criminal penalties (also amends Government Code, Property Code, and Tax Code).                                       | 01/1/08               |
| <a href="#">HB 1530</a>              | Amends provisions related to educational requirements, application procedures, training of instructors, and other regulatory matters regarding real estate brokers, salespersons, inspectors, and right-of-way agents.                     | 9/1/07                |
| <a href="#">HB 2352</a>              | Authorizes tax consultants to work under the supervision of Texas licensed attorneys.  | 9/1/07                |
| <a href="#">SB 914</a>               | Continues the operation of the Texas Real Estate Commission.   | 9/1/07                |
| <a href="#">SB 1634</a>              | Authorizes a land surveyor to obtain a court order to cross land when denied permission by the owner.  | Immediately           |
| <b><i>PENAL CODE</i></b>             |  |                       |
| <a href="#">HB 460</a>               | Provides that it is a criminal offense to obtain, possess, transfer, or use any identifying information of a deceased person.  | 9/1/07                |
| <b><i>PROBATE CODE</i></b>           |  |                       |
| <a href="#">HB 391</a>               | Relating to the estates of decedents.  | Immediately           |
| <a href="#">HB 1710</a>              | Relating to the administration of community property by surviving spouses.   | 9/1/07                |
| <b><i>PROPERTY CODE</i></b>          |  |                       |
| <a href="#">HB 271</a>               | Requires home sellers to disclose previous use of the home for manufacture of methamphetamine.   | 1/1/08                |
| <a href="#">HB 564</a>               | Relating to the administration and operation of certain trusts and other property interests held for the benefit of another (also amends Finance Code).  | 9/1/07                |
| √ <a href="#">HB 732</a>             | Amends Chapter 12, Property Code to provide requirements for recording either a paper document or an electronic document.  | 9/1/06                |
| <a href="#">HB 989</a>               | Relating to the filing for record of a plat or replat of a subdivision of real property.   | 9/1/07                |
| <a href="#">HB 1038</a>              | Relating to the operation of the Texas Residential Construction Commission (also amends Local Government Code and Health & Safety Code.).  | 9/1/07                |
| <a href="#">HB 2061</a>              | Amending Property Code to require a confidential notice at the top of the first page of an instrument conveying real property to or from an individual.  | Immediately           |
| √ <a href="#">HB 2207</a>            | Requires a seller to provide specific disclosure to the buyer when residential real property is encumbered by a lien.  | 1/8/08                |
| <a href="#">HB 2402</a>              | Prohibits property owner's associations from amending dedicatory instruments to grant the association an easement through or over an owner's lot with out the consent of the property owner.   | 9/1/07                |
| √ <a href="#">HB 2738</a>            | Relating to procedures for foreclosure of liens on real property and trustee's duties.   | 9/1/07                |
| <a href="#">HB 3518</a>              | Relating to the extension of, addition to, or modification of existing restrictive covenants in certain residential subdivisions in Montgomery County.   | 9/1/07                |
| <a href="#">HB 3674</a>              | Amends the Property Code to make certain property owners' associations subject to the Texas Open Meetings Act and Open Records Act (also amends Government Code).  | 9/1/07                |
| √ <a href="#">SB 512</a>             | Provides that a judgment lien against homestead property does not attach and constitute a lien against the real property and providing a procedure for releasing the lien.   | 9/1/07                |

| BILL NUMBER                | RELEVANT SECTION OF TEXAS LAW AFFECTED AND BRIEF DESCRIPTION  | EFFECTIVE DATE               |
|----------------------------|---|------------------------------|
| <i>TAX CODE</i>            |   |                              |
| <a href="#">HB 5</a>       | Limits the amount of ad valorem taxes that a school district may impose on the homestead of an elderly or disabled person (also amends Education Code and Finance Code).  | Upon voter approval of SJR13 |
| <a href="#">HB 438</a>     | Limits an increase in a homestead appraisal value for ad valorem tax purposes to 10% regardless of when the most recent tax appraisal occurred.   | 1/1/08                       |
| <a href="#">HB 604</a>     | Relating to the appraisal for ad valorem tax purposes of certain land used for wildlife management under a conservation easement.   | 1/1/08                       |
| <a href="#">HB 923</a>     | Provides that if the tax assessor of taxing body mails a tax bill to a mortgagee, the tax assessor is not required to mail a copy of the tax bill to the mortgagor.   | 9/1/07                       |
| <a href="#">HB 1010</a>    | Relating to the appraisal for ad valorem tax purposes of property located in more than one appraisal district and to the boundaries of an appraisal district (also amends Education Code).                            | 1/1/08*                      |
| <a href="#">HB 1899</a>    | Relating to sale of certain real property at an ad valorem tax sale and the right of redemption in connection with the real property.   | 9/1/07                       |
| <a href="#">HB 3191</a>    | Relating to the exemption from ad valorem taxation of certain property used to provide low-income housing.  | 1/1/08                       |
| <a href="#">HB 3319</a>    | Relating to inapplicability of sales and use tax on real property services of landmen.  | 9/1/07                       |
| <a href="#">HB 3496</a>    | Requires chief appraiser's to deliver a notice of appraised value by April 1, or as soon as practicable, for homestead property and by May 1, or as soon as practicable, for non-homestead property.                  | 1/1/08                       |
| <a href="#">SB 377</a>     | Relating to the electronic payment of certain taxes and the electronic filing of certain reports.   | Immediately                  |
| <a href="#">SB 426</a>     | Relating to qualification for an ad valorem tax exemption for property used to provide low-income or moderate-income housing in the event of a change in ownership of the property as a result of a foreclosure sale. | Immediately                  |
| <a href="#">SB 456</a>     | Relating to notice provisions authorizing tax deferral or abatement.  | 9/1/07                       |
| <a href="#">SB 1063</a>    | Permits a taxing authority to waive penalties and interest on a delinquent ad valorem tax if the taxpayer shows he or she unsuccessfully attempted to make the payment on time.                                       | Immediately                  |
| √ <a href="#">SB 1520</a>  | Providing procedures for ad valorem tax lien transfers and foreclosures by tax lien lenders.  | 9/1/07                       |
| <i>TRANSPORTATION CODE</i> |   |                              |
| <a href="#">HB 320</a>     | Authorizes businesses to verify customer identify with the electronically readable information contained on a drivers license or state identification card when customer is paying for goods or services by check.    | 9/1/07                       |
| <a href="#">HB 2591</a>    | Relating to country improvement of subdivision roads or an access road to a subdivision..   | Immediately                  |

