Attorneys At Law

8584 Katy Freeway, Suite 420

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

Partners

Gregory S. Graham [1]

Shawn P. Black [2]

Ryan Black [3]

Senior Lawyers

David F. Dulock

Diane M. Gleason

Daniel S. Engle [4]

Margaret A. Noles

Associates

Nick Stevens

Syndy Davis

Brandon Pieratt

Ambria Wilmore

Of Counsel

David M. Tritter

Calvin C. Mann, Jr.

Thomas E. Black, Jr.[5]

Retired Partner(s)

Calvin C. Mann, Jr.

Thomas E. Black, Jr.[5]

1 Also Licensed in Georgia

2 Also Licensed in Kentucky and New York

3 Also Licensed in District of Columbia

4 Also Licensed in New York

5 Also Licensed in New York and Washington

August 19, 2021

To: Clients and Friends

From: David F. Dulock

Subject: Texas Legislative Update II – Bills Effective September 1, 2021

This legislative update summarizes bills from the 2021 Regular Legislative Session that are effective September 1, 2021, and that we consider are of interest to our clients. Previous to this legislative update, we issued Legislative Update I, summarizing bills effective immediately. Legislative Update I may be found on the Resources page of the firm's website www.bmandg.com.

To quickly find bill(s) addressed in this legislative update that may interest you, please go to the attached **Bill Index** on page 17 for bill name and page number.

1. CERTAIN QUALIFICATIONS AND REQUIREMENTS FOR RESIDENTIAL MORTGAGE LOAN COMPANIES, THE INVESTMENT AND USE OF EXCESS RESIDENTIAL MORTGAGE LOAN ORIGINATOR RECOVERY FUND FEES, AND THE CREATION OF THE MORTGAGE GRANT FUND (House Bill 3617)

   House Bill 3617 amends the following Sections of the Finance Code:

Section 13.016(a), which requires the savings and mortgage lending commissioner to establish, administer, and maintain one Recovery Fund and requires the Recovery Fund to be administered and maintained under Subchapter F, Chapter 156, is amended to create an exception provided by new Subchapter G to Chapter 156, added by House Bill 3617, that creates the Mortgage Grant Fund in new Sections 156.551 – 156.555.

Section 13.016(b) is amended to remove savings and mortgage lending commissioner's authority to set fee amounts under Chapters 156 and 157 for deposit in the Recovery Fund.

Section 156.2041(a) is amended to remove the requirement that an applicant, to be issued a mortgage company license, must maintain a physical office in Texas. ***Our Comment:*** *Senate Bill 1900, effective September 1, 2021, makes the same amendment to Section 156.2041(a).*

Section 156.2042(a) is amended to remove the requirement that an applicant, to be issued a credit union subsidiary organization license, must maintain a physical office in Texas. ***Our Comment:*** *Senate Bill 1900, makes the same amendment to Section 156.2042(a).*

Section 156.212(a) is deleted. It required each residential mortgage loan company licensed under Chapter 156 to maintain a physical office in Texas and that if a residential mortgage loan company's main office is outside Texas, this requirement to maintain a physical office in Texas is satisfied if the company has a branch office located in Texas. By deleting Section 156.212(a), House Bill 3617 removed both requirements.

(17 pages)

Section 156.501(b) is amended to make the Recovery Fund subject to Section 156.502(b) in addition to being subject to Section 156.501(b).

Section 156.501(c) is amended to provide that Recovery Fund amounts may be invested and reinvested in accordance with Chapter 2256 (Public Funds Investment) of the Government Code, and under the prudent person standard described in Section 11b (Expanded Investment Authority for Permanent University Fund), Article VII (Education), of the Texas Constitution, rather than invested and reinvested in the same manner as funds of the Employees Retirement System of Texas. It also substitutes the word “claims” for the words “judgment payments” regarding prohibition of an investment that will impair the Recovery Fund’s necessary liquidity required to satisfy “claims,” rather than to satisfy “judgment payments.”

Our Comment: *Senate Bill 1900 makes the same amendment to Section 156.501(c) regarding the investment and reinvestment of Recovery Fund amounts; but it does not make an amendment substituting the word “claims” for the words “judgment payments.”*

Section 156.502(a) is amended to require an applicant applying for an original license issued under Chapter 157, in addition to paying the original application fee, to pay a Recovery Fund fee in the amount of $20. It deletes existing text requiring an applicant applying for an original license or for renewal of a license issued under Chapter 157, in addition to paying the original application fee or renewal fee, to pay a Recovery Fund fee in an amount determined by the commissioner, not to exceed $20.

