

BROWN, FOWLER & ALSUP

A Professional Corporation
Attorneys at Law

10333 Richmond Avenue, Suite 860
Houston, Texas 77042
www.LoanLawyers.com

Telephone 713/468-0400
Facsimile 713/706-5565

2015 TEXAS LEGISLATIVE UPDATE

By: Ashlee E. Ross, Senior Associate Attorney

The Texas Legislature meets in a regular 140-day legislative session every two years. The 84th Legislative Session convened January 13, 2015, and was adjourned on June 1, 2015. Below is a synopsis of selected legislation most likely to affect our clients and colleagues in the real estate finance and title business. Please click on the bill number for more information on each piece of legislation.

BROKERS	
<u>Senate Bill 699</u> Authors: Eltife Coauthor: West Sponsor: Kuempel Effective Jan. 1, 2016	<p>The definition of a broker includes one who advises an owner of real estate on a short sale transaction. However, one is not considered a broker based solely on (1) constructing or remodeling a home or other building; (2) managing or investing in real estate; or (3) “entering into an obligation to pay another person that is secured by an interest in real property.” To engage in real estate brokerage, a licensed sales agent must be sponsored by, not simply associated with, a licensed broker. For qualifying real estate courses (formerly known as core real estate courses), a daily qualifying course may not exceed 12 hours.</p> <p><i>Amends Texas Occupations Code Section 1101</i></p>

CONTRACT FOR DEED	
<u>House Bill 311</u> Author: Canales Sponsor: Lucio Effective Sept. 1, 2015	<p>Currently, a seller under an executory contract (more commonly known as a contract for deed) must record the contract within 30 days of its execution, and if the seller does not comply, the purchaser may record the contract. However, this bill changes the nature of contracts for deed entered into after September 1, 2015 by stipulating “a recorded executory contract shall be the same as a deed with vendor’s lien.” The vendor’s lien amount is the unpaid contract price, less any lawful deductions, and a foreclosure sale can be through a judicial foreclosure or through the current provisions regarding sale of property when the purchaser has equity in the property. Once the contract is recorded, the seller can no longer terminate and accelerate the contract upon default but must complete a foreclosure to reclaim the property.</p> <p><i>Amends Texas Property Code Chapter 5, various sections</i></p>

DEED TO TRANSFER PROPERTY ON DEATH	
<p><u>Senate Bill 462</u></p> <p>Author: Huffman Coauthors: Ellis, Rodríguez Sponsor: Farrar</p> <p>Effective Sept. 1, 2015</p>	<p>Prior to his/her death, an individual may prepare a transfer on death deed designed to convey property upon the grantor's death. In addition to requiring the essential elements of a standard deed, to be effective, the transfer on death deed must state the conveyance is to occur at the grantor's death and must be recorded prior to the grantor's death in the county clerk's real property records of the county where the real property is located. A power of attorney cannot be used, and a subsequent Will may not revoke the deed. A subsequent divorce, however, revokes the transfer on death deed. A grantor may revoke the deed by filing a document revoking the deed with the county clerk's office. The statute also includes forms for a transfer on death deed and a cancellation of the transfer on death deed.</p> <p>During the lifetime of the grantor who has executed a transfer on death deed, the grantor may transfer or encumber the property, and the property will still qualify for any ad valorem tax exemptions including homestead exemptions. Additionally, executing this deed does not trigger the due on sale clause of an existing mortgage.</p> <p><i>Adds Texas Estates Code Chapter 114</i></p>

FINANCIAL INSTITUTIONS	
<p><u>House Bill 705</u></p> <p>Author: Farrar Sponsor: Ellis</p> <p>Effective Sept. 1, 2015</p>	<p>At the application of an heir, creditor or any other person having a financial interest in a decedent's estate or on a court's own motion, a court may order a financial institution to release the balance information of each of the decedent's accounts held with the financial institution. The order from the court can be made 90 days after decedent's death provided no probate proceedings have been initiated. This does not apply to pay-on-death accounts, trust accounts or accounts with a beneficiary listed.</p> <p><i>Adds Texas Estates Code Chapter 153</i></p>
<p><u>House Bill 2394</u></p> <p>Author: Darby Coauthor: Fallon Sponsor: Creighton</p> <p>Effective Sept. 1, 2015</p>	<p>A court may not order a financial institution to produce a record in response to a request during discovery or hold a financial institution in contempt of court for failing to do so if the request is made by a party that has not paid the financial institution's costs or posted a cost bond.</p> <p><i>Amends Texas Finance Code Section 59.006</i></p>

FORECLOSURES	
<p><u>House Bill 2063</u></p> <p>Author: Oliveira Sponsor: Zaffirini</p> <p>Effective Sept. 1, 2015</p>	<p>County clerks must record documents related to non-judicial foreclosures, including notice of sale, appointment of substitute trustee and a statement of facts regarding the foreclosure sale. Additionally, this bill provides for specific language to be included on any appointment of trustee or substitute trustee.</p> <p><i>Amends Texas Property Code Chapters 12 and 51</i></p>
<p><u>House Bill 2066</u></p> <p>Author: Oliveira, Fallon Sponsor: Watson</p> <p>Effective Sept. 1, 2015</p>	<p>This bill allows for a residential foreclosure to be rescinded and outlines the series of events and required notices to rescind the sale while protecting the lienholder's rights for future collection. Not later than the fifteenth calendar day following a nonjudicial foreclosure sale, a mortgagee, trustee or substitute trustee may rescind the sale for reasons including the default being cured prior to the sale and the mortgagee's failure to follow statutory foreclosure guidelines. Rescinding a foreclosure sale returns the mortgagee and debtor to their respective rights and obligations that existed prior to the foreclosure sale.</p> <p><i>Amends Texas Property Code Chapter 51</i></p>

