



OLD REPUBLIC
National Title Insurance Company

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Bulletin

To: All Agents, Direct Operations and Attorneys for the State of Texas
From: David W. Rhodes
Date: September 22, 2003
Re: Recent Legislation Affective the Title Industry

The Texas Legislature passed numerous bills affecting what we do in abstract and examination as well as the closing process. The Bills have various effective dates as indicated below.

HJR 23 -- Refinance of a Home Equity Loan

This new statute requires an amendment to the Texas Constitution. If approved by the voters the bill would allow the refinancing of a Home Equity loan by a reverse mortgage and be effective as of 9/13/03.

SB 1067 – Effective 9/13/03

Home Equity Lending and High Cost Home Loans

- Amends various sections of the Finance Code. It allows the Texas Finance Commission and Credit Union Commission to, on request of an interested person or its own motion, issue interpretations of §50(a)(5)-(7), (e)-(p), (t), and (u), of Article XVI of the Texas Constitution, which cover home equity lending.
- Adds a provision that a lender may not charge for a service or product in connection with a "high-cost" home loan that is not actually received by the borrower.

SJR 42 – Effective 9/13/03

Home Equity Lines of Credit / Lender Cure Provisions / Various Home Equity Issues

- Proposed constitutional amendment authorizing home equity lines of credit with advances up to 50% of the fair market value of the home with a minimum draw requirement of \$4,000, but combined debt may still not exceed 80%. No fees may be charged in connection with a debit or advance (all costs must be up front) and the lender may not unilaterally alter the terms of the line of credit. Debit/Credit cards, pre-printed solicitation checks, or other similar devices may *not* be used to access the line of credit.
- Creates a comprehensive provision with specific guidance for lenders to cure errors in connection with a home equity loan.
- Prohibits home equity closings until one business day after the owner of the homestead receives an itemized disclosure with the *actual* fees, points, interest, costs, and charges that will be charged at closing. (In cases of a “bona-fide emergency,” lender may obtain written approval from borrower to alter costs on day of closing)
- Adds regulated mortgage brokers to the list of lenders authorized to make home equity loans.
- Establishes bi-monthly payments as permissible in connection with a home equity loan.

This new statute adds language to Section 50, Article XVI, Texas Constitution (a)(6) which makes it much more dangerous to close and insure a home equity loan where there is a prior unreleased home equity loan. Subsection Q(x)(e) requires the lender to acknowledge to Borrower the accrual of interest and all of the owner’s obligations are suspended where lender has failed to comply or has failed to correct its failure to comply within 60 days after the lender is notified by Borrower of lender’s failure to comply.

If you have a prior unreleased home equity loan that is unreleased prior to closing, please contact Old Republic for approval to issue.

HB 276 – Effective 9/1/03

Attorney’s Fees and Costs in a Fraudulent Transfer Action

- Attorney’s fees and costs can now be recovered in any proceeding under Chapter 24 of The Business and Commerce Code of Texas.

- Amends Ch. 24 of the Business and Commerce Code, adding §24.013, which was left out of the original Texas Uniform Fraudulent Transfer Act.

HB 2292 – Effective 9/1/03

Lien on Homestead to Pay Medicare Bills

- Adds §531.077 to the Government Code Ch. 531, Sub. Ch. B.
- Requires the commissioner to implement 42 USC 1396p(b)(1) in the state Medicare program. This represents a major shift in the way Texas handles recovery of Medicare costs. Previously, Texas did not attempt to take action against the residence homestead of a person confined to a nursing home or similar facility (either before or after death) if that person entered the facility with the intent to return to the home.
- 42 USC 1396p allows the State to pursue collection against the homestead of the patient by placing a lien on the property, unless certain qualifications exist:
 - The patient's spouse lives in the home.
 - The patient's children under 21 live in the home, or those children that are blind or permanently disabled reside in the home.
 - Siblings of the patient have lived in the home for at least *one year* prior to the patient entering the care facility.
- Liens placed on the home *dissolve* if the patient leaves the care facility and returns home.
- This is in addition to collection action taken against the estate of the patient.