### *MATTERS TO BE ON NOVEMBER 6, 2007 BALLOT*

|               |  |
|---------------|--|
| <b>HJR 40</b> | Proposing a constitutional amendment authorizing the legislature to provide that the maximum appraised value of a residence homestead for ad valorem taxation is limited to the lesser of the most recent market value of the residence homestead as determined by the appraisal entity or 100 percent, or a greater percentage, of the appraised value of the residence homestead for the preceding tax year. |
| <b>HJR72</b>  | Proposing a constitutional amendment to clarify certain provisions relating to the making of a home equity loan and the use of home equity loan proceeds.  |
| <b>SJR 13</b> | Proposing a constitutional amendment authorizing the legislature to provide for a reduction of the limitation of the total amount of ad valorem taxes that may be imposed for public school purposes on the residence homesteads of the elderly or disabled to reflect any reduction in the rate of those taxes for the 2006 and 2007 tax years.   |

\* Generally effective 1/1/08

√ Summarized bills

## **I. Residential Mortgage Fraud**

According to the U.S. Treasury Department, the amount of mortgage fraud activity is on the increase, costing lenders and consumers hundreds of millions of dollars each year. To combat the losses of lenders and consumers caused by fraudulent mortgage activity, the Texas House and Senate in the 80<sup>th</sup> legislative session passed House Bill 716 requiring home loan applicants be notified of the penalties for making a

false statement in connection with a mortgage loan, requiring reporting of suspected mortgage fraud activities, establishing a residential mortgage fraud task force, and amending the Texas Penal Code to include mortgage fraud as a felony offense.

House Bill 716 amends Subchapter B, Chapter 343, Finance Code, adding Section 343.105 requiring every lender, mortgage banker, or licensed mortgage broker to provide each

applicant with a written notice at closing. The notice provided must: be provided on a separate document and in at least 14-point type and have the following or substantially similar language:

**"Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of Section 32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000.**

**"I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan.**

**"I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing."**

Upon receipt, the borrower is required to verify the information and sign the notice. However, a failure of the lender, mortgage banker, or licensed mortgage broker to provide the notice does not affect the validity or enforceability of the lien by any holder of the loan.

In addition to requiring that home loan applicants be provided with the mortgage fraud notice at closing, House Bill 716 also requires a person to report fraudulent activity. The Act amends Subchapter B, Government Code adding new subsection 402.031(2)(b) to require a person who has determined, or reasonably suspects, that fraudulent activity has been committed, or is about to be committed, to report this activity to the appropriate government agency. Importantly, Section 402.031(2), Government Code, defines fraudulent activity as "any act that constitutes a violation of penal law and is a part of an attempt or scheme to defraud any person". The reported activity must be made to an authorized governmental agency such as the Texas Attorney General, a federal, state, or local law enforcement agency, or other government agency identified in Section 402.031(a)(1), Government Code.

When a financial institution or a person has reported the fraudulent activity to the government agency, it may not tell the person involved the fraudulent activity that it has been reported. Similarly the government agency to which the fraudulent activity has been reported may not tell the person involved in the fraudulent activity that it has been

reported. Importantly, neither a financial institution nor person reporting fraudulent activity is liable under any state or federal law or regulation for making the report. House Bill 716 requires the attorney general's office to establish a Residential Mortgage Fraud Task Force forming a strategic partnership with federal, state, and local law enforcement agencies with a goal of proactively tracking and prosecuting mortgage fraud and its perpetrators on a statewide basis. The members of the task force are to include the attorney general's office, consumer credit commissioner, banking commissioner, credit union commissioner, and other agencies specified by new Section 402.032, Government Code. The task force efforts are to be focused on the sharing of information and resources as well as successful administrative and criminal enforcement actions against perpetrators of mortgage fraud.

