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2019 TEXAS LEGISLATIVE UPDATE

By: Logan E. Hastings, Associate Attorney

The Texas Legislature meets in a regular 140-day legislative session every two years, convening on the second Tuesday in January of odd-numbered years. The 86th Legislative Session convened on January 8, 2019 and was adjourned on May 27, 2019. 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.

1. PUBLIC SCHOOL FINANCE / LENDER ADJUSTMENTS TO ESCROW ACCOUNTS

[House Bill 3](#)

Author: Huberty, Bernal,
Zerwas, Ken King, Allen

Sponsor: Taylor

Effective: September 1, 2019

This bill relates to public school finance and public education. While the bill is largely not relevant to real estate finance or the title business, there is some potentially problematic language for lenders and home loan servicers in Section 26.151(b), which reads:

(b) to the extent that H.B. 3, 86th Legislature, Regular Session, 2019, has the effect of reducing property taxes in this state, a lender or home loan servicer of a home loan that maintains a property tax escrow account must take into account the effect of that legislation in establishing the borrower's annual property tax payments to be held in that account and *immediately* adjust the borrower's monthly payments accordingly. (emphasis added).

It may be problematic for a lender or home loan servicer to immediately adjust the borrower's monthly payments prior to receiving tax bills and there may be RESPA preemption issues to consider as well.

Amends Texas Tax Code §26.151

2. ACKNOWLEDGMENT OF A WRITTEN INSTRUMENT ON BEHALF OF AN LLC OR PARTNERSHIP

[House Bill 1159](#)

Author: Price, Krause, Meyer,
Minjarez, Moody

Sponsor: Watson

Effective: September 1, 2019

Amends the definition of "acknowledged," in the case of a partnership, to explicitly permit an authorized officer or agent to execute a notarial acknowledgement on behalf of the partnership.

Adds an Item (6) to Subsection (b) of Section 121.006 regarding the definition of "acknowledged" in the case of an LLC which reads:

(6) in the case of a limited liability company by a member, manager, authorized officer, or agent acting for the limited liability company, that the member, manager, authorized officer, or agent personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument in the capacity stated, as the act of the limited liability company, for the purposes and consideration expressed in it.

	<p>Amends the statutorily promulgated short-form notarial acknowledgement applicable to partnerships in Section 121.008(b) to include the changes discussed above and adds a short-form notarial acknowledgment applicable to limited liability companies. See the statute for the complete list of these forms.</p> <p><i>Amends Texas Civil Practice and Remedies Code §121.006(b) and §121.008(b)</i></p>
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3. AD VALOREM TAXES / AGRICULTURAL VALUATION ON LAND SECURING A HOME EQUITY LOAN	
<p><u>House Bill 1254</u></p> <p>Author: Murphy</p> <p>Sponsor: Hancock</p> <p>Effective: January 1, 2020</p>	<p>Repeals the prohibition against designating land for agricultural use if that land secures a home equity loan. This change brings home equity lending law into harmony with the changes last session that permitted land designated for agricultural use to secure a home equity loan.</p> <p><i>Amends Texas Tax Code § 23.42(a)</i></p>

4. AD VALOREM TAXES / CHANGE OF USE	
<p><u>House Bill 1743</u></p> <p>Author: Tracy O. King, Rodriguez, Murphy, Geren, Guillen</p> <p>Coauthor: Phil King</p> <p>Sponsor: Creighton</p> <p>Effective: September 1, 2019</p>	<p>Reduces the look back time period for roll back taxes from five to three years preceding the year in which a change of use occurs. It also reduces the interest rate due on the additional tax from seven to five percent.</p> <p><i>Amends Texas Tax Code §§ 23.55(a) and 23.76(a)</i></p>

5. AUTHORITY TO TRANSFER REAL PROPERTY IN THE NAME OF AN ENTITY	
<p><u>House Bill 1833</u></p> <p>Author: Wray</p> <p>Sponsor: Hughes</p> <p>Effective: September 1, 2019</p>	<p>Creates a mechanism by which a limited liability company, limited partnership, or a professional entity may assign the authority to transfer an estate or interest in real property not exceeding \$1 million. Functionally, the entity executes and records an affidavit naming one or more individuals with authority to transfer. The affidavit must comply with the statute and there are some restrictions on who may be named in the affidavit.</p> <p><i>Amends Texas Property Code Chapter 12 by adding § 12.019</i></p>

6. AD VALOREM TAXES / WAIVER OF PENALTIES AND INTEREST	
<p><u>House Bill 1885</u></p> <p>Author: Greg Bonnen, Guillen</p> <p>Coauthor: Zaffirini</p> <p>Sponsor: Bettencourt</p> <p>Effective: January 1, 2020</p>	<p>Gives the governing body of a taxing unit the authority to waive penalties and interest on a delinquent tax if:</p> <ol style="list-style-type: none"> 1. The taxed property is subject to a mortgage that does not require taxes be escrowed; 2. The tax bill was sent to the mortgagee but the mortgagee failed to send a copy to the property owner; and 3. The tax payer paid the tax not later than the 21st day after the taxpayer knew or should have known of the delinquency. <p><i>Amends Texas Tax Code § 33.011</i></p>

