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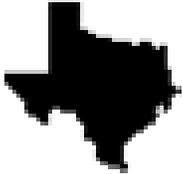
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## TEXAS LEGISLATIVE UPDATE

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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 78<sup>th</sup> Legislative Session was adjourned on June 7, 2003 having passed 4724 legislative bills filed during the session. Of these Governor Rick Perry vetoed 48 bills and 20 others are joint resolutions proposing amendments to the Texas Constitution that must be approved by a majority of voters in September. On June 18, 2003 Governor Perry called the Texas Legislature back into Special Session beginning June 30 for the primary purpose of addressing Congressional Redistricting and other unfinished business, such as important budgetary matters. 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 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.tex.us/>.

### Quick Reference Schedule

HOUSE BILLS		
H.B.	SYNOPSIS	EFF. DATE:
136	Implements Constitutional amendment authorizing a city or county to freeze the property taxes on a residence homestead of a person 65 years of age or older	1/1/04
✓ 208	Authorizes a mechanics lien to those providing labor or materials pursuant to a written contract with the owner	9/1/03
217	Limits the amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person	1/1/04**
703	When a property is located in more than one appraisal district, each district must adopt the lowest appraised value	1/1/04
1223	A homestead designation is not lost if the owner is absent for less than a year due to military service or resides in a facility providing health care, infirmity, or aged services.	Immediately
1247	Relating to the creation, funding, and operation of a fire fighter and police officer home loan program	Immediately
✓ 1338	Prohibits lenders from requiring homeowner's insurance coverage in an amount that exceeds the replacement value of the dwelling and its contents. Additionally the fair market value of land may not include the value of the dwelling and its contents	1/1/04**
1380	Allows authorized lenders to offer certain types of credit and noncredit insurance contemporaneously with or subsequent to a loan.	9/1/03
1460	Relating to the income method of appraisal of income producing real property for ad valorem tax purposes	1/1/04
✓ 1493	Authorizes a mortgage servicer to conduct a foreclosure sale on behalf of a mortgagee	1/1/04
2147	Requires that a late application for a homestead exemption must be filed not later than one year after the Date the ad valorem taxes on the homestead for that tax year were paid or became delinquent, whichever is earlier.	Immediately
2252	Specifies exemptions for certain individuals from cost recovery actions and liens placed on homesteads by Texas Commission on Environmental Quality.	9/1/03
✓ 2930	Relating to the confidentiality of certain personal information in real property records filed with the county clerk	9/1/03
3221	Land located in a county near an international border requires platting only for land subdivided into two or more lots intended primarily for residential use and a lot is presumed to be intended primarily for residential use if is five acres or less.	9/1/03