Lastly, House Bill 716 amends Section 32.32, Penal Code to include mortgage fraud as a criminal offense. Specifically the definition of credit under Section 32.32(a) has been amended to include mortgage loans. Moreover, an offense of False Statement to Obtain Property or Credit under Section 32.32(b), Penal Code is amended to include a mortgage loan.

The Act is effective September 1, 2007.

## **II. HJR 72 proposes a constitutional amendment clarifying provisions relating to home equity loans**

HJR 72 proposes a constitutional amendment to clarify some of the home equity loan provisions in Section 50(a)(6), Article XVI, Texas Constitution. The following changes are included in the proposed amendment:

1. Agricultural use – Currently Subsection 50(a)(6)(I) prohibits a home equity lien if the homestead property is designated for agricultural use for property tax purposes, unless the property is primarily used for producing milk. HJR 72 amends this Subsection by clarifying that the lien is valid if on the date of closing the property has not been designated for agricultural use.
2. Loan Application - Under existing law, Subsection 50(a)(6)(M)(ii) requires the lender to provide the borrower with a final itemized disclosure of the actual fees and charges shown on the HUD-1 one business day prior to closing. HJR 72 amends this subsection to require that if not previously provided, the lender must also provide the homestead owner with a copy of the loan application at least one business day prior to closing.
3. One Year Prohibition – Currently Subsection 50(a)(6)(M)(iii) prohibits a home equity loan from

being closed before the first anniversary date of an existing home equity loan. This restriction has been changed to provide that a home equity loan may be closed sooner if under oath the property owner requests an earlier closing due to a state of emergency declared by the president of the United States or the governor that applies to the area where the owner's property is located.

4. Blanks left in documents – Subsection 50(a)(6)(Q)(iii) currently provides that the owner of the homestead may not sign any instruments with blanks left to be filled in. HJR 72 changes this restriction to provide that the owner of the homestead may not be required to sign any instruments in which blanks related to substantive terms contained in the document are left to be filled in.
5. Document copies – Currently Subsection 50(a)(6)(Q)(v) requires lenders, at the time the extension of credit is made, to provide the owner of the homestead with all documents signed by the borrower related to the extension of credit. HJR 72 changes this to require lenders to provide borrowers with a copy of the final loan application and all executed documents signed by the borrowers at closing relating to the extension of credit.
6. 12-Day Notice – HJR 72 amends the text of the promulgated form of 12-Day Notice set out in Section 50(a)(6)(Q)(X)(g) to reflect each of the foregoing proposed constitutional amendments.

The proposed constitutional amendment is scheduled to be submitted for voter approval at an election on November 6, 2007. If approved by the voters, the constitutional amendment shall be effective immediately upon canvassing of the vote by the Texas Secretary of State's office.

### **III. Property Tax Lender Reform**

In the 80<sup>th</sup> Legislative Session the Texas House and Senate passed two bills regarding property tax lenders. Generally, property tax lenders are persons who lend homeowners amounts needed to pay delinquent property taxes and are assigned the superior tax liens from the taxing authority. House Bill 2138 amends the Finance Code requiring property tax lenders to be licensed by the Office of Consumer Credit Commissioner. Senate Bill 1520 amends Tax Code imposing new requirements and restrictions on property tax lenders. Details of House Bill 2128 and Senate Bill 1520 are discussed below under Sections A and B respectively.

#### ***A. House Bill 2138 requires property tax lender licensing***

House Bill 2138 amends Subtitle B, Title 4, Finance Code adding Chapter 351 to enact a new Property Tax Lender

License Act. Importantly, Section 351.002, Finance Code defines a property tax loan as an advance of money made in connection with (1) the transfer of a property tax lien under Section 32.06, Tax Code (Transfer of Tax Lien), or a contract under 32.065, Tax Code (Contract for Foreclosure of Tax Lien); (2) in which, with the property owner's consent the person making the transfer arranges for payment of the property taxes and associated closing costs in accordance with Section 32.06, Tax Code; and (3) the tax lien is transferred by the taxing unit to the property tax lender and may be further secured by a deed of trust, security deed, or other security instrument. New Section 351.051 requires property tax lenders to be licensed to 1) engage in the business of making, negotiating or transacting property tax loans; or 2) in connection with a property tax loan subject to Chapter 351, to contract for, charge or receive, directly or indirectly, charges for interest, compensation, consideration, or another expense, authorized under Chapter 351 that in the aggregate exceeds the charges authorized by other law. A license, however, is not required for the following entities or their employees if the employee is acting on his or her employer's behalf:

1. a bank, savings bank, or savings and loan association, or a subsidiary or their affiliates;
2. a state and federal credit union or their subsidiary, affiliate, or credit union service organization;
3. an individual making five or fewer property tax loans from his own funds in any consecutive 12 month period to a spouse, former spouse, or a person in the lineal line of consanguinity of the individual lending the money

House Bill 2138 grants the Finance Commission rulemaking authority to ensure compliance with new Chapter 351, Finance Code and Sections 32.06 and 32.065, Tax Code regarding ad valorem tax lien transfers. It also sets out bonding and reporting requirements of licensees.

Although effective September 1, 2007, property tax lenders are not required to be licensed under, or comply with, Chapter 351, Finance Code before March 1, 2008.