Our Comment: *A similar amendment is made to Section 157.013(b) for an application for an original residential mortgage loan originator license.*

Section 156.502(a-1) is added to authorize all or any portion of a penalty amount collected by the savings and mortgage lending commissioner under Sections 156.302 (Administrative Penalty), 156.303 (Disciplinary Action; Cease and Desist Order), 157.023 (Administrative Penalty), 157.024 (Disciplinary Action; Cease and Desist Order), 157.031 (Unlicensed Activity; Offense), 158.105 (Cease and Desist Order), and 180.202 (Administrative Penalty), as determined by the commissioner, to be deposited in the Recovery Fund at the end of each fiscal year.

Section 156.502(b) is amended to provide that if the Recovery Fund balance at the end of a calendar year is more than $3.5 million, the savings and mortgage lending commissioner must remit the amount in excess of 3.5 million to the Texas Comptroller of Public Accounts for deposit in the Mortgage Grant Fund established under Section 156, Subchapter G. Existing text is deleted that states the excess amount is available to the commissioner to offset the expenses of participating in and sharing information with the Nationwide Mortgage Licensing System and Registry.

Our Comment: *Senate Bill 1900 repeals Section 156.502(b).*

Chapter 156 is amended by adding Subchapter G Mortgage Grant Fund:

Section 156.551(a) requires the savings and mortgage lending commissioner to establish, administer, and maintain a Mortgage Grant Fund and to hold in trust amounts the commissioner receives for deposit in the Fund for carrying out the purposes of the Fund.

Section 156.551(b) authorizes, subject to Section 156.551(c), all or any portion of a penalty amount collected by the savings and mortgage lending commissioner under Sections 156.302, 156.303, 157.023, 157.024, 157.031, 158.105, and 180.202, as determined by the commissioner, to be deposited in the Recovery Fund at the end of each fiscal year.

Section 156.551(c) provides that the Mortgage Grant Fund balance may not at any time exceed $300,000.

Section 156.552 provides that the Mortgage Grant Fund consists of penalties the savings and mortgage lending commissioner collects and deposits under Section 156.551(b) and excess amounts transferred from the Recovery Fund under Section 156.502(b).

Section 156.553(a) requires the savings and mortgage lending commissioner to invest and reinvest the Mortgage Grant Fund assets (subject to Section 156.553(b)); make disbursements from the Fund in accordance with Section 156.554; advise the Texas Finance Commission regarding the Fund; maintain books and records for the Fund as required by the Texas Finance Commission; and appear at hearings or judicial proceedings related to the Fund.

Section 156.553(b) provides that Mortgage Grant Fund amounts may be invested and reinvested in accordance with Chapter 2256 of the Government Code and under the prudent person standard described in Section 11b, Article VII, of the Texas Constitution.

Section 156.554(a) requires the savings and mortgage lending commissioner to approve each disbursement from the Mortgage Grant Fund, which must be for a purpose authorized by Section 156.554(b).

Section 156.554(b) provides that the commissioner may provide grants from the Mortgage Grant Fund in an aggregate amount of not more than $100,000 each year to an auxiliary mortgage loan activity company or another nonprofit organization for the purposes of providing mortgage loan financial education to consumers and providing to other nonprofit organizations training so those organizations may provide mortgage loan financial education to consumers. Section 156.554(b) also requires the commissioner to make disbursements from the Fund to pay claims made under Section 156.555 that meet the requirements for payment under that section. And finally, Section 156.554(b) provides that the commissioner may make disbursements from the Fund to provide support for statewide financial education, activities, and programs specifically related to mortgage loans for consumers, including Texas Financial Education Endowment activities and programs described by Section 393.628(c), Finance Code.

Section 156.555(a) authorizes a residential mortgage loan applicant to make a claim on and receive payment from the Mortgage Grant Fund for the recovery of actual, out-of-pocket damages incurred because of fraud committed by an individual who acted as a residential mortgage loan originator but who did not hold a residential mortgage loan originator license issued under Chapter 157 at the time the individual committed the fraudulent act.

Section 156.555(b) provides that a residential mortgage loan applicant who makes a claim under Section 156.555(a) is subject to the eligibility and procedural requirements for a

claim made under Section 156.504 and the statute of limitations under Section 156.503.

Our Comment: *Section 156.504 sets out the eligibility and procedural requirements for a recovery from the Recovery Fund.*

Section 156.555(c) provides that Mortgage Grant Fund payments to a residential mortgage loan applicant under Section 156.555(a) are subject to the recovery limits in Section 156.505.