<b>SENATE BILLS</b>		
<b>S.B.</b>	<b>SYNOPSIS</b>	<b>EFF. DATE</b>
14	Provides for regulation of rates for residential property insurance and car insurance	9/1/03*
173	Provides that military personnel called for service in the current Iraqui conflict can pay delinquent property taxes after the war is over or after individual completes service and returns to the state	Immediately
✓ 252	Establishes requirements for registration of mortgage bankers	1/1/04
260	Continues the Texas Board of Professional Land Surveying for another 12 years	9/1/03
324	Relating to exemption from regulation as a credit services organization	9/1/03
340	Requires businesses to render for taxes their tangible personal property and imposes a fine of 10% of the taxes for failure to do so and a fine of 50% for fraudulent evasion	1/1/04*
✓ 473	Permits a consumer to place a security freeze on his/her file with a credit bureau and prohibits the credit bureau from providing information related to extension credit without consumer's express consent	9/1/03*
✓ 521	Relating to acquisition and regulation of manufactured homes	6/1/03
597	Relating to regulation of certain companies that provide for profit pre-paid legal service contracts	9/1/03
725	Extends the due date for paying property taxes when real or person property is erroneously omitted from the tax rolls.	9/1/03
774	Authorizes the same fees for a revolving credit account secured by an interest in real property as permitted for secondary mortgage loans	9/1/03
853	Requires organization soliciting homeowners by mail or telephone to pay a fee for applying for property tax refund to disclose ahead of time the name of the government entity that owes a refund	9/1/03
1000	Confers confidential treatment of information collected by the Legislative Council in conducting a study for a state agency	Immediately
✓ 1067	Giving the Finance Commission authority to interpret Sections 50(a) 5-7 of Article XVI of Constitution regarding home equity loans	Upon voter approval of SRJ 42
✓ 1211	Authorizes a creditor, at the creditor's option, to purchase collateral protection insurance covering real property for either 1) the amount of the indebtedness or 2) the insurable value of the improvements on the real property	Immediately
✓ 1429	Authorizes lenders to offer debt cancellation and debt suspension agreements in connection with a loan	Immediately
✓ 1430	Authorizes an additional 5% interest for default on certain secondary mortgage loans	Immediately
1527	Relating to purchaser's right to cure default under an executory contract for conveyance	9/1/03
✓ 1559	Prohibits recording of a deed or deed of trust after January 1, 2004 unless it contains a notice that person is entitled to remove from recordation a social security number or driver's licenses number	9/1/03
✓ 1577	Requires that the savings and loan commissioner find that a mortgage broker or loan officer license applicant is of good moral character and that licensees are not in violation of orders issued by the savings and loan commissioner, any commission rule, or any provision of the Mortgage broker License Act.	9/1/03
✓ 1578	Requires a pre-license test for mortgage broker and loan officer license applicants	9/1/03
1666	Defines a financial institution for purposes of law governing savings banks	9/1/03
✓ 1667	Requires applicants for a mortgage broker license to be fingerprinted and submit fingerprints and other necessary information.	9/1/03
1708	Creates a procedure allowing landowner to re-purchase property taken through eminent domain	1/1/04
<b>MATTERS TO BE ON SEPTEMBER 13, 2003 BALLOT</b>		
<b>HJR 16</b>	Proposes a constitutional amendment to authorize a county, city, town, or a junior college district to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses	
<b>HJR 21</b>	Proposes a constitutional amendment limiting school district ad valorem taxes of a disabled homeowner to the amount paid in the year the homeowner qualifies for a disabled exemption	
✓ <b>HJR 23</b>	Proposes an amendment to the Texas Constitution to permit refinancing of home equity loan with a reverse mortgage	
<b>HJR 51</b>	Proposes a Constitutional amendment to establish two-year period for redemption of mineral interest sold for unpaid ad valorem taxes at a tax sale.	
✓ <b>SJR 42</b>	Creates a home equity line of credit, provides for administrative interpretation of home equity lending law and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans	

- \* Generally effective 09/01/01
- \*\* Generally effective 1/4/04
- ✓ Summarized Bills

## I. HOME EQUITY REFORM

In the 2003 Legislative Session, the Texas House and Senate passed two joint resolutions proposing amendments to the Texas Constitution and one bill affecting current home equity lending practices. SJR 42 amends Section 50(a), Article XVI, Texas Constitution creating a home equity line of credit along with extensive provisions for curing any failure of a lender to comply with its obligations under the Constitution when making a home equity loan. HJR 23 proposes an amendment to Section 50(f), Article XVI, Texas Constitution to permit refinancing of a home equity loan with a reverse mortgage; and SB 1067 authorizes the Texas Finance Commission and the Texas Credit Union Commission to interpret constitutional provisions regarding home equity lending. The Act also prohibits a borrower of a high cost loan from being charged for services or products he or she did not receive.

### A. Home Equity Line of Credit and Provisions for Cure

S.J.R. 42 amends Section 50(a), Article XVI, Texas Constitution to authorize a home equity line of credit. New Section 50(t) defines a home equity line of credit is an open-end account that may be extended under certain circumstances. In particular the home equity line of credit is limited to a total of 50% of the fair market value of borrower's home on the date that the line of credit is established. Moreover, when there are other liens on the home the home equity line of credit when added to the balance of all other liens may not exceed 80% of the fair market value of the home. No single advance or debt may be less than \$4,000.00 and debts or advances may not be obtained by use of a credit card, debt card, pre-printed solicitation check or other similar devices. The borrower may make regularly scheduled payments as often as every two weeks but not less often than monthly. Closing may not be held i) before the 12<sup>th</sup> day after the later of the date that the application is submitted to the lender or the lender provides the Constitutional notice, or ii) before one business day after the owner receives a final itemized disclosure of the actual fees, points, interest, costs, and closing charges.