7. TRUSTS/ CODIFICATION OF COMMON LAW

[House Bill 2245](#)

Author: Wray, Raymond

Sponsor: Rodriguez

Effective: September 1, 2019

Section 4 of House Bill 2245 states that it codifies the common law regarding titling of assets transferred from one trust to a second trust. It makes clear that a second trust can be created by a distribution of principal under Section 112.072 or 112.073 to a trust created under the terms of the distributing trust or to a trust created under a different trust instrument. It goes on to codify the proposition that if such a distribution to a second trust is made, the property so distributed is *not* required to be retitled. The legislative intent seems to be to allow a trustor to decant a trust into a trust of the same name, thereby avoiding fees associated with retitling the transferred assets.

This statute notwithstanding, it is our opinion that when property is transferred from one trust to another trust, the property should be retitled. While the changes made by this law may be beneficial to the property owner by saving them some money, we believe that there is an overriding need to have a clear chain of title when assets go from being governed by the terms of one trust to being governed by the terms of a different trust. The second trust may have new and different terms that would affect a lender's decision to make a loan or a title company's willingness to insure a transaction.

Amends Texas Property Code Subchapter D, Chapter 112 by adding §112.0715

8. REVOCATION OF A TRANSFER ON DEATH DEED AND INTESTATE SUCCESSION CLARIFICATION

[House Bill 2782](#)

Author: Wray

Sponsor: Rodriguez

Effective: September 1, 2019

Section 114.102 is amended by adding clarification that a grantor may revoke a prior transfer on death deed by recording a memorandum of conveyance rather than recording the subsequent conveyance itself.

Section 201.003(c) is amended to clarify the laws governing intestate succession when a deceased spouse was survived by a descendent that was not the descendent of the surviving spouse. Under the prior phrasing of the statute, there was some confusion as to whether subsection (c) applied to the entire community estate or just the decedent's share of the community estate. This change makes it clear that subsection (c) only applies to the deceased spouse's undivided one-half interest in the community estate.

Amends Estates Code §§ 114.102 and 201.003(c)

9. TITLE INSURANCE RATES

[House Bill 3228](#)

Author: Muñoz, Jr., Raymond,
Hunter

Sponsor: Hancock

Effective: September 1, 2019

Provides a mechanism by which certain consumers may participate in public hearings to consider changing a premium rate.

Amends Texas Insurance Code §§ 2703.202, 2703.203, and 2703.204.

10. MODIFICATION TO SELLER'S DISCLOSURE NOTICE REGARDING FLOODING

[House Bill 3815](#)

Author: Morrison

Sponsor: Huffman

Amends the statutorily promulgated Seller's Disclosure Notice to include more detailed disclosures with respect to past and potential future flooding. It also adds a definition section for certain flood related terms. The Seller's Disclosure Notice must, at a minimum, read substantially similar to the statutorily promulgated form. This legislative update does not specifically detail every change to the form. Instead, the

Effective: September 1, 2019	<p>reader is directed to the statute itself for more detail.</p> <p>This is the House version of Senate Bill 339, both of which were signed into law by the governor on June 14, 2019.</p> <p><i>Amends Texas Property Code §5.008(b)</i></p>
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11. PROPERTY TAX REFORM	
<p><u>Senate Bill 2</u></p> <p>Author: Bettencourt, Creighton, Hancock, Paxton, Taylor</p> <p>Coauthor: Birdwell, Campbell, Fallon, Flores, Hall, Nelson, Schwertner</p> <p>Sponsor: Burrows</p> <p>Effective: January 2, 2020 except as otherwise stated therein.</p>	<p>This extensive property-tax reform bill was passed with the legislative intent of slowing the rate at which property tax bills in Texas increase over time. The legislation may be of particular interest to our clients in the loan servicing industry. We have not attempted to provide a thorough summary of the bill here. Instead, the reader is directed to the bill text.</p> <p><i>Amends Texas Tax Code § Numerous</i></p>

12. MODIFICATION TO SELLER’S DISCLOSURE NOTICE REGARDING FLOODING	
<p><u>Senate Bill 339</u></p> <p>Author: Huffman</p> <p>Sponsor: Morrison</p> <p>Effective: September 1, 2019</p>	<p>Amends the statutorily promulgated Seller’s Disclosure Notice to include more detailed disclosures with respect to past and potential future flooding. It also adds a definition section for certain flood related terms. The Seller’s Disclosure Notice must, at a minimum, read substantially similar to the statutorily promulgated form. Rather than specifically detailing every change to the form, the reader is directed to the statute itself for the complete, updated form.</p> <p>This is the Senate version of House Bill 3815, both of which were signed into law by the governor on June 14, 2019.</p> <p><i>Amends Texas Property Code § 5.008(b)</i></p>