Our Comment: *Section 156.505 recovery limits are (i) $25,000 in the aggregate arising out of the same transaction regardless of the number of claimants, and (ii) $50,000 in the aggregate against one residential mortgage loan originator arising out of separate transactions.*

Section 156.556 requires the Texas Finance Commission to adopt rules to administer this Subchapter G, including rules governing implementation of Section 156.554 that: (1) ensure a grant awarded under that section is used for a public purpose described by that section; and (2) provide a means of recovering money awarded that is not used in compliance with that section.

Our Comment: *In using the word "grant" in relation to the rules governing implementation of Section 156.554, it is not clear whether Section 156.556 will limit those rules to Section 156.554(b)(1) or whether those rules will include Section 156.554(b)(1) and (b)(3).*

Section 157.013(b)(2) is amended to require an application for an original residential loan originator license be accompanied by a Recovery Fund fee in the amount of $20. It adds the words "for an original license" and deletes existing text requiring a Recovery Fund fee in an amount determined by the commissioner, not to exceed $20.

Section 156.501(d) (relating to authorizing the Recovery Fund to be used at the discretion of the commissioner for certain purposes stated therein) and Section 156.501(f) (relating to entitling the commissioner, as manager of the Recovery Fund, to certain reimbursement stated therein) are repealed.

Our Comment: *Senate Bill 1900 also repeals Sections 156.501(d) and (f).*

Section 156.501(c), as amended by House Bill 3617, applies only to an investment made on or after the bill's September 1, 2021 effective date. An investment made before September 1, 2021, is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

Our Comment: *Senate Bill 1900 also makes the above Section 156.501(c) amendment prospective in its application.*

2. RELEASE OF JUDGMENT LIEN ON HOMESTEAD PROPERTY (House Bill 3115)

Current Section 52.0012 of the Property Code allows a judgment debtor to file an affidavit to serve as a release of record of a judgment lien on the judgment debtor's homestead property subject to the conditions and requirements set out in current Section 52.0012.

House Bill 3115 amends Section 52.0012 by amending Subsections (b), (d), (e), and (f) and adding Subsections (b-1) and (g), as summarized below.

Section 52.0012, as amended, provides that a judgment debtor filing an affidavit, which must be in substantially the form set out in amended Subsection (f), may also file a certificate of mailing. The certificate must be substantially in the form set out in new Subsection (g).

Section 52.0012, as amended, provides that if the judgment debtor has filed a certificate of mailing, and a contradicting affidavit by the judgment creditor is not filed, or is filed later than the 30th day after the date a certificate of mailing was filed, a bona fide purchaser or a mortgagee for value or their successors or assigns may rely conclusively on the affidavit for the 90-day period that begins on the 31st day after the date the certificate of mailing was filed.

Section 52.0012, as amended, changes the time when a judgment debtor sends a written notice of an affidavit to a judgment creditor from "30 days or more before the affidavit was filed" to after the affidavit was filed.

House Bill 3115 applies only to an affidavit filed on or after the bill's September 1, 2021 effective date. An affidavit filed before September 1, 2021 is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

3. AUTHORITY OF A COUNTY TO REQUIRE PHOTO IDENTIFICATION TO FILE CERTAIN DOCUMENTS WITH THE COUNTY CLERK (House Bill 3415)

House Bill 3415 amends Section 191.010(b) of the Local Government Code to include the 10 most populous counties, by deleting "3.3 million" and inserting "800,000" so that the first sentence reads: "A county clerk in a county with a population of 800,000 or more may require a person presenting a document in person for filing in the real property records of the county to present a photo identification to the clerk."

4. CERTAIN NOTIFICATIONS REQUIRED FOLLOWING A BREACH OF SECURITY OF COMPUTERIZED DATA (House Bill 3746)

Chapter 521 of the Business & Commerce Code ("Identity Theft Enforcement and Protection Act") concerns identity theft and the unauthorized use of identifying information. Section 521.053(b) requires "[a] person who conducts business in [Texas] and owns or licenses computerized data that includes sensitive personal information [defined in Section 521.002(a)(2)] [to] disclose any breach of system security, after discovering or receiving notification of the breach, to any individual whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person."

House Bill 3746 amends Section 521.053 by amending Subsection (i) and adding Subsection (j).

Current Subsection (i) provides that a person who is required by Subsection (b) to disclose a breach of system security also must notify the attorney general of that breach if the breach affects at least 250 Texas residents. Amended Subsection (i) requires that notification to the attorney general to include "the number of affected residents that have been sent a disclosure of the breach by mail or other direct method of communication at the time of notification."

