



**OLD REPUBLIC**

**National Title Insurance Company**

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## Bulletin

**To:** All Agents, and Direct Operations in Texas

**From:** Dwight J. Dunlap, Jr.,

**Date:** 08/17/2005

**Re:** 79<sup>th</sup> Texas Legislative Session and First Called Session

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The Texas Legislature has as of the date of this bulletin completed the 79<sup>th</sup> Regular Legislative Session as well as a second called session. During this legislative session bills were passed that affect the title insurance industry. Areas of law affected concern the marketing of our services, divorce, foreclosure, probate, and platting. This bulletin is a brief discussion of those bills. It is by no means an exhaustive listing of all of the bills that affect real estate law.

### **Title Insurance**

HB 2565 amends the Insurance Code to allow the title agents to market their customers by providing real estate law seminars, by participating in real estate associations and by advertising in real estate publications on a fair market rate basis. The effective date of this act is somewhat confusing at this time, but in any event as of January 1, 2006. The Texas Department of Insurance as of this writing has not amended its regulations to bring Procedural Rule P-53 in compliance with this new legislative amendment. Please see O. R. T. Bulletin 2005-04.

### **Real Property Records**

SB 461 amends the local government code to provide that a county clerk can not reject legal documents for filing solely because they do not disclose the social

security or driver's license numbers of the parties named in the document. This bill is effective September 1, 2005.

HB 3101 amends Section 12.002(e) of the property code to provide that plat or replat filed after September 1 of a tax year must have attached to it a receipt from the various taxing authorities showing taxes paid for that year. If the figures are not then available, the plat must have an attached statement to that effect signed by the various tax assessor collectors housing authority over that property. This bill is effective September 1, 2005.

### **Contracts for Deeds**

HB 1823 adds new Sections 5.08 through 5.085 to the property code to allow purchasers under contract for Deeds to convert their contracts to a Deed, Note and Deed of Trust at any time they wish to do so. This new provision is subject to the right of the contract seller to respond in writing as to legally why he should not be required to do so. The terms of the note and deed of trust must be the same terms as contained in the original contract. This act also provides that a seller is required to have and, at all times that he is under contract, to maintain legal fee title. A violation of this provision is a false, misleading or deceptive act written the provisions of the Texas Deceptive Trade Practices Act. This act will be effective on September 1, 2005.

### **Foreclosure**

HB 1234 Amends Section 51.0075 of the Property Code by providing that a mortgage servicer may authorize an attorney to appoint a Substitute Trustee on behalf of a mortgagee. The notice of the appointment must contain the name and street address of the substitute trustee. This act applies to security instruments executed on or after September 1, 2005.

HB 961 amends section 51.002 of the Property Code to allow the county clerks to designate a place new to the courthouse in order for trustees/substitute trustees to conduct foreclosure sales. The notices will continue to be posted at the courthouse door. This act became effective on June 17, 2005.

### **Home Equity**

HB 637 amends Section 781, and Section 889 A and 890 of the Texas Probate Code to allow a guardian to secure a home equity loan on a ward's interest in the homestead. A minor upon attaining his majority may not disaffirm a home equity loan authorized by the court under this act.

### **Mechanic and Materialman Lien's**

HB 629 amends section 53.103 of the Property Code so that a lien claimant has a lien on retained funds only in the event that the claimant files an affidavit claiming a lien not later than the 30<sup>th</sup> day after the earlier of the date the work is completed, original contract is terminated or the original contractor abandons the performance under the original contract. Section 53.107 is amended to allow the owner to establish the date of termination by giving notice to each sub-contractor who, before the date of termination or abandonment, has notified the owner to withhold funds.

These new provisions do not apply to a residential project. This Bill is effective as of September 1, 2005.

### **Probate Code**

HB 1186 amends various sections to the Texas Probate Code.

New Probate Code Section 586 (a)(2) voids any devise to the attorney who prepared the will or to his parent, descendant of a parent, or any spouse of these persons.

HB 1186 also addresses new Section 71 A to clarify that a gift (devise) under a will passes with its indebtedness and liens intact unless the will clearly states authorize a general provision to the effect that all debts are to be paid is deemed to be insufficient to exonerate the devisee from the debt.

This bill also amends Section 271 of the Probate Code to allow the court to set apart the homestead of a surviving spouse, minor child, or unmarried adult child of the deceased.

HB 1186 amends Section 306 to require the personal representative of an estate to collect the payoff of any debt owed against a particular property from the

devisee(s) of that property unless the devisee(s) as exonerated under Section 71A.

This bill amends Section 472 of the code to provide for the revocation of certain non-testamentary transfers between spouses made during and after marriage. Appointments of a spouse during marriage to serve in a future representative capacity ie. as an executor, guardian, or trustee are also revoked upon a subsequent divorce.