13. CONTINUATION AND FUNCTIONS OF THE TFC, TDB, AND TDSML	
<p><u>Senate Bill 614</u></p> <p>Author: Nichols, Birdwell, Buckingham, Hall</p> <p>Sponsor: Lambert</p> <p>Effective: September 1, 2019</p>	<p>Continues the existence of the Texas Finance Commission, Texas Department of Banking, and Texas Department of Savings and Mortgage Lending until September 1, 2031.</p> <p>Authorizes each of the three entities to create advisory committees to assist them in their respective functions.</p> <p>Directs the Texas Department of Banking and Texas Department of Savings and Mortgage Lending to maintain certain records of complaints submitted to the departments and to act on those complaints quickly.</p> <p>Requires the Texas Finance Commission to craft a plan for negotiated rulemaking procedures and alternate dispute resolution for interdepartmental matters.</p> <p>Abolishes the prior “good moral character” requirement for acquiring a residential</p>

	<p>mortgage loan originator license.</p> <p><i>Amends Texas Finance Code, Texas Health and Safety Code §§ Numerous</i></p>
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14. TRANSFER ON DEATH DEEDS: DEFINITION AND FORMS

<p><u>Senate Bill 874</u></p> <p>Author: Huffman</p> <p>Sponsor: Farrar</p> <p>Effective: September 1, 2019</p>	<p>Adds a Subdivision (3) to Section 22.020(a) which reads as follows: “Transfer on death deed has the meaning assigned by Section 114.002 Estates Code.”</p> <p>Requires the supreme court to promulgate “a form for use to create a transfer on death deed and a form for use to create an instrument of revocation of a transfer on death deed under Chapter 114, Estates Code.”</p> <p><i>Amends Texas Government Code § 22.020(a)</i> <i>Repeals Texas Estates Code Subsection 114.002(b) and Subchapter D, Chapter 114</i></p>
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15. RIGHT OF REDEMPTION FOLLOWING A TAX SALE IS NOT TRANSFERRABLE

<p><u>Senate Bill 1642</u></p> <p>Author: Miles</p> <p>Sponsor: Wu</p> <p>Effective: September 1, 2019</p>	<p>Adds Subsection (1) which reads as follows: “An owner of real property who is entitled to redeem the property under this section may not transfer the owner’s right of redemption to another person. Any instrument purporting to transfer the owner’s right of redemption is void.”</p> <p><i>Amends Texas Tax Code § 34.21</i></p>
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16. REGULATION OF STATE BANKS, STATE TRUST COMPANIES, AND THIRD-PARTY SERVICE PROVIDERS OF STATE BANKS AND STATE TRUST COMPANIES

<p><u>Senate Bill 1823</u></p> <p>Author: Campbell</p> <p>Sponsor: Murphy</p> <p>Effective: September 1, 2019</p>	<p>This bill concerns internal banking regulations that may be of concern to some of our clients in the banking industry. We have not attempted to provide an analysis of this bill except to point it out and advise that our banking clients forward it to their in-house counsel for review and implementation.</p> <p><i>Amends Texas Finance Code §§ Numerous</i></p>
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17. PAPER RECORDATION OF ELECTRONIC RECORD IN THE ERA OF ONLINE NOTARIZATION

<p><u>Senate Bill 2128</u></p> <p>Author: Creighton</p> <p>Sponsor: Parker</p> <p>Effective: September 1, 2019</p>	<p>Last legislative session, Texas became the third state, along with Montana and Virginia, to allow notaries public to notarize documents online using audio-video communication. Online notarization ran into problems, however, because a large number of Texas counties do not have digitized public records. There was no mechanism to record a paper copy of an electronic record that had been notarized online. This bill remedies that apparently unforeseen circumstance by providing a framework by which a notary public may authenticate a paper or tangible version of an electronic record and have it recorded. Part of that framework is the ability of a notary public to declare a paper or tangible copy a true and correct copy of an electronic record through the execution of a Declaration of Authenticity. This declaration must substantially conform to the statutorily promulgated form in Section 12.0013(e). See the statute for a working understanding of the framework as well as the Declaration of Authenticity form.</p> <p><i>Amends Texas Local Government Code § 193.003(b), Texas Property Code § 12.0011(b), and adds § 12.0013</i></p>
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18. MORTGAGE LOAN ORIGINATION

[Senate Bill 2330](#)

Author: Creighton

Sponsor: Parker

Effective: November 24, 2019

This bill provides temporary authority for some individuals to originate mortgage loans if they comply with the requirements of the newly added Section 180.0511. We have not attempted to provide a thorough analysis of this bill but, instead, direct our clients in the loan origination business to the bill text for a more complete understanding.

Amends Texas Finance Code § Numerous

NOTICE

THIS MEMORANDUM IS PROVIDED FOR THE GENERAL INFORMATION OF CLIENTS AND FRIENDS OF OUR FIRM AND IS NOT INTENDED AS SPECIFIC LEGAL ADVICE. YOU SHOULD NOT RELY ON THIS GENERAL INFORMATION ALONE BUT SHOULD CONSULT AN ATTORNEY REGARDING THE APPLICATION OF THE LAWS AND REGULATIONS DISCUSSED IN THIS MEMORANDUM TO YOUR SPECIFIC BUSINESS OR CIRCUMSTANCES.