S.J.R. 42 includes specific provisions allowing lenders to cure failures to comply with their obligations under home equity provisions of the Constitution. In particular, a lender would forfeit all principal and interest only if it fails to correct non-compliance within 60 days after being notified by an owner. The cure provisions specified by the Act are as follows:

- Refunding to the owner an amount equal to any overcharge paid by the owner, if it exceeded the amount authorized by law;
- Sending the owner a written acknowledgment that the lien is valid only in an amount that does not exceed the 80% cap or, if applicable, the lien is not secured by: (1) additional real or personal non-homestead property and (2) homestead property that has been designated for agricultural use, as provided by statutes

governing property tax (and that is not used primarily for production of milk);

- Sending an owner written notification modifying the amount, percentage, term, or other provision not authorized by the Constitution and adjusting the borrower's account so that the borrower is not required to pay more than that permitted by law and is not subject to other terms or provisions prohibited by law;
- Delivering the required documents to the borrower if the lender failed to provide the owner with all signed copies or obtaining appropriate signatures if the lender and borrower failed to sign a written acknowledgment of the homestead property's fair market value on the date the extension of credit is made;
- Sending the owner written acknowledgment, if the failure to comply is prohibited by Section (a)(6)(K), that the accrual of interest and all of the owner's obligations under the loan are abated so long as any prior lien prohibited under Paragraph (K) remains secured by the homestead; or
- If the failure to comply cannot be cured by any of the above means, providing a refund or credit to the homeowner equal to \$1,000 and offering the homeowner the right to refinance the loan at no cost to the homeowner for the remaining term on the same terms, including interest. In that case, the home equity loan may be refinanced under the cure provision before the first anniversary date of closing.

In spite of the provisions for cure, a lender or holder of the note will forfeit all principal and interest if an unauthorized person made the loan or it was not created by written agreement with the consent of all owners and their spouses, unless consent is subsequently obtained. Importantly, licensed Texas mortgage brokers would be added to the list of persons authorized to make home equity loans.

This proposed constitutional amendment will be submitted to the voters at an election to be held on September 13, 2003. If approved, as expected, the Constitutional Amendments will be effective when the vote is canvassed within 30 days after the election date.

### B. Authority of the Texas Finance Commission and the Texas Credit Union Commission to Issue Interpretations relating to Home Equity Lending

Senate Bill 1067 amends Subchapter D, Chapter 11, Finance Code to add new Section 11.308 and Subchapter E, Chapter 15, Finance Code to add new section 15.413 permitting the

Texas Finance Commission and the Texas Credit Union Commission to issue interpretations of Sections 50(a)(5)-(7), (e)-(p), (t) and (u), Article XVI, Texas Constitution. An interpretation issued by the Finance Commission is applicable to all lenders authorized to make home equity loans under Section 5(a)(6), Article XVI, Texas Constitution, except those regulated by the Texas Credit Union Commission.

In addition to granting interpretive authority to the Texas Finance Commission and the Texas Credit Union Commission, Senate Bill 1067 prohibits lenders, in connection with a high cost loan, from charging the borrower for a service or product is not received by the borrower.

This Act is effective when a majority of the voters at an election held on September 13, 2003 approve SJR 42. If SJR 42 fails to be approved by the voters, this Act has no effect.

### **C. Refinance of Home Equity Loans with Reverse Mortgages**

Currently home equity loans made pursuant to Section, 50(a)(6), Article XVI, Texas Constitution may be refinanced only as home equity loans. Specifically they may not be converted into “traditional first mortgages” by refinancing them. The restriction prevents circumvention of constitutional consumer protections applicable to home equity loans by refinancing them. An important additional effect of this restriction is that it prevents conversion of home equity loans into a reverse mortgage which also has strong constitutional protections.

H.J.R. 23 proposes a constitutional amendment permitting refinancing of a home equity loan with a reverse mortgage. Specifically H.J.R. 23 amends Section 50(f), Article XVI, Texas Constitution, to prohibit a refinance of debt secured by a homestead if any portion of it is a home equity loan unless refinance of the debt is a home equity loan or a reverse mortgage. (emphasis added)

The proposed amendment will be submitted to the voters at an election to be held on September 13, 2003.