New Subsection (j) requires the attorney general to post on the attorney general's

publicly accessible website a listing of the data breach notifications received by the attorney general, excluding certain sensitive, compromising, or confidential information; update the listing no later than 30 days after notification of a new breach of system security was received; remove a notification from the listing not later than one year after it was added; and maintain only the most recently updated listing on the attorney general's website.

5. CRIMINAL OFFENSE OF FRAUDULENT SECURING OF DOCUMENT EXECUTION (Senate Bill 109)

Section 32.46(a) of the Penal Code makes securing execution of documents by deception a crime if a person, with intent to defraud or harm any person, by deception: (1) causes another to sign or execute any document affecting property or service or the pecuniary interest of any person; or (2) causes or induces a public servant to file or record any purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court or purported judicial entity not expressly created or established under the constitutions or laws of Texas or of the United States or of a purported judicial officer of a purported court or purported judicial entity described above.

Senate Bill 109 amends Section 32.46(a) by eliminating the requirement that the crime be committed "by deception" and replaces it with the requirement that the crime be committed if a person, with the intent to defraud or harm any person, causes another person, without that person's effective consent, to sign or execute the document or causes a public servant, without the public servant's effective consent, to file or record the purported judgment or other document.

Senate Bill 109 amends Section 32.46(d) by adding subdivision (d)(3) defining effective consent to include consent by a person legally authorized to act for the owner and stating consent is not effective if: (A) induced by deception or coercion; (B) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the individual committing the offense to be unable to make reasonable property dispositions; or (C) given by a person who by reason of advanced age is known by the individual committing the offense to have a diminished capacity to make informed and rational decisions about the reasonable disposition of property.

Senate Bill 109 changes the name of Section 32.46 from "Securing Execution of Document by Deception" to "Fraudulent Securing of Document Execution."

Senate Bill 109 applies only to an offense committed on or after the bill's September 1, 2021 effective date. An offense committed before September 1, 2021, is governed by the law in effect on the date the offense was committed, and that law is continued in effect for that purpose. For purposes hereof, an offense was committed before September 1, 2021, if any element of the offense was committed before that date.

6. RELATING TO QUITCLAIM DEEDS (Senate Bill 885)

Senate Bill 885 amends Section 16.025(b) of the Civil Practice and Remedies Code and adds Section 13.006 to Chapter 13 of the Property Code as summarized below.

Section 16.025(b), Civil Practice and Remedies Code, is amended by adding the words "a quitclaim deed" to provide that the five-year limitations period in Section 16.025(a) for a person to bring a suit for adverse possession "does not apply to a claim based on a quitclaim deed, a forged deed, or a deed executed under a forged power of attorney."

Section 13.006 is added to Chapter 13, Property Code, to provide that after the fourth anniversary of the date a quitclaim deed is recorded in the deed records of the county in which the real property is located, the quitclaim deed does not affect the question of the good faith of a subsequent purchaser or creditor and is not notice to a subsequent purchaser or creditor of any unrecorded conveyance of, transfer of, or encumbrance on the real property.

Senate Bill 885 applies only to a quitclaim deed recorded on or after the bill's September 1, 2021 effective date. A quitclaim deed recorded before September 1, 2021 is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

7. CONTINUATION AND FUNCTIONS OF THE CREDIT UNION DEPARTMENT AND THE CREDIT UNION COMMISSION (Senate Bill 707)

Senate Bill 707 amends Chapter 15 of the Finance Code as summarized below.

Section 15.212 is amended to extend the date the Credit Union Department (CUD) and the Credit Union Commission (CUC) could be abolished under the Texas Sunset Act (Chapter 325, Government Code) to September 1, 2033.

Section 15.104 is added to require the CUD to promptly notify and issue guidance to all Texas chartered credit unions on the adoption of a federal law or regulation that: (1) affects a power or authority conferred to credit unions under Section 123.003(a) (i.e., federal credit union activities, powers, loans, and investments); (2) takes effect immediately; and (3) conflicts with state law.

Section 15.2041 is amended by amending Subsection (b) and adding Subsection (d).

Subsection (b), regarding the training program for new CUC members, requires the training program to provide the new member with additional information regarding: the law governing CUD operations, the scope of and limitations on the CUC's rulemaking authority, laws related to disclosing conflicts of interest, and other laws applicable to members of a state policy making body in performing their duties. Subsection (b) deletes the following current training program information: legislation that created the CUD and the basic principles and responsibilities of credit union management.

Subsection (d) requires the CUD commissioner to create a training manual that includes the information required by Subsection (b) and distribute it annually to each CUC member. Each member must sign and submit to the commissioner a statement acknowledging the member received and reviewed the training manual.