HB204 amends Section 40 of the Probate Code to provide that the adopted adult does not inherit from the adult's biological parent. This act becomes effective on September 1, 2005.

HB230 amends Section 761(a) and (c) of the code to provided that a guardian may be removed if, in the guardian handling of the estate the ward is neglected or has not been maintained as liberally as the assets of the estate would allow. This act will take effect September 1, 2005.

### **Land Surveying**

HB 854 amends Section 150.002 (a) and (b) to provide that in a suit involving the professional negligence of a surveyor, the aggrieved party must provide an affidavit from a third party licensed surveyor or professional engineer which sets forth at least one act of negligence to support the claim.

### **Surveying**

HB 3340 amends Section 21.044 of the Natural Resources Code so that neither the commissioner nor a surveyor will be required to make a new survey once a survey has been drafted by the commissioner and filed in the official records of the state land office.

This act will be effective on September 1, 2005.

### **Notary Public's Record Keeping**

SB 220 Amends Section 406.014 of the Government code to provide that a notary public may maintain their records as to the identity of those persons whose acknowledgements they have taken in a computer or other electronic storage device.

This bill becomes effective as of September 1, 2005.

### **Tax Code**

HB 2491 amends Section 32.05 of the tax code to provide that a tax lien takes priority over the claim of any lien holder including home owner's association and condominium associations. This priority prevails regardless of whether the debt or lien existed before the attachment of the tax lien. Section as 32.05 amended further provides that a tax sale extinguishes the lien held by a property owner's association or condominium association if the debtor is joined in the lawsuit or, if not joined, did not file the lien of record.

### **Recording**

SB 335 adds new chapter 15 to the Texas Property Code. This new chapter controls the filing of documents in the Real Property Records on September 1, 2005 and thereafter.

"The purpose of the new chapter is to promote uniformity of the law with respect to the filing of documents with respect to states that enact a law substantially similar to this chapter."

New Section 15.004 provides for the validity of electronically filed documents. This section provides that a law requiring that a document be in writing and/or signed is satisfied by an electronically filed document that complies with requirements of new Chapter 15. Likewise, a statutory requirement that a document be notarized is also satisfied by a electronically filed document

meeting the requirements of this chapter: A physical or electronic image of a stamp, impression, or seal is not required.

New Section 15.05 requires a county clerk that accepts electronic documents for filing must continue to accept paper documents and file them along with electronic documents in the same index.

### **Manufactured Housing**

HB 2438 amends Section 1201.2055 of the Occupation Code to provide that a manufactured housing unit does not become real property until:

1. the Department of Housing issues a certified copy of the statement of ownership and location;
2. written 60 day of its issuance the owner files certified copy of the certificate is the real property records of the county in which the home is located; and
3. the owner has notified the Department of Housing as well as the tax assessor – collectors of the filing.

Section 1201.2076 of the Occupation Code was amended to provide that manufactured housing unit may not be converted from personal property to real property until the Department of Housing has inspected the home and determined that it is habitable. The Department will then notify the appropriate tax assessor – collector of the conversion. Each lien holder, including tax liens, must then be released or each lien holder, including tax liens, must give the department a letter consenting to the conversion.

This act became effective on June 18, 2005

### **Recording**

HB 950 amends Section 118.011 at of the Local Government Code in order to establish new recording fees. The amendment requires a county clerk to collect a fee of \$5.00 for the first page of a document to be filed in either the real or personal property records. Additional pages are to be filed at the fee of \$4.00 each.

This act will be effective September 1, 2005

## **Tax Lien**

SB 1587 amends Section 32.06(g) of the Tax Code to provide that purchasers and assignees of tax liens may not foreclose their liens until one year after the date upon which the transferee is recorded, unless the contract between the property owner and the assignee provides otherwise. This transfer is further required to give notice to all lien holders of recorded liens in the same manner and within the same time frames required under the foreclosure Section 52.002 of the Texas Property Code.

This Act applies only to those contracts between property owners and transferee entered into on or after September 1, 2005, the effective date of this Act.

This Bill was passed by the legislature due to those businesses, which call themselves a "tax service", that find property owners who have allowed their ad valorem taxes to become delinquent. These services contract with the property owner to pay off the delinquency in return for a signed promissory note from that owner. Again, this Bill is effective as of September 1, 2005.

You may obtain copies of specific bills at <http://www.capitol.state.tx.us>. Attorneys may also obtain copies of these bills on the State Bar of Texas web site <http://www.texasbar.com>.

As always, please contact us if you have any questions concerning these new statutory provisions at 888-678-1700.

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