## **II. LICENSING AND REGISTRATION**

The Texas House and Senate passed one bill requiring registration of mortgage bankers and three separate bills regarding licensing of mortgage brokers and loan officers. Senate Bill 252 requires registration of mortgage bankers, unless exempt. Senate Bills 1577, 1578, and 1667 amend the Mortgage Broker Licensing Act to add requirements for licensing of mortgage brokers and loan officers. Details of Senate Bill 252 and the amendments to the Mortgage Broker Licensing Act amendments are discussed below under Sections A and B respectively.

### **A. Mortgage Banker Registration**

Senate Bill 252 amends the Finance Code by adding new Chapter 157 requiring most lenders to register with the Texas Savings and Loan Commissioner before conducting business as a mortgage banker, unless exempt from registration. The underlying purpose of the Mortgage Banker Registration Act is to provide consumers a means for lodging and resolving complaints against mortgage bankers. Mortgage bankers are exempt from registration if licensed as a mortgage broker or loan officer under Chapter 156, Finance Code. Also exempt are: 1) federally insured banks, savings, banks, savings and loan associations, Farm Credit System Institutions, or credit unions; and 2) affiliates or subsidiaries of federally insured banks, savings banks, savings and loan associations, Farm Credit Systems Institution, or credit unions. Regulated loan lenders (secondary mortgages) licensed under Chapter 342, Finance Code, also are exempt from registration if: 1) the application for a mortgage loan includes the required notice regarding complaints; 2) the lender uses forms adopted by the Finance Commission for mortgage bankers who represent that an applicant is pre-approved or pre-qualified; and 3) the Finance Commission determines by rule that a Chapter 342 license may be suspended or revoked if the lender engages in unlawful or unfair practices in connection with a mortgage loan.

The registration fee may not exceed \$500.00 per year and information contained in the registration statement must be updated no later than 30 days after the date that the information changes. A mortgage banker may withdraw the registration at any time. The registration may also be revoked by the commissioner under certain circumstances such as failing to update registration within 30 days, failing to respond to the commissioner’s written request for a response to a complaint, if the commissioner determines that the mortgage banker has intentionally violated state or federal law, or has intentionally engaged in improper, fraudulent or dishonest dealings. If a registration is revoked, a mortgage banker may re-register only with the commissioner’s authorization after a determination that the mortgage banker will comply with state and federal laws and will not engage in improper, fraudulent, or dishonest dealings.

Those registered as a mortgage banker must include the following written statement with the loan application.

“COMPLAINTS REGARDING MORTGAGE BANKERS SHOULD BE SENT TO THE SAVINGS AND LOAN DEPARTMENT, \_\_\_\_\_, (street address of the Savings and Loan Department). A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT \_\_\_\_\_ (telephone number of Savings and Loan Department’s toll-free consumer hotline).”

This registration law becomes effective January 1, 2004.

### **B. Amendments to the Mortgage Broker Licensing Act**

The Texas House and Senate passed three bills amending the Mortgage Broker Licensing Act to add additional licensing requirements for mortgage brokers and loan officers: Senate Bill 1577 adds character responsibility or general fitness requirements for mortgage broker and loan officer license applicants; SB 1578 adds pre-licensing testing requirements for mortgage broker and loan officer applicants; and SB 1667 requires applicants to submit fingerprints with their license applications.

#### *1. General Fitness Requirements*

Effective September 1, 2003 Senate Bill 1577 amended 156.204, Finance Code amending Subsections (a) and (c) and adding new Subsection (d) to require that applicants for new mortgage broker or loan officer licenses satisfy the Texas Savings and Loan Commissioner of the individual's good moral character, including honesty, trustworthiness, and integrity. The applicant also must not have violated any rule relating to mortgage brokers or loan officers or an order previously issued to the individual by the Commissioner.

A current requisite for new and renewal licenses for mortgage brokers and loan officers includes a requirement that the applicant has not been convicted of a criminal offense, as provided by Chapter 53, Occupations Code, that the Commissioner determines is directly related to the individual's occupation. S.B. 1577 defines a conviction as imposition of a sentence, community supervision which includes deferred adjudication community supervision, or a court defers final disposition of the person's case.