Section 15.409 Subsections (b), (c), and (d) are redesignated as Section 15.408. Former Subsection 409(b) is redesignated Subsection 408(a). Former Subsection 409(c) is redesignated Subsection 408(b). Former Subsection 409(d) is redesignated Subsection 408(c) and is amended

to provide that the CUD must periodically notify the "complaint parties" (in place of "person filing the complaint and each person who is the subject of the complain~~t~~) of the status of a complaint until its final disposition (adding) "unless the notice would jeopardize an investigation."

Section 15.4081 is added to provide for a complaint tracking process in Subsection (a) and an annual statistical analysis in Subsection (b).

In Subsection (a), to help identify and address regulatory issues and constraints, the CUD is required to track all phases of the complaint and enforcement processes, including the receipt, investigation, and disposition of complaints, and is required to maintain the following information for each complaint:

- the basis for the complaint;
- the origin of the complaint, including whether the complaint came from another regulatory agency, a credit union member or employee, a member of the public, or a public or private entity;
- the number of days it took to resolve the complaint from the date the complaint was received;
- the disposition of the complaint, including the reason no disciplinary action was taken or the type of disciplinary action taken, as applicable, and the amount of any administrative penalty or late fee;
- if the complaint was dismissed or referred to another agency, the details regarding the dismissal or referral; and
- if the complaint was ongoing, the status of the complaint.

In Subsection (b), the CUD is required to annually compile a statistical analysis of the complaint and enforcement processes for the preceding fiscal year. The analysis must include:

- the total number of complaints filed with CUD against credit unions;
- the number of open investigations at the end of the fiscal year;
- the number of complaints that were resolved, disaggregated by the source of the complaint, the type of alleged violation, jurisdictional and non-jurisdictional complaints, regulatory and nonregulatory complaints, and the disposition and action taken, including any administrative penalty or late fee assessed; and
- the average number of days it took to resolve a complaint, including complaints that were resolved through an examination of a credit union.

Senate Bill 707 repeals Section 122.001(d) of the Finance Code, requiring articles of incorporation of a credit union to be signed and sworn to. The repeal of Section 122.001(d) applies only to articles of incorporation filed on or after the bill's September 1, 2021 effective date. Articles of incorporation filed before September 1, 2021 are governed by the law in effect on the date the articles were filed, and the former law is continued in effect for that purpose.

Senate Bill 707 also provides that Section 15.2041, as amended by Senate Bill 707, applies to a member of the CUC appointed before, on, or after September 1, 2021, with the exception that a member of the CUC who, before September 1, 2021, completed the Section 15.2041 training program, as it existed before September 1, 2021, is only required to complete

additional training on the subjects Senate Bill 707 added to the Section 15.2041 training program and that such CUC member may not vote, deliberate, or be counted as a member in attendance at a meeting of the CUC held on or after December 1, 2021, until the member completes the additional training.

8. CONTROL OF VIRTUAL CURRENCY AND THE RIGHTS OF PURCHASERS WHO OBTAIN CONTROL OF VIRTUAL CURRENCY FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE (House Bill 4474)

House Bill 4474 amends Chapter 9 (Secured Transactions) of the Business & Commerce Code as summarized below.

Section 9.102(b) is amended by adding “Virtual currency” and “Section 12.001” to its index of definitions in other chapters that apply to Chapter 9 (Secured Transactions).

Section 9.1071 is added to state that a secured party has control of virtual currency as provided by Section 12.004.

Section 9.310(b)(8) is amended by adding “virtual currencies” to the list of named Chapter 9 collateral for which filing a financing statement is not necessary to perfect a security interest that is perfected by control under Section 9.314.

Section 9.312’s heading is amended by adding “Virtual Currencies.”

Section 9.312(a) is amended by adding “virtual currencies” to the list of named Chapter 9 collateral in which a security interest may be perfected by filing.

Section 9.314 is amended by amending Subsections (a) and (b).

Subsection (a) is amended by adding “virtual currencies” to the list of named Chapter 9 collateral in which a security interest may be perfected by control of the collateral under named sections of the Business & Commerce Code amended by adding “Section 9.1071.”

Subsection (b) is amended by adding “virtual currencies” to the list of named Chapter 9 collateral in which a security interest is perfected by control under named sections of the Business & Commerce Code, amended by adding “Section 9.1071,” when the secured party obtains control and remains perfected by control only while the secured party retains control.

Section 9.331’s heading is amended by adding “Virtual Currencies” and “Virtual Currencies Under Chapter 12.”

Sections 9.331 is amended by amending Subsections (a) and (b).