#### ***B. Senate Bill 1520 provides new notification requirements for transferees of a tax lien***

Effective September 1, 2007, Senate Bill 1520 amends Section 32.06, Tax Code, adding new subsection (b-1) to require that not later than 10 business days after receiving the tax collector's certified statement (certifying taxes are paid and transferring the tax lien) property tax lenders must send a copy of it to any mortgage servicer and to each holder of a recorded first lien. The copy of the certified statement must be sent by certified mail to the address on the most recent payment invoice, statement, or payment coupon provided by the mortgage server to the property owner, or the address of the first lien holder as shown in the real property records.

Senate Bill 1520 provides that a judicial foreclosure of a tax lien requires the transferee of the lien to serve a copy of the

application for foreclosure on the property owner and the first lien holder of record. The application must allege that the lien is:

1. an ad valorem tax lien rather than a lien created under Section 50, Article XVI, Texas Constitution;
2. the applicant does not seek a court order required by Section 50, Article XVI, Texas Constitution;
3. state that the transferee has provided notice to cure the default, notice of intent to accelerate, and notice of acceleration of the maturity date to the property owner and each holder of a recorded first lien on the property in the manner required for notice to a debtor under Section 51.002, Property Code; and
4. confirm that the property owner has not requested a deferral of taxes authorized by 33.06., Tax Code.

In addition to the above requirements, first-lien holders of record must be provided with at least 60-days notice prior to the date of the proposed foreclosure.

When the tax lien becomes delinquent Senate Bill 1520 provides that a notice must be sent to the first-lien holder. If a transferred tax lien is delinquent for 90 consecutive days, the transferee must send a notice of the delinquency to the first-lien holder of record before the 120<sup>th</sup> day of delinquency. If the 120<sup>th</sup> day is not a business day, then the notice of delinquency must be sent on the next business day after the 120<sup>th</sup> day. Within six months after the date the notice is sent, the holder or a mortgage servicer of a recorded first lien is entitled to obtain a release of transferred lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee.

#### **IV. Civil Practice and Remedies Code**

The Texas House and Senate made two amendments to the Civil Practices and Remedies Code. House Bill 1787 amends Section 22.001, Civil Practice and Remedies Code to permit, in limited circumstances, the use of a declaratory judgment to determine title to real property. Senate Bill 1781 amends Section 16.033, Civil Practices and Remedies Code shortening the time period in which a person must bring suit to recover real property, or an interest in real property, conveyed by an instrument with certain technical defects.

##### ***A. House Bill 1787 allows resolution of boundary disputes with a declaratory judgment***

Effective immediately, House Bill 1787 amends Section 37.004, Civil Practices and Remedies Code by adding subsection (c) to allow a particular title issue to be resolved through declaratory judgments. When the only issue regarding title to real property is determination of a boundary line between properties, new subsection (c) authorizes the dispute to be settled through a declaratory judgment rather than a trespass to try title action under §22.0001, Property Code.

##### **B. Senate Bill 1781 shortens time to bring action to recover real property conveyed by defective instrument**

Effective immediately, Senate Bill 1781 amends Section 16.033, Civil Practices and Remedies Code by amending subsection (a) to shorten the length of time for bringing suit for recovery of real property or an interest in real property. Persons with a right of recovery of real property, or an interest in real property, conveyed by instrument with a defect described in 16.033(a) (i.e. lack of signature by proper corporate officer, lack of corporate seal, etc.) must now bring a suit for recovery of real property no later than two years (formerly 4 years) after the instrument is filed for record in the county where the real property is located.

Section 16.033, Civil Practices and Remedies Code is also amended to add new subsection (c) regarding an instrument affecting real property containing a defect, omission, or informality in the certificate of acknowledgment or failing to include a certificate of acknowledgment that has been filed of record for more than two years. In particular, new subsection (c) provides that if the defective instrument has been filed for record more than 2 years in the county where the property is located, the instrument is considered lawfully recorded and is notice of the existence of the instrument on and after the date that the instrument was filed.

#### **V. Finance Code Amendments**

Two amendments to the Finance Code were made by the Texas House and Senate in the 80<sup>th</sup> Legislative Session. House Bill 2783 enacts significant overall amendments to the requirements for mortgage broker and loan officer licensing. House Bill 1716 amends Chapter 156, Finance Code, to add new section 156.214 regarding registration of financial services companies.

##### ***A. Mortgage Broker and Loan Officer licensing***

Effective September 1, 2007, House Bill 2783 amends Subchapter C, Chapter 156, Finance Code to add Section 156.2011 regarding provisional loan officer licenses. The new section provides that applicants may be issued a provisional license if: 1) in the 20 months immediately before applying for a provisional loan officer license, the individual has at least 18 months of loan officer experience employed by a person exempt from licensing under Section 156.202; and 2) other than the educational and examination requirements, satisfies the qualifications for a loan officer license. The commissioner is required to make best efforts to issue the provisional license on or before the later of: 1) the 10<sup>th</sup> business day after a completed application is received; or 2) the second business day after receipt of the results of the required criminal background check indicating no criminal charges pending and no criminal record. A provisional loan officer license is valid for 90 days after it is issued. A provisional license may, however, be revoked if the

Commissioner discovers the applicant has misrepresented his or her qualifications for a loan officer license, the applicant has violated Chapter 156, Finance Code, or the applicant is not qualified for a provisional loan officer license. Revocation of a provisional loan officer license may not be appealed.