HB 1493 – Effective 1/1/04

Foreclosure: Authority of Mortgage Servicer to Conduct Sale.

- Amends/Adds various sections of/to Ch. 51 of the Property Code. Allows a mortgage servicer to conduct a foreclosure sale for the mortgagee if the two have entered into a service agreement and the servicer discloses it works for the mortgagee in the notice of sale.
- Adds that one who buys foreclosed property buys it "as-is," without any express or implied warranties (other than title) and is not considered a "consumer."

SB 1527 – Effective 9/1/03

Right to Cure a Default in Executory Contract for Conveyance

- Amends §5.064 and §5.065 of the Property Code by *decreasing* from 60 days to 30 days (after notice given) the time allowed to cure a default before a seller may enforce the remedies of rescission or forfeiture and acceleration.

SB 1708 – Effective 1/1/04

Repurchase of Government Condemned Property (Eminent Domain)

- Amends Ch. 21, Sub. Ch. B, of the Property Code, adding §21.023 and Sub. Ch. E.
- Provides for a person, whose property was acquired by a government entity through eminent domain proceedings, to repurchase the property after the public use has terminated. The property may be repurchased at the fair market value at the time of public use termination. (replaces the bidding process)
- The government must notify the previous owner within 180 days if the land has been held public for less than 10 years. (City, County, TxDOT right of ways are exempt from this provision)
- The previous owner must notify acceptance within 180 of receipt of notice and close within 90 days of that acceptance.

SB 521 – Effective 5/1/03 (Currently in Force)

Manufactured Home Financing

- Amends numerous sections of Ch. 1201 of the Occupations Code.
- Intended to restore the availability of chattel (personal property, as opposed to real) loans for manufactured homes. (an unintended consequence of some legislation made this very difficult) Allows the owner to elect to treat it as a chattel mortgage or real estate lien.
- Protects taxing authorities by requiring borrowers to escrow taxes if the borrower chooses a chattel loan.
- Allows a realtor who is not licensed to sell manufactured homes to sell property with a manufactured home attached to it.

- Imposes a three-day right of rescission for manufactured home purchases and places restrictions on the forfeiture of earnest money under contracts for their purchase.
- Changes the notice provisions, directing the TX Dept. of Housing to generate, and the lender to provide consumers with explanations of both chattel and real estate mortgages, estimated charges, and fees, all to be provided 24 hours in advance of closing. If notices are not given, the purchaser has two years in which to rescind the agreement and obtain an almost complete refund.

HB 335 – Effective 9/1/03 (applies to sales conducted after 10/1/03)

Eligibility to Purchase Property at Tax Sales

- Amends §34.00445 of the Civ. Prac. and Rem. Code, and §34.015 of the Tax Code.
- Prohibits persons owing ad valorem taxes (real, business personal, or mineral) from purchasing real property at a judicial execution or tax sale.
- Prohibits the sale-conducting officer from executing a deed without attesting (on the deed) to examination of a valid statement from the county taxing authority showing no delinquent taxes.
- This new statute requires a Buyer of property at a tax sale or other judicial execution sale to prove that he owns no delinquent ad valorem to the county, school district or municipality before he can receive a deed to subject property. The officer executing the deed must recite in the deed that Buyer exhibited to that office the required written statement of no taxes due. The grantee in the deed must be the person who was the successful bidder at the sale and who provided the required written statement. Failure to comply does not invalidate the conveyance.

HJR 51 – Effective 1/1/04 (subject to voter approval)

Redemption Period for Mineral Estates Sold in Tax Sales

- Proposed amendment to change the redemption period for mineral estates sold at tax sales from six months to two years.
- In connection with HB 1125, below.