Subsection (a) is amended by adding “or a qualifying purchaser of a virtual currency” to the rights of specific holders and purchasers that Chapter 9 does not limit and by adding “and 12” to the named Chapters under which these holders and purchasers take priority over an earlier security interest to the extent provided in these Chapters.

Subsection (b) is amended by adding “or 12” as a Chapter pursuant to which Chapter 9 does not limit the rights of or impose liability on a person to the extent that

the person is protected against the assertion of a claim under Chapter 8 "or 12."

House Bill 4474 adds Chapter 12 (Virtual Currency) to Title 1 of the Business & Commerce Code.

Section 12.001 (Definition). In Chapter 12 "virtual currency":

(1) means a digital representation of value that:

(A) is used as a medium of exchange, unit of account, or store of value; and

(B) is not legal tender, whether or not denominated in legal tender; and

(2) does not include:

(A) a transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for legal tender, bank credit, or virtual currency; or

(B) a digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

Section 12.003 (Rights in Virtual Currency). Subsection (a) provides that in this section:

(1) "Adverse claim" means a claim that a claimant has a property interest in a virtual currency and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the virtual currency.

(2) "Qualifying purchaser" means a purchaser that obtains control of a virtual currency for value and without notice of any adverse claim.

Subsection (b) provides that, subject to Subsections (c) through (h), law other than Chapter 12 determines whether a person acquires rights in a virtual currency and the rights that the person acquires.

Subsection (c) provides that a purchaser of a virtual currency acquires all rights in the virtual currency that the transferor had or had power to transfer.

Subsection (d) provides that a purchaser of a limited interest in a virtual currency acquires rights only to the extent of the interest purchased.

Subsection (e) provides that in addition to acquiring the rights of a purchaser, a qualifying purchaser acquires the purchaser's rights in a virtual currency free of any adverse claim.

Subsection (f) prohibits an action based on an adverse claim to a virtual currency, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, from being asserted against a qualifying purchaser that acquires the purchaser's interest in, and obtains control of, the virtual currency for value and without notice of the adverse claim.

Subsection (g) provides that a person has notice of an adverse claim if the person knows of the adverse claim or the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the adverse claim exists.

Subsection (h) provides that filing a financing statement under Chapter 9 is not notice of an adverse claim to a virtual currency.

Section 12.004 (Control of Virtual Currency). Subsection (a) provides that a person has control of a virtual currency if the following conditions are met:

(1) the virtual currency or the system in which the virtual currency is recorded, if any, gives the person:

(A) the power to derive substantially all the benefit from the virtual currency;

(B) subject to Subsection (b), the exclusive power to prevent others from deriving substantially all the benefit from the virtual currency; and

(C) subject to Subsection (b), the exclusive power to transfer control of the virtual currency to another person or cause another person to obtain control of a virtual currency that derives from the virtual currency; and

(2) the virtual currency, a record attached to or logically associated with the virtual currency, or the system in which the virtual currency is recorded, if any, enables the person to readily identify the person as having the powers specified in Subdivision (1).

Subsection (b) provides that a power specified in Subsection (a)(1)(B) or (C) can be exclusive, even if the virtual currency or the system in which the virtual currency is recorded, if any, limits the use to which the virtual currency may be put or has protocols that are programmed to result in a transfer of control and the person has agreed to share the power with another person.

Subsection (c) authorizes a person, for the purposes of Subsection (a)(2), to be identified in any way, including by name, identifying number, cryptographic key, office, or account number.

House Bill 4474 provides that the changes in law made by the bill apply to a transaction entered into on or after the bill's September 1, 2021 effective date. House Bill 4474 also provides that the changes in law made by this bill apply only to an action, case, or proceeding commenced on or after the bill's September 1, 2021 effective date.

9. MODIFYING APPLICATION OF THE RULE AGAINST PERPETUITIES FOR TRUST INTERESTS (House Bill 654)

The rule against perpetuities is a long-standing legal principle that "no interest in property is good unless it must vest, if at all, not later than 21 years, plus a period of gestation, after some life or lives in being at the time of creation of the interest." Black's Law Dictionary 1498 (4th ed. 1968). Current Section 112.036 of the Property Code applies the rule against perpetuities to trusts, other than charitable trusts, as follows:

> The rule against perpetuities applies to trusts other than charitable trusts. Accordingly, an interest is not good unless it must vest, if at all, not later than 21 years after some life in being at the time of the creation of the interest, plus a period of gestation. Any interest in a trust may, however, be reformed or construed to the extent and as provided by Section 5.043.

House Bill 654 amends Section 112.036 by adding Subsections (a) – (f).

