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**To:** Clients and Friends

**From:** Daniel S. Engle

**Subject:** 2023 Texas Legislative Update

The Texas Legislature recently closed their biannual regular session. Black, Mann & Graham L.L.P. monitored the legislative session and has identified several passed bills that we interpreted as noteworthy to Texas residential mortgage lenders and mortgage brokers. Summaries of these bills are listed below with the full text of each bill in an appendix to this memo. Finally, the Legislature is currently in a special session called by the Governor to attempt to pass legislation to reduce property taxes. If noteworthy legislation is passed during this special session or a subsequent special session, then we will issue a supplement to this memo.

**House Bill 207. Creation of “Safe Harbor” to Designate Non-Contiguous Rural Property as Non-Homestead. Effective September 1, 2023.**

House Bill 207 addresses a concern of lenders making non-homestead loans in rural Texas by adding Section 41.0022 of the Texas Property Code. Texas law allows one’s rural homestead to be up to 100 acres for an individual and 200 acres for a family. A rural homestead may also be in non-contiguous parcels. These protections made lenders wary of making business-purpose loans on rural property due to concerns that a separate parcel that is non-contiguous with an owner’s dwelling could still be part of an owner’s rural homestead. Additionally, Texas’s Constitutional Provision invalidating “pretend sales of homestead involving any condition of defeasance” (see Texas Constitution Article XVI, Section 50(c)) made a transfer of rural property into a corporate entity to facilitate a business-purpose loan (as homestead cannot be held in a corporate entity) not sufficient to remove this concern for many lenders—as the transfer into the corporate entity could be subsequently challenged as a pretend sale.

This bill allows a rural property owner to transfer a parcel of rural land that does not contain their primary residence and is not contiguous to the land parcel containing their primary residence into a corporate entity. Once transferred into a corporate entity, the owner may make an affidavit affirming that the property is not their homestead, that the property is not contiguous to their homestead, that the property is rural property, that the transfer is not a pretend sale, that the transfer does not contain a condition of defeasance and identifying their actual homestead property. If married, the owner’s spouse must join in executing the deed conveying title into the corporate entity as well as the affidavit. If the affidavit meets the statutory requirements, a lender may “conclusively rely” upon it in making a loan on the non-homestead property. An owner executing the deed will be “estopped from claiming” that the conveyance into the corporate entity is a pretend sale or that the owner did not abandon homestead rights.

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**House Bill 219. Requirement to Provide Release of Lien on Paid Loan on Primary Residence. Effective September 1, 2023**

House Bill 219 creates a requirement under Section 343.108 of the Texas Finance Code for a mortgage servicer or mortgagee to timely deliver or record a release of lien after payoff of a “Home Loan”. A “Home Loan” is defined under Chapter 343 of the Texas Finance Code as a loan on a 1-4 family property either used or to be used as the borrower’s principal residence. If the mortgagor sends a written request for a release on or before the 20th day after the payoff, the mortgagee or mortgage servicer has 30 days after receipt of the request to either deliver a release of lien to the mortgagor or file a release of lien. If not notified by the owners, the mortgage servicer or mortgagee satisfies this requirement by either delivering a release of lien to the mortgagor or filing a release of lien within 60 days of payoff.

As a note, upon repayment of a Texas home equity loan governed by Article XVI, Section 50(a)(6) of the Texas Constitution, a lender must provide an owner a release of lien within reasonable time of receipt of full payment (see Texas Constitution Article XVI, Section 50(a)(6)(Q)(vii)). The official interpretations in the Texas Administrative Code state that thirty days is a reasonable time (see 7 TAC § 153.24(3)). This requirement pertaining to Texas home equity loans is not superseded by House Bill 219.

### **House Bill 2196. Trust Law Updates Including Clarification on “Qualifying Trusts.” Effective Immediately**

House Bill 2196 provided updates various provisions in Texas trust law with amended provisions in Sections 41.0021, 112.035, 112.036, 112.0715, 115.014 of the Texas Property Code and repealing a provision in Section 112.0715(c) of the Texas Property Code. A large portion of the bill dealt with trust law updates outside the scope of this memo. However, it also provided legal clarification concerning “Qualifying Trusts,” which are defined by Texas Property Code Section 41.0021. Qualifying Trusts are trusts in which a beneficiary or settlor may hold a homestead interest protected from most creditors. Fannie Mae and Freddie Mac require that for a Texas Home Equity loan made under the authority of Article XVI, Section 50(a)(6) of the Texas Constitution to close in a trust that it must be a Qualifying Trust. The bill changed the requirements of a Qualifying Trust to match those to obtain a homestead exemption from property taxes under the Texas Tax Code including confirming that a revocable trust with a married couple as joint settlors that requires both spouses to consent to revocation can be a Qualifying Trust.

### **Senate Bill 801. Trust Law Update Clarifying that Failure to Identify Trustee of a Trustee on an Instrument Does Not Invalidate Instrument. Effective September 1, 2023**

Senate Bill 801 added Section 114.087 to the Texas Property Code and amended Section 5.028(a) of the Texas Property Code. It resolved fears that a failure to identify the trustee of a Texas trust by only listing the trust name on an instrument—for example, a Warranty Deed conveying title to “The ABC Trust” rather than to “John Doe, as Trustee of The ABC Trust”—could invalidate the instrument. This is because under Texas law, a trustee of a Texas trust holds legal title on behalf of the beneficiaries of the trust.

Instead, Senate Bill 801 clarifies that a failure to identify the trustee of a trust is not a fatal problem, and that if a Texas trust is listed as a party to the instrument, then it can be considered for all purposes that the trustee of the listed trust is the actual named party. It also states that a correction instrument may be filed to identify the trustee of a trust if the instrument has been recorded but that a correction instrument is not required.

### **Senate Bill 1780. Authorizing Online Notary Publics to Take Acknowledgments on Tangible Documents. Effective January 1, 2024.**

Senate Bill 1780 modifies Section 406.101 of the Government Code to permit a Texas Online Notary Public to take an online acknowledgment of a tangibly signed document (that is, “wet-signed”). Currently, only electronically signed documents may be acknowledged by a Texas Online Notary Public. Beginning in 2024, this passed bill will permit Texas Online Notary Publics to take acknowledgments of tangible signatures on a document during an online audio-visual session with the signer of the document. After the audio-visual session, the signer must ship the document to the Online Notary Public within 10 days of the session so the Online Notary Public may execute the notarial certification.