#### *2. Pre-licensing Requirements*

S.B. 1578 amends Subsections (a) and (c), Section 156.204, Finance Code to require mortgage broker and loan officer license applicants to provide the Texas Savings and Loan Commissioner with satisfactory evidence of having taken and passed a pre-licensing test. The test must be administered by a testing company approved by the Finance Commission and must require that an applicant demonstrate knowledge of the mortgage industry as well as the role and responsibilities of a mortgage broker or loan officer.

Testing requirements are grandfathered and apply only to applications made on or the effective date of September 1, 2003. The current law applies for applications made before September 1, 2003.

### *3. Criminal Background Investigations*

Senate Bill 1667, also effective September 1, 2003, amends Subsection (b), Section 156.206, Finance Code to require mortgage broker and loan office license applicants to submit fingerprint and other information with their applications. The Commission is authorized to submit fingerprint and other information to the Federal Bureau of Investigation and the Department of Public Safety is designated as the recipient of the criminal history information.

Currently the Commission is authorized to obtain criminal history information from any court or a local, state, or federal agency. Under new section 156.206(d) criminal history information obtained from the Federal Bureau of Investigation can only be released to a governmental entity or as authorized by federal statutes, federal rule, or federal executive order.

## **III. FINANCE CODE AND INSURANCE CODE AMENDMENTS**

Several amendments to the Finance Code were made by the Texas House and Senate in the 2003 Legislative Session. Among these amendments are Senate Bill 1429 authorizing lenders to offer debt cancellation and suspension agreements; Senate Bill 1211 authorizes lenders to obtain collateral insurance covering either the amount of unpaid indebtedness or the replacement cost; and Senate Bill 1430 authorizes additional interest on default of a secondary mortgage loan.

The Texas House and Senate also passed House Bill 1338 amending the Insurance Code to limit the amount of homeowner's insurance lenders may require in connection with financing of a residential property.

Details of the Finance Code and Insurance Code amendments are discussed below.

### **A. Authorization for Debt Cancellation and Suspension Agreements**

Senate Bill 1429 amends Subchapter I, Chapter 342, Finance Code authorizing lenders to offer the borrower debt cancellation or debt cancellation agreements with the same or similar terms as an agreement that may be offered by a bank or savings association. The lender, however, may not require the borrower to accept the agreement and must provide a separate written notice that acceptance is not a condition of the loan. Additionally, income from these agreements is not considered interest on the loan.

This Act becomes effective immediately.

B. **Additional Interest for Default on Secondary Mortgage Loans Authorized under Chapter 342, Finance Code**

Effective immediately Senate Bill 1430 amends Chapter 342, Finance Code, to authorize secondary mortgage loans that include simple interest to provide for additional 5% interest for default if all or part of an installment is unpaid 10 days after its due date. The 10-day period includes Sundays and holidays.

C. **Lenders Authorized to Obtain Collateral Protection Insurance under Section 307.051, Finance Code**

Effective immediately, Senate Bill 1211 amends Section 307.051, Finance Code, adding new subsection (e-1) to authorize a creditor, at its option, to obtain insurance covering either a) replacement cost of the improvements; or b) amount of unpaid indebtedness, subject to policy limits. The debtor must reimburse the creditor for the premium, finance charges, and other charges incurred by the creditor in obtaining the insurance. In determining a sufficient level of replacement cost coverage the amendment permits the creditor to use prior evidence of insurance coverage provided by the debtor. If the creditor provides collateral protection insurance, a statement must be included in the written notice required by Section 307.052 that the debtor might obtain lower cost coverage through the Texas FAIR Plan and provide contact information about the Texas FAIR plan.

D. **House Bill 1338 Establishes New Limits on the Amount of Homeowners Insurance that may be Required in connection with Financing of Residential Property**

House Bill 1338 amends Section 2, Article 21.48A, Insurance Code, adding Subsection (g) to prohibit lenders, as a condition to financing of residential property, including a mobile or manufactured home, from requiring homeowners insurance coverage, or other residential property insurance, in an amount exceeding the replacement value of the dwelling and its contents. Moreover, the fair market value of the land on which a dwelling is located may not be included in the replacement value of the dwelling and its contents.

Effective September 1, 2003, the Act only applies to mortgages and other financing arrangements for residential property entered into on or after January 1, 2004. Prior to this date, a mortgage or other financing arrangement is governed by the law existing before the Act's effective date.