Under current law mortgage brokers have been permitted to conduct business under a corporate, partnership or other business entity form without obtaining an additional license. House Bill 2783, however, has amended Section 156.204(b) to require a separate mortgage broker license for the business entity as well as an individual. Specifically, the amendment prohibits a corporation, limited liability company, or limited partnership from acting as a mortgage broker unless the entity obtains a mortgage broker license. To be licensed as a mortgage broker the entity must designate an individual licensed as a mortgage broker as its representative and pay an application fee, not to exceed \$175.00, to be determined by the Commissioner. Importantly new subsection 156.204(b) specifies who may act as an entity's designated representative. If the entity is a corporation, the designated representative must be an officer or the corporation. If the entity is a limited liability company the designated representative must be a manager of the limited liability company. For a limited partnership, the designated representative must be an individual who is a general partner, or an officer of a corporate general partner; or a manager of a general partner that is a limited liability company.

In addition to requiring a separate mortgage broker license for business entities, House Bill 2783 adds new requirements for mortgage brokers conducting business under an assumed name. Specifically the Act amends Section 156.211, Finance Code, adding subsection (b-1) to provide that not less than 10 days prior to transacting business under an assumed name, a broker must file with the commissioner a copy of each assumed name certificate the broker intends to transact business under and pay a fee of \$25.00 per assumed name. Loan officers, however, may not transact business under an assumed name that is not the registered assumed name of the sponsoring mortgage broker.

In addition to the above new requirements, House Bill 2783 also amends Section 342.051, Finance Code to provide that mortgage brokers licensed under Chapter 156 are not required to be licensed to make, negotiate, or transact a mortgage loan under Chapter 342, including subordinate lien mortgage loans regulated by Chapter 342.

House Bill 2783 has changed the educational requirements to be eligible for an individual mortgage broker license. Specifically Section 156.204(a)(9) has been amended to add educational requirements for applicants without previous experience as a mortgage broker or loan officer. If the individual has not previously been licensed as a mortgage broker, he or she must complete 90 classroom hours of education courses approved by the commissioner. If the individual has not previously been licensed as a mortgage

broker but has been licensed as a loan officer, he or she must complete an additional 30 classroom hours of education courses approved by the commissioner.

The educational requirements to be eligible for a loan officer license have also changed. Amended Section 156.204(c)(4)(b) provides that an applicant with no experience as a loan officer must successfully complete 60 hours of education courses approved by the commissioner. An applicant with 18 months experience as a loan officer must successfully complete 30 hours of education courses approved by the commissioner.

House Bill 2783 is generally effective on September 1, 2007. Entities, however, are not required to obtain a mortgage broker license until January 1, 2008.

### ***B. Registration as Financial Services Company***

House Bill 1716 amends the Mortgage Broker License Act (Subchapter C, Chapter 156, Finance Code) by adding new Section 156.214, which permits registered financial services companies to perform mortgage broker services through unlicensed individuals who act as the company's exclusive agents. To be eligible to register as a financial services company, a person must satisfy the following requirements:

1. be a depository institution exempt from licensing under Section 156.202(1)(A) (i.e. a bank, savings bank, or savings and loan association, or a subsidiary or an affiliate of a bank, savings bank, or savings and loan association) or Section 156.202(1)(B) (i.e. a state or federal credit union, or a subsidiary, affiliate, or credit union service organization of a state or federal credit union) and chartered and regulated by the Office of Thrift Supervision or the Office of the Comptroller of the Currency, or be a subsidiary or affiliate of the institution;
2. provide the commissioner with satisfactory evidence of accountability in a form acceptable to the commissioner, supported by a surety bond equal to \$1 million to cover the person's responsibility for mortgage broker activities of each exclusive agent;
3. provide the commissioner with a satisfactory business plan which includes a plan to provide education to its exclusive agents, handle consumer complaints regarding the financial service company's exclusive agents, and supervise mortgage broker activities of its exclusive agents;
4. an annual registration fee of the lessor of: (a) one-half of the license fee for a loan officer under Section 156.203(c)1, multiplied by the number of exclusive agents under contract to act for the financial services company in this state ; or (b) \$200,000.00;
5. the financial services company has designated an officer to be responsible for the activities of its exclusive agents.

If the commissioner determines that the above requirements have been satisfied, a registration will be issued. A registered financial service company is subject to Chapter 156,

Subchapters D (License Revocation and Suspension) and E (Hearings and Judicial Review), Finance Code, as if the company were licensed as a mortgage broker. The registration is valid for a year and may be renewed on or before its expiration date. An expired registration may be renewed by following the same procedures as an expired mortgage broker license as outlined under Section 153.2081(b), Texas Finance Code..

