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MEMORANDUM

TO: Clients and Friends of the Firm

FROM: J. Alton Alsup

DATE: April 2, 2007

SUBJECT: Emergency Bill (HB 2061) Requires that Deeds and Deeds of Trust Recorded in Public Records Contain an Amended Form of Confidentiality Notice Effective Immediately

Governor Rick Perry has signed into law an emergency bill (HB 2061) designed to protect Texas' county and district clerks from criminal or civil liability for disclosing recorded instruments containing the social security number of any living person. The bill was signed March 28, 2007 and was immediately effective.

The bill in part both (i) prohibits the preparer of a document presented for recording in the office of the county clerk from including an individual's social security number in the document, and (ii) requires that a certain promulgated form of Notice of Confidentiality Rights be included at the top of the first page of a deed or deed of trust presented for recording informing individuals of their rights to remove or strike through any reference in such an instrument to their social security or driver's license numbers. The Notice of Confidentiality Rights legend is now required in all cases regardless of whether the deed or deed of trust instrument actually contains any reference to an individual's social security or driver's license number. Since 2005, a similar Notice of Confidentiality Rights had been required only if the instrument actually contained such a reference to a social security or driver's license number.

Specifically, the bill amends Section 11.008 of the Texas Property Code to require that a deed or deed of trust transferring an interest in real property to or from an individual include a notice that appears at the top of the first page of the instrument in 12-point boldfaced or uppercase letters and 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.

This promulgated legend revises the former wording set forth in §11.008(b) as follows (deleted words shown struck through and new words underlined):

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY [~~THIS~~] 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.

The bill, by requiring that the revised legend appear *at the top* of the first page of the instrument, ignores the top margin for the first page of such an instrument that is reserved for recording data (which may be as much as a 3" top margin). We have construed the top of the page for this purpose to be the top of the first page of the instrument below the top margin reserved for recording data and immediately above the identifying heading (e.g., "Warranty Deed" or "Deed of Trust") that also is required by §191.007(c) of the Local Government Code to be placed at the top of the first page of an instrument to identify the type or kind of legal paper that is being presented for recording.

Importantly, the validity of any instrument is not affected by the failure to include the required Notice of Confidentiality Rights, and the county clerk may not under any circumstances reject an instrument presented for recording solely because the instrument fails to comply with this notice requirement. Furthermore, this notice provision may be superseded by conflicting federal law, and, in the event and to the extent that federal law conflicts with these provisions, an instrument must contain the information required by, and must be filed in a manner that complies with, federal law.

Our firm is in the process of immediately revising and placing into service its various forms of deed and deed of trust instruments complying with the notice provisions of amended §11.008(c) and is providing this advice so that clients and friends of the firm may make revisions to their own repository of forms as well.

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.