**IV. ACQUISITION AND CONVERSION OF MANUFACTURED HOMES TO REAL PROPERTY**

Effective June 1, 2003 Senate Bill 521 amends various sections of the Occupations Code, Texas Manufactured Housing Standards Act, and the Property Code affecting when a manufactured home may be treated as real property and

prescribing new procedures for converting manufactured homes to real property authorized in 1977 by Section 50(a)(8).

It is important to note that beginning September 1, 2003 the document of title issued by the Texas Department of Housing and Community Affairs is now known as a "statement of ownership and location". Furthermore, documents of title issued prior to September 1, 2003 may be exchanged for a "statement of ownership and location" by surrendering it to the Texas Department of Housing and Community Affairs along with other required information and requesting that a "statement of ownership and location" be issued.

The process for obtaining the "statement of ownership and location" for a new manufactured home begins prior to the first retail sale of the home. At that time the retailer must provide the purchaser with an application for issuance of "statement of ownership and location" and information necessary to complete the application. After the first retail sale the retailer must provide for installation and ensure that the application is properly completed. The retailer must file the application with the department no later than 30 days after the date of the retail sale. If a subsequent sale or transfer of the home occurs a purchaser or transferee must apply for a new statement. Ownership of the manufactured home does not pass or vest at sale or transfer until a completed application for issuance of a "statement of ownership and location" is filed with the department.

Owners may elect to treat the manufactured home as real property by filing a "statement of ownership and location", made under affidavit, with the Texas Department of Housing and Community Affairs indicating an intention to treat it as real property. This election, however, may only be made if the unit is either attached to real property that is owned by the owner of the home or to land leased to the owner of the home under a long-term lease as defined by departmental rule. Moreover, the department will not issue a statement of ownership and location until: 1) each lien on the home has been released by the lien holder; or 2) the department has written consent from each lien holder on file. The department may issue a statement of ownership and location before the liens are released or lien holder consent obtained if the department sends a certified copy of the statement to: 1) a licensed title insurance company that has issued a title insurance policy covering all prior liens; or 2) a federally insured financial institution or licensed attorney has obtained a title insurance policy covering all prior liens from a licensed title insurance company.

After the department has issued a statement of ownership and location indicating an intention to treat the manufactured home as real property a certified copy of the statement must be filed in the real property records in the county where the home is located. It is important to note that the manufactured home will not be considered real property until the certified copy has

been filed. If a real property election has been made but the certified copy has not been filed, the manufactured home continues to be treated as personal property.

Senate Bill 521 also amends Section 347.254 of the Finance Code by adding Subsection (c) to require consumers to pay ad valorem taxes on the manufactured home through the creditor. The escrow requirement does not apply, however, if the creditor is a federally insured financial institution and does not require escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property.

## V. PROPERTY CODE AMENDMENTS

The Texas House and Senate made several amendments to the Property Code. Among these amendments are: Senate Bill 1559 amending Chapter 11, Property Code, to require removal of social security numbers and driver's license numbers from deeds, mortgages, and deeds of trust recorded in the records of a county clerk after January 1, 2004 unless a certain notice appears on the first page of the instrument; Senate Bill 208 amending Chapter 53.021, Property Code, entitling those furnishing materials or labor for demolition of a structure on real property to a mechanic's lien; and Senate Bill 1493 permitting mortgage servicer to administer foreclosures on behalf of the mortgagee.

### A. Removal of Social Security and Driver's License Numbers Contained in Deeds, Mortgages, and Deeds of Trusts Recorded in a County Clerk's Records after January 1, 2004

Senate Bill 1559 amended Chapter 11, Property Code to add the requirement that any deed, mortgage, or deed of trust may not be recorded on or after January 1, 2004 unless a notice appears on the first page of the instrument in a 12-point boldfaced type or 12-point uppercase letters reading substantially as follows:

NOTICE OF CONFIDENTIALITY RIGHTS:  
IF YOU A NATURAL PERSON, YOU MAY  
REMOVE OR STRIKE ANY 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 validity of an instrument is not affected by failure to include the notice. The county clerk may not reject an instrument because it contains or fails to contain a social security number or driver's license number. If the instrument is accepted for recording, the recording and the instrument

create a conclusive presumption that the requirements of Section 11.08(b), Property Code have been met.

The Act is effective September 1, 2003 and only applies to deeds, mortgages, or deeds of trust executed on or after January 1, 2004.