Subsection (a) provides that the rule against perpetuities applies to an interest in a trust other than a charitable trust.

Subsection (b) provides that for purposes of Section 112.036, the effective date of a trust is the date the trust becomes irrevocable.

Subsection (c) provides that an interest in a trust must vest, if at all: (1) not later than 300 years after the effective date of the trust, if the effective date of the trust is on or after September 1, 2021; or (2) except as provided by Subsection (d), not later than 21 years after some life in being at the time of the creation of the interest, plus a period of gestation, if the effective date of the trust is before September 1, 2021.

Subsection (d) provides that an interest in a trust that has an effective date before September 1, 2021, may vest as described by Subsection (c)(1) if the trust instrument provides that an interest in the trust vests under the provisions of Section 112.036 applicable to trusts on the date that the interest vests. ***Our Comment:*** *The House Research Organization bill analysis of House Bill 654 clarifies the language of Subsection (d) by stating that "an interest in a trust ... would have to vest, if at all, not later than 300 years after the effective date of a trust if the trust's effective date was before September 1, 2021, and the trust instrument specifically provided that an interest in the trust would vest under the law governing perpetuities as applicable on the date the interest vested."*

Subsection (e) provides that any interest in a trust may be reformed or construed to the extent and as provided by Section 5.043 of the Property Code.

Subsection (f) provides that under Section 112.036, a settlor of a trust may not direct that a real property asset be retained or refuse that a real property asset may be sold for a period longer than 100 years.

10. COMPTROLLER OF PUBLIC ACCOUNTS DATA MATCHING WITH FINANCIAL INSTITUTIONS TO FACILITATE THE COLLECTION OF CERTAIN DELINQUENT TAX LIABILITIES (House Bill 1258)

House Bill 1258 amends Chapter 111 of the Tax Code by adding Section 111.025 that establishes a data matching system and requires an applicable financial institution to exchange data each calendar quarter with the Comptroller of Public Accounts or the Comptroller's agent to facilitate matching the names of individuals who are delinquent in a comptroller-administered tax or fee with the names of account holders of the financial institution.

Subsection (a) defines the following terms for the purposes of Section 111.25:

(1) "Account" means a demand deposit account, checking account, negotiable order of withdrawal account, savings account, time deposit account, and money market mutual fund account.

(2) "Account owner record" means a record a financial institution uses to report account owner information, including an account holder's name, social security number, or federal employer identification number, and the account balance and account type.

(3) "Delinquent taxpayer" means a person who at the time of a data match request under Subsection (b) is delinquent in a tax or fee administered by the Comptroller.

(4) "Financial institution" means a depository institution defined by Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(c)), a federal credit union and a state credit union, as those terms are defined by Section 101, Federal Credit Union Act (12 U.S.C. Section 1752), and the agent of a financial institution described by this paragraph (4).

(5) "Inquiry file" means an electronic file the Comptroller or the Comptroller's agent sends to a financial institution that contains a record of delinquent taxpayers.

Subsection (b) requires a financial institution, each calendar quarter, to exchange data with the Comptroller or the Comptroller's agent to facilitate matching the names of delinquent taxpayers with the names of account holders by using either an all accounts method or a matched accounts method. If the financial institution uses an all accounts method, the financial institution submits to the Comptroller or the Comptroller's agent an electronic file listing all the financial institution's open accounts and account owner records, and the Comptroller or the Comptroller's agent compares that information with the Comptroller's records of delinquent taxpayers. If the financial institution uses a matched accounts method, the financial institution submits to the Comptroller or the Comptroller's agent an electronic file listing all account owner records that match information in the inquiry file the Comptroller or the Comptroller's agent sent to the financial institution.

Subsection (c) requires the Comptroller to make a data match request under Subsection (b) compatible with the data processing system of the financial institution.

Subsection (d) prohibits the Comptroller from requesting a financial institution to perform a data match under Section 111.025 more than once each calendar quarter.

Subsection (e) prohibits a financial institution from notifying account holders that the Comptroller has requested a data match or whether a data match has been made.

Subsection (f) provides that the information provided by or to a financial institution, the Comptroller, or the Comptroller's agent for the purpose of performing a data match is confidential and is prohibited from being used for any purpose or disclosed to any person except as necessary to perform a data match. And after completion of the data match, it requires the financial institution, the Comptroller, and the Comptroller's agent to return, destroy, or erase any information obtained.

Subsection (g) provides that a financial institution is not liable to any person for disclosing information to the Comptroller under Section 111.025 or for any other action that the financial institution takes in good faith to comply with Section 111.025.