HB 1125 – Effective 1/1/04

Redemption Period Extension for Mineral Interests Sold for Delinquent Taxes

- Amends §34.21(a), (c) and (e) of the Tax Code.
- Extends the redemption period for a mineral interest sold for unpaid ad valorem taxes from six months to *two years*. Requirements are the same as for redemption of homestead residence and agricultural property.

SB 725 – Effective 9/1/03

Payment of Taxes Erroneously Omitted from Tax Rolls by Taxing Authority

- Amends §31.04 of the Tax Code
- If taxes were not billed due to taxing authority error, the delinquency date for penalties and interest is extended to the next February 1 that would provide at least 180 days from the date of notice.

HB 1454 – Effective 9/1/03

Power of Property Owners Associations to Enforce Covenants

- Currently, §204.002(a) of the Property Code applies to residential subdivisions in counties with a population of more than 2.8 million. (Harris) Now, counties bordering the Gulf having more than 250,000 also are included. (Galveston)

HB 208 – Effective 9/1/03 (for contracts signed on or after 9/1/03)

Mechanics Liens on Real Property for Demolition Services

- Mechanic's lien procedures and rights under Chapter 53 of the Property Code now also apply to those who perform *demolition of a structure* under written contract with the owner, owner's agent, trustee, receiver, contractor or sub-contractor.

HB 2930 – Effective 9/1/03 (docs must conform 1/1/04)

Confidentiality of Information on Recorded Documents

- Every standard deed, deed of trust or mortgage form must be modified effective 1/1/04 to include a notice in bold or upper case on the *first page*

that a person may strike out their social security and driver's license numbers prior to having the instrument recorded in the public record

HB 3414 – Effective 1/1/04 (statements filed or due to be filed on/after 1/1/04)

Standardization of UCC Financing Statements

- Amends §9.516b, adds §9.5211 and repeals §9.521
- Allows the filing office to reject a financing statement that is not on an "industry standard form, including a national standard form or a form approved by the International Association of Commercial Administrators, adopted by the rule of the Secretary of State."

HB 543 – Effective 6/1/03 (Currently in Force)

Manufactured Home Delivery in Flood Plains

- Amends §1201.512 of the Occupations Code
- Prohibits a manufactured home retailer, broker, or sales person from delivering or installing (or in any way assisting) a mobile home to be used as a permanent dwelling within a FEMA special hazard flood zone. The consumer must provide evidence the proposed location does not lie within a flood zone.

HB 1223 – Effective 6/18/03 (Currently in Force)

Homestead Designation Continuations

- Amends §11.13(1) of the Tax Code
- Property does not lose its homestead designation if the owner temporarily ceases occupation of it, does not establish another principal residence, and:
 - The absence is less than two years and the owner intends to return and occupy as a principal residence, or
 - The absence is due to military service outside the US, or (Texas or US armed forces)
 - The absence is due to residency in a health/infirmity/aging facility.

This bill makes it clear that property does not lose its homestead exemption on the tax rolls if there is a temporary abandonment for the reasons set forth above.

SB 173 – Effective 5/28/03 (Currently in Force)

Deferred Delinquency of Property Taxes Due to Military Service

- Amends legislation enacted during the first Gulf War to allow service personnel actively serving in the war effort to pay delinquent ad valorem taxes without penalty or interest for a period of time after cessation of hostilities. The bill now includes language to apply in any national emergency or war, as declared under US law.
- Amnesty period is until 60 days after the occurrence of any of the following:
 - The person is discharged from military service or,
 - The person returns to the state for more than 10 days or,
 - The person returns to non-active duty or,
 - The war/hostilities end.

HB 2902 – Effective 6/20/03 (Currently in Force)

Assessment of Road Costs in Subdivisions

- Amends Transportation Code §253.003.
- Now allows assessments for road improvements to be levied against a defined *part* of subdivision, instead of the entire subdivision.

As always, if you have any questions about the effects of any new legislation, please call the Underwriting Department of Old Republic National Title Insurance Company at 888-678-1700.