FORECLOSURES, CONT.	
<p><u>House Bill 2067</u></p> <p>Author: Oliveira Sponsor: Zaffirini</p> <p>Effective Immediately</p>	<p>If a note is accelerated and subsequently the accelerated maturity date is rescinded or waived before the limitations periods expires, the note shall be treated as though no acceleration occurred. Rescission or waiver of the note’s acceleration is effective when made by written notice and sent via first class or certified mail to the debtor’s last known address. The lienholder’s right to accelerate the debt in the future is not affected. Additionally, the statute states that sending this notice is not the “exclusive method for waiver and rescission of acceleration.”</p> <p><i>Adds Civil Practice and Remedies Code Section 16.038</i></p>
<p><u>House Bill 2207</u></p> <p>Authors: Keffer, Anchia, Phil King, Clardy, Longoria Sponsor: Eltife</p> <p>Effective Jan. 1, 2016</p>	<p>A foreclosure on real property does not terminate any underlying oil and gas lease existing on the property. Any mineral interest, including the right to receive royalties, passes to the purchaser at the foreclosure sale “to the extent that the security instrument under which the real property was foreclosed had priority over the interest in the oil or gas lease of the mortgagor or the mortgagor's assigns.” However, the surface rights of a lessee terminate on foreclosure of the property. A subordination agreement between the parties controls over any conflicting part of the statute.</p> <p><i>Adds Texas Property Code Chapter 66</i></p>

FRAUD IN REAL ESTATE TRANSACTIONS	
<p><u>House Bill 2590</u></p> <p>Authors: Johnson, Schofield Coauthors: Koop, Minjarez, Rose Sponsor: West</p> <p>Effective Sept. 1, 2015</p>	<p>This bill adds real estate title transfer fraud as a violation of the Texas Deceptive Trade Practices Act and therefore is subject to Texas DTPA penalties. City attorneys may prosecute an action under this section, and 75 percent of any collection of fees by a city, county or district attorney must be deposited “in the general fund of the county or municipality in which the violation occurred.”</p> <p><i>Amends Business & Commerce Code Chapter 27</i></p>

HOMEBUYER ASSISTANCE PROGRAM	
<p><u>House Bill 1428</u></p> <p>Authors: Raymond, Naishtat, Elkins Sponsor: Zaffirini</p> <p>Effective Sept. 1, 2015</p>	<p>The Texas Department of Housing and Community Affairs must allow an individual to apply for funds set aside for persons with disabilities before entering into a contract to purchase a home. Additionally, the department must create a pre-approval process to determine eligibility of a borrower and must give a buyer 90 days to find a home once pre-approved.</p> <p><i>Amends Texas Government Code Section 2306.111</i></p>

MORTGAGE DISCLOSURES	
<p><u>House Bill 831</u></p> <p>Authors: Giddings, Keough Sponsor: West</p> <p>Effective Sept. 1, 2015</p>	<p>Within 30 days after receiving a request by a surviving spouse of a home loan mortgagor, a mortgage servicer must provide to the surviving spouse the loan number, the current balance, whether any amounts are delinquent and what amount, if any, is held in escrow. This request from the surviving spouse must include specific language referenced in the statute, a death certificate of the mortgagor, an affidavit from a disinterested party in a form similar to an Affidavit of Heirship as set forth in Texas Estates Code 203.002 and an affidavit from the surviving spouse stating the property is the surviving spouse’s primary residence.</p> <p><i>Amends Texas Finance Code Chapter 343</i></p>

NOTARY PUBLICS	
<p><u>House Bill 1683</u></p> <p>Author: Bohac Sponsor: Huffman</p> <p>Effective Jan. 1, 2016</p>	<p>The secretary of state shall assign each notary public an identifying number. This number will be provided to the notary when he/she receives his/her commission, will be kept on record with the state and will appear on the notary's stamp or seal.</p> <p><i>Amends Texas Government Code Section 406.001, 406.008 and 406.013</i></p>

POWERS OF ATTORNEY	
<p><u>House Bill 3316</u></p> <p>Authors: Miller, Doug Sponsor: Hancock</p> <p>Effective Sept. 1, 2015</p>	<p>A durable power of attorney used for a recorded instrument in a real property transaction must be recorded in the office of the county clerk of the county in which the property is located no later than 30 days after the date the real property instrument is filed for recording.</p> <p><i>Amends Texas Estates Code Section 751.151</i></p>

RECORDING DOCUMENTS	
<p><u>House Bill 1681</u></p> <p>Author: Bohac Sponsor: Bettencourt</p> <p>Effective Immediately</p>	<p>The Harris County Clerk may require a person bringing a document for recording in the real property records to present photo identification.</p> <p><i>Adds Texas Local Government Code Section 191.010</i></p>

TEXAS SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2009	
<p><u>Senate Bill 1203</u></p> <p>Author: Rodriguez Sponsor: Pickett</p> <p>Effective Sept. 1, 2015</p>	<p>The licensing and registration exemption under the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 expands to include 501(c)3 non-profit organizations originating mortgage loans for borrowers who have "provided at least 200 labor hours or 65 percent of the labor to construct the dwelling securing the loan."</p> <p><i>Amends Texas Finance Code Sections 156.202, 157.0121 and 180.003</i></p>