House Bill 1716 amends Section 156.202, Finance Code, making the exclusive agents of a registered financial services company exempt from mortgage broker licensing. Under new subsection 156.202(5) an individual is exempt from mortgage broker licensing if he or she is an exclusive agent of a registered financial services company under a written agreement that prohibits the individual from soliciting, processing, negotiating, or placing a mortgage loan with a person other than the registered financial services company or an affiliate of that particular company. However a person may not act as an exclusive agent without the prior consent of the commissioner if the individual has been convicted of a criminal offense involving dishonesty, breach of trust, or money laundering, plead guilty or nolo contendere in connection with the prosecution of certain offenses, or had any professional license revoked or suspended in this state or another jurisdiction.

Prior to allowing the exclusive agent to solicit, process, negotiate, or place a mortgage loan, a registered financial services company must provide the commissioner with required information relating to the person along with the person's fingerprint. The commissioner will obtain the person's criminal history along with a fee to cover the cost of the criminal background check. Both the individual and the financial services company will be notified by the commissioner of the determination whether the person is eligible to be an exclusive agent. Persons who are determined to be ineligible may appeal the decision in the same manner as an appeal may be made under Section 156.209, Finance Code.

House Bill 1716 is effective September 1, 2007.

## VI. Insurance Code Amendments

House Bill 3271 amends Section 2703.204, Insurance Code, regarding admission of parties with a substantial interest in title insurance as a party to a biennial hearing for adopting premium rates. The amendment provides that individuals or associations seeking to be a party to the phase of the biennial hearing regarding adoption of a premium rate or rule must provide the commissioner of insurance with a detailed summary of the individual's or association's interest in title insurance. A summary for individuals seeking admission must include a statement of the number of real estate transactions the individual has been involved in and purchased title insurance. If an association is seeking admission, the summary must include a statement of the number of members of the association. If an association has at least 250 members,

it is presumed to have a substantial interest in the business of title insurance.

A party to the biennial hearing may file an action in the Travis County District Court to remove another party from the phase of the biennial hearing that relates to adoption of a premium rate or a rule on the grounds that the other party does not have a substantial interest in the business of title insurance.

House Bill 3271 is effective September 1, 2007 and applies only to rates for title policies issued on or after January 1, 2009.

## VII. Local Government Code Amendments

Effective immediately Senate Bill 580 amends Section 193.001, Local Government Code to provide that if an instrument was recorded electronically, a county clerk may note the recording information on the first page of the instrument and the information may include the date and time.

## VIII. Property Code Amendments

The Texas House and Senate made four amendments to the Property Code during the 80<sup>th</sup> Legislative Session, including House Bill 2061 amending Section 11.008, Property Code requiring a confidentiality notice to appear at the top of the first page of an instrument transferring an interest in real property to or from an individual; House Bill 2738 amending Chapter 51, Property Code regarding the posting of notice of sale under a contract lien and the duties of a trustee under a deed of trust; House Bill 2207 requiring the seller of residential property encumbered by a lien to provide a disclosure of the lien; and Senate Bill 512 relating to the release of an abstract of judgment lien on homestead property.

### ***A. HB 2061 requires confidentiality notice on instruments transferring an interest in real property***

Effective immediately House Bill 2061 amends Section 11.008 to provide that an instrument presented for recording is not required to contain an individual's social security number. Moreover, a preparer of documents presented for recording is prohibited from including an individual's social security number in a document presented for recording at a county clerk's office.

More importantly House Bill 2061 also amends Section 11.008(c) to provide that an instrument transferring an interest in real property to or from an individual must contain a notice at the top of the first page in 12 point boldface type or 12 point uppercase letters which 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 any instrument that**

**transfers an interest in real property before it is filed for record in the public records: Your Social Security Number or your Driver's License Number.**

A failure to include the confidentiality notice does not affect the validity of the instrument. Moreover a county clerk may not, under any circumstances, reject an instrument presented for recording solely because it fails to comply with the confidentiality notice requirements.

***B. House Bill 2738 permits notices of sale to be posted up to 48 hours after county courthouse or clerk's office reopens after inclement weather, a natural disaster, or other Act of God; trustee's duties defined and no fiduciary duties imposed.***

Under current law Chapter 51, Property Code requires that a notice of sale under a deed of trust or other contract lien must be given at least 21 days prior to the day of sale by either posting it on the courthouse door or filing the notice with the county clerk. However, problems arise when the courthouse or county clerk's office is closed due to inclement weather, natural disaster, or other Act of God. As a result House Bill 2738 amends Section 51.002, Property Code, adding new subsection (b-1) to provide that in these situations a notice of sale may be posted at the courthouse or filed with the county clerk up to 48 hours after the courthouse or county clerk's office reopens for business.

House Bill 2738 also amends Section 51.002, Subsection (h), Property Code, regarding a foreclosure sale held in an area other than the courthouse that has been designated by a commissioners' court. The amendment provides that a sale may not be held in an area designated by a commissioner's court before the 90<sup>th</sup> day after the designation is recorded.

The duties of a trustee have also have been amended by adding new Section 51.0074, Property Code. Specifically Section 51.0074 provides that one or more persons may be authorized to exercise the power of sale under a security instrument. The duties of the trustee, under the security instrument, however, may only include the power of sale in accordance with the terms of the security instrument and the trustee may not held to the obligations of a fiduciary of the mortgagor or mortgagee.