### B. House Bill 208 Authorizes Mechanic's Liens in connection with the Demolition of a Structure Located on Real Property

Persons performing labor or furnishing material for demolition of a structure on real property were previously unprotected from non-payment. House Bill 208 amends Section 53.021, Property Code to add Subsection (e) entitling those performing or furnishing labor or materials for demolishing a structure on real property pursuant to a written contract with the property owner, the owner's agent, trustee, receiver, contractor or subcontractor to a mechanic's lien.

The inception of the lien created under Section 53.21 (c), (d), or (e) is the date of recording of the affidavit of lien as required by Section 53.052. Priority of liens created under Section 53.021 (c), (d), or (e) with respect to other mechanic's liens is also determined by the date of recording. However, the lien is not valid or enforceable against a grantee or purchaser acquiring an interest in the real property before inception of the lien.

Effective on September 1, 2003, the Act only applies to labor performed or labor or materials furnished pursuant to a written contract entered into on or after this date.

### C. Authority of Mortgage Servicer to Foreclose on behalf of the Mortgagee and to Set Reasonable Conditions for Public Sale

Effective January 1, 2004, House Bill 1493 adds new Section 51.0021 to the Property Code expressly authorizing mortgage servicers to administer foreclosures on behalf of a mortgagee. A mortgage servicer is defined by new section 51.001(3) as the last person the mortgagee has instructed the mortgagor to send payments to. Moreover, the mortgage servicer may be the mortgagee.

The mortgage servicer is authorized to administer the foreclosure if: 1) the mortgagee has contracted with the mortgage servicer for mortgage servicing; and 2) the mortgage servicer discloses in the notice required under Section 51.002 that: (a) it represents the mortgagee under a servicing agreement with the mortgagee; and (b) the name and address of the mortgagee.

In addition to authorizing administration of foreclosure by the mortgage servicer, the Act also permits a trustee or substitute trustee to set reasonable conditions for conducting a public

sale if the conditions are announced before bidding for the first sale of the day held by the trustee.

## VI. PROTECTION OF CONSUMER CREDIT FILES

Individuals who either are, or suspect they are, victims of identity theft are permitted by consumer credit reporting bureaus to place security alerts on their credit files. Since these alerts are advisory in nature, they are often not followed by merchants and credit grantors. Senate Bill 473 attempts to prevent identity theft by amending Section 20.01, Business and Commerce Code, to allow victims of identity theft to place a security freeze on his or her credit report.

As defined by the Act a security freeze is a notice placed in a consumer file to prohibit a credit bureau from releasing a consumer credit report relating to the extension of credit without express authorization from the consumer. Under Section 20.0385 a security freeze on a consumer file does not apply for purposes of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment. Moreover, under Section 20.038 there are a number of exemptions from the security freeze that include, but are not limited to, the following:

- A state or local governmental entity, including a law enforcement agency, court, or private collection agency, if it acts pursuant to a court order, warrant, subpoena, or administrative subpoena;
- Purposes of prescreening as provided by the Fair Credit Reporting Act (15 U.S.C. Section 1661 et seq.), as amended; or
- A person with whom the consumer has an account or contract or to whom the consumer has issued a negotiable instrument, or the person's subsidiary, affiliate, agent, assignee, prospective assignee, or private collection agency, for purposes related to that account contract, or instrument; or
- A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted by the consumer.

Senate Bill 473 also contains provisions prohibiting certain uses of an individual's social security number. Included among these are: 1) requiring individuals to transmit his or her social security number over the Internet unless the connection with the Internet is secure or the number is encrypted; 2) requiring a social security number for access to an Internet website, unless a password or unique PIN number or other authentication device is also required for access; or 3) printing

a social security number on any materials that are sent by mail, except as part of an application or enrollment process, to establish, amend, or terminate an account or contract, or policy, or to confirm the accuracy of a social security number, unless required by state or federal law.

Prohibited uses of a social security number occurring before January 1, 2005 may continue if: 1) the use is continuous; and 2) beginning January 1, 2006 an annual disclosure is sent to the individual stating that the prohibited use will cease upon written request. If a written request to stop using the individual's social security number in a prohibited manner is received, the request must be complied with not later than 30 days after request is received. A charge may not be imposed for complying with the request.

### 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.**