Lastly Section 51.0075, Property Code regarding the purchase price in a sale held by a trustee has been amended by adding new Subsection (f). Under the new subsection the purchase price in a sale held by a trustee or substitute trustee, is payable immediately on acceptance of the bid by the trustee or substitute trustee. Furthermore, the trustee or substitute trustee shall disburse the proceeds of the sale as provided by law.

House Bill 2738 is effective immediately as of June 15, 2007.

***C. House Bill 2207 prohibits conveyance of residential property encumbered by a lien unless prior written notice given to purchaser and lienholder.***

House Bill 2207 amends Subchapter A, Chapter 5, Property Code by adding new Section 5.016 to prohibit a person from conveying or contracting to convey an interest in residential real property that will be encumbered by a recorded lien unless on or before the seventh day before the effective date of conveyance or the execution of an executory contract, option, or other contract binding the purchaser, the seller provides the purchaser and each lien holder with a separate written disclosure statement regarding the encumbrance. The disclosure statement must be in at least 12-point type and must: (1) identify the property, including the name, address, and phone number of each lien holder; (2) state the amount of the debt secured by each lien; (3) specify the terms of any contract or law under which the debt that is secured by the lien was incurred, including, as applicable: the interest rate, periodic installments required to be paid; and the account number; 4) state whether the lien holder has consented to the transfer of the property to the purchaser; (5) specify the details of any insurance policy relating to the property, including: the name of the insurer and insured; the amount for which the property is insured; and the property that is insured; 6) the amount of any property taxes that are due on the property; and (7) include a statement at the top of the disclosure in a form substantially similar to the following:

WARNING: ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A CLAIM AGAINST THIS PROPERTY AS LISTED BELOW. IF A LIEN IS NOT RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE LIENHOLDER, IT IS POSSIBLE THE LIENHOLDER COULD DEMAND FULL PAYMENT OF THE OUTSTANDING BALANCE OF THE LIEN IMMEDIATELY. YOU MAY WISH TO CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION AND DISCUSS THIS MATTER WITH AN ATTORNEY.

A failure to comply with the above disclosure requirements does not invalidate a conveyance. Rather a contract entered into which does not comply with the disclosure requirements of Section 5.016(a) allows the purchaser to terminate the contract for any reason on or before the seventh day after the date the purchaser receives notice. However, a violation of Section 5.016(a) is not actionable if the person required to give the notice both reasonably believes and takes necessary action to ensure that any lien not disclosed will be released before 30 days after the property is transferred. New Section 5.016(a) is not applicable, however, to the types of transfers specified in Section 5.016(c) such as court ordered or foreclosure sales, sales by a trustee in bankruptcy, or sales to a mortgagee by a mortgagor or successor in interest.

This Act takes effect January 1, 2008. The change in law made by this Act applies only to transfers of property or contracts entered into on or after the effective date. Transfers of property or contracts entered into before the effective date

of the Act are governed by the law in effect prior to the Act's effective date.

**D. Senate Bill 512 authorizes owner's affidavit as release of abstract of judgment lien on homestead property.**

Senate Bill 512 amends Section 52.001, Property Code, to provide that an abstract of judgment does not attach and constitute a lien on real property if the property is a residential homestead that is exempt from forced sale under Chapter 41, the Texas Constitution, or any other law.

Equally important, SB 512 also amends Subchapter A, Chapter 52, Property Code, adding new section 52.0012 to provide a procedure for releasing abstract of judgment liens on residential homestead property. New section 52.0012 provides that the abstract of judgment lien against homestead property may be released when the judgment debtor files an affidavit in the county where the real property is located that substantially complies in form with the following:

HOMESTEAD AFFIDAVIT AS RELEASE  
OF JUDGMENT LIEN

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_ ("Affiant(s)") (insert name of one or more affiants) who, being first duly sworn, upon oath states:

- 1) My/our name is/are \_\_\_\_\_ (insert name of Affiant(s)). I/we own the following described land ("Land"): (describe the property claimed as homestead)
- (2) This affidavit is made for the purpose of effecting a release of that judgment lien recorded in \_\_\_\_\_ (refer to recording information of judgment lien) ("Judgment Lien") as to the Land.
- (3) The Land includes as its purpose use for a home for Affiant(s) and is the homestead of Affiant(s), as homestead is defined in Section 41.002, Property Code. The Land does not exceed:
  - (A) 10 acres of land, if used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business; or
  - (B) 200 acres for a family or 100 acres for a single, adult person not otherwise entitled to a homestead, if used for the purposes of a rural home.
- (4) Attached to this affidavit is evidence that:
  - (A) Affiant(s) sent a letter and a copy of this affidavit, without attachments and before execution of the affidavit, notifying the judgment creditor in the Judgment Lien of this affidavit and the Affiant(s)' intent to file for record this affidavit; and
  - (B) the letter and this affidavit were sent by registered or certified mail, return receipt requested, 30 or more days before this affidavit was filed to:
    - (i) the judgment creditor's last known address;
    - (ii) The address appearing in the judgment creditor's pleadings in the action in which the judgment was rendered or

- another court record, if that address is different from the judgment creditor's last known address;
- (iii) The address of the judgment creditor's last known attorney as shown in those pleadings or another court record; and
- (iv) the address of the judgment creditor's last known attorney as shown in the records of the State Bar of Texas, if that address is different from the address of the attorney as shown in those pleadings or another court record.

(5) This affidavit serves as a release of the Judgment Lien as to the Land in accordance with Section 52.0012, Property Code.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Affiant(s))

State of \_\_\_\_\_  
County of \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

My commission expires:  
\_\_\_\_\_

A bona fide purchaser or mortgagee for value, or an assign of a bona fide purchaser or mortgagee for value, may conclusively rely on an affidavit that includes evidence that the judgment debtor sent a letter along with a copy of the unexecuted affidavit notifying the judgment creditor of the affidavit and the judgment debtor's intention to file it least 30 days prior to filing the affidavit. The letter and affidavit must be sent by registered mail, return receipt requested to: 1) the judgment creditor's last known address; 2) the address appearing in the judgment creditor's pleadings if different from the judgment creditor's last known address, 3) the address of the judgment creditor's last known attorney as shown in the pleadings or another court record; and 4) if different than the judgment creditor's pleadings or another court record, the address of the judgment creditor's last known attorney as shown by the records of the State Bar of Texas.

The judgment lien is not released, however, if the purchaser's or mortgagee's interest was acquired from the judgment debtor after the judgment creditor filed a controverting affidavit in the real property records of the county where the property is located asserting that either the affidavit filed by the judgment debtor is untrue, or states another reason the judgment lien attaches to the property.

Effective September 1, 2007, Senate Bill 512 applies only to an abstract of judgment lien recorded after the effective date of the Act. Abstracts of judgment liens recorded before September 1, 2007 are governed by the law in effect immediately before that date.

***E. Instruments requiring original signatures***

Effective September 1, 2007, House Bill 732 amends Chapter 12, Property Code, adding Section 12.0011 regarding original signatures required in paper documents. In particular the new section provides that a paper document may not be recorded or serve as notice unless: 1) it contains an original signature that is acknowledged, sworn to with a proper jurat, or proved according to law; or 2) is a paper document attached as an exhibit to a paper affidavit or other document that has original signatures that are acknowledged, sworn to with a proper jurat, or proved according to law.

Original signatures, however, are not required for an electronic instrument or other document that complies with Chapter 15, Property Code; Chapter 195, Local Government Code, Chapter 43, Business & Commerce Code; or other applicable law.

These changes only apply to a document filed or recorded on or after the September 1, 2007 effective date of the Act. A document filed or recorded before the effective date is governed by the law in effect at the time the document was filed or recorded.

**IX. Occupations Code Amendments**

Under current law converting a manufactured home from personal property to real property requires the owner to file an application for statement of ownership and location with the Texas Department of Housing and Community Affairs (the "Department") indicating an election to treat the home as real property. When the Department issues the statement of ownership and location, the manufactured home remains personal property until a certified copy of it has been filed in the real property records of the county in which the manufactured home is located and the tax-assessor-collector has been notified of the filing.

House Bill 1460 amends Section 1201.2055, Occupations Code, adding new subsection (i) to provide a means of converting the manufactured home from personal property to real property in the event this required procedure has not been completed. The new subsection provides that if the mortgage loan secured by real property, including the manufactured home, has been funded and a deed of trust covering the property and all improvements has been recorded but the process of converting to real property was not completed, the holder or servicer of the loan may complete the conversion process. The holder or servicer of the loan may complete the process by applying for a statement of ownership and location electing real property status, obtaining a certified copy of the statement of ownership and location, and making all required

filings and notifications necessary to complete the conversion process. To complete the process, however, the holder or the servicer must provide at least 60-days' prior written notice sent by certified mail to the record owner indicated on the Department's records at the location of the home, or if different, to the address of the owner as well as any address that holder or servicer of the loan believe that owner either has been or is receiving mail. Moreover, the Department, by rule, shall require evidence that the holder or servicer complied with the requirements of Section 1201.2055(i).

It is important to note that House Bill 1460 has also amended Section 1201.207, Occupations Code, adding new subsection (a-1) to lengthen the Department's processing time for statements of ownership location after June 30 of each year. The new subsection provides that except for applications for new manufactured homes and applications accompanied by a tax certificate, the Department will cease processing applications for statements of ownership and application until all tax liens filed with department on or before June 30 have been processed and either recorded or rejected. During this period the Department will post a notice on its website regarding when it anticipates it will resume processing the applications for statement of ownership and location and when the processing time will return to the required 15 working day time frame.

House Bill 1460 is effective January 1, 2008.

**NOTICE**

**THIS MEMORANDUM IS PROVIDED FOR THE GENERAL INFORMATION OF THE CLIENTS AND FRIENDS OF OUR FIRM ONLY AND IS NOT INTENDED AS SPECIFIC LEGAL ADVICE. YOU SHOULD NOT PLACE RELIANCE ON THIS GENERAL INFORMATION ALONE, BUT SHOULD CONSULT COUNSEL REGARDING THE APPLICATION OF THE LAWS AND REGULATIONS DISCUSSED IN THIS MEMORANDUM TO YOUR SPECIFIC CASE OR CIRCUMSTANCES.**