Subsection (h) authorizes the Comptroller to contract with a third party to facilitate the implementation of Section 111.025 and restricts the third-party contractor's use of confidential information solely for the purpose of implementing Section 111.025.

Subsection (i) requires that a suit to enforce Section 111.025 be brought by the attorney general in the name of the state and that venue for the suit is in Travis County.

Subsection (j) authorizes the Comptroller to adopt rules to implement Section 111.025.

11. RECOVERY OF ATTORNEY'S FEES IN CERTAIN CIVIL CASES UNDER SECTION 38.001, CIVIL PRACTICE AND REMEDIES CODE (House Bill 1578)

Section 38.001 of the Civil Practice and Remedies Code currently limits recovery of

reasonable attorney's fees for valid claims listed in Section 38.001 to recovery from an individual or corporation. House Bill 1578 amends Section 38.001 by removing the word "corporation" and expanding the entities from which attorney's fees are recoverable to an "organization" as defined by Section 1.002, Business Organizations Code, "other than a quasi-governmental entity authorized to perform a function by state law, a religious organization, a charitable organization, or a charitable trust." Section 1.002 defines organization as "a corporation, limited or general partnership, limited liability company, business trust, real estate investment trust, joint venture, joint stock company, cooperative, association, bank, insurance company, credit union, savings and loan association, or other organization, regardless of whether the organization is for-profit, nonprofit, domestic, or foreign."

House Bill 1578 provides that the change in law made by the bill applies only to an award of attorney's fees in an action commenced on or after the bill's September 1, 2021 effective date. House Bill 1578 also provides that an award of attorney's fees in an action commenced before September 1, 2021, is governed by the law applicable to the award immediately before that date, and that law is continued in effect for that purpose.

12. WORK FROM REMOTE LOCATIONS BY EMPLOYEES OF CERTAIN ENTITIES LICENSED BY THE OFFICE OF CONSUMER CREDIT COMMISSIONER (House Bill 3510)

House Bill 3510 amends Chapter 341, Subchapter F, Finance Code, by adding Section 341.503 to authorize a person licensed by the Office of Consumer Credit Commissioner under Subtitle B (Loans and Financed Transactions) to allow an employee of the license holder to work from a remote location if the license holder meets the requirements specified in the bill.

Section 341.503 comprises Subsections (a), (b) and (c).

Subsection (a) authorizes a person licensed under Subtitle B, notwithstanding the unlicensed location prohibition provisions of Subtitle B and except as provided by Subsection (b), to allow an employee of the license holder to work from a remote location if the license holder: **(1)** ensures that in-person consumer interactions will be conducted at a licensed location; **(2)** maintains appropriate safeguards for license holder and consumer data, information, and records, including the use of secure virtual private networks where appropriate; **(3)** employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes; **(4)** ensures that consumer information and records are not maintained at a remote location; **(5)** ensures that license holder and consumer information and records, including written procedures and training for work from remote locations authorized under Section 341.503, are accessible and available to the Consumer Credit Commissioner or the Commissioner's representative on request; **(6)** provides appropriate employee training to keep all conversations about and with consumers conducted from a remote location confidential as if conducted from a licensed location, and ensure that remote employees work in an environment conducive and appropriate to consumer privacy; and **(7)** adopts, maintains, and follows written procedures to ensure that the license holder and the license holder's employees comply with Section 341.503 and applicable law, and the employees do not perform an activity that would be prohibited at a licensed location.

Subsection (b) provides that Section 341.503 applies to an employee of a person licensed under Chapter 348 (Motor Vehicle Installment Sales) or 353 (Commercial Motor Vehicle Installment Sales) only if the employee engages in making, servicing, holding, or collecting a retail installment transaction as defined by Section 348.001 (Definitions) or 353.001 (Definitions), as applicable.

Subsection (c) authorizes the Finance Commission to adopt rules to implement Section 341.503.

13. PROHIBITION AGAINST SEXUAL HARASSMENT IN THE WORKPLACE (Senate Bill 45)

Currently, protections against workplace sexual harassment in Texas apply only to persons who work for an employer with 15 or more employees (*see* Chapter 21, Labor Code, Section 21.002(8) for definition of "employer"). To expand the protections against workplace sexual harassment, Senate Bill 45 amends Chapter 21, Labor Code, by adding Subchapter C-1, titled "Sexual Harassment," composted of Sections 21.141 and 21.142, which establishes that protections against workplace sexual harassment apply to employees of an employer with one or more employees. Although Senate Bill 45 does not affect mortgage lending directly, it is included because it does expose more mortgage lending employers with a Texas office to an unlawful employment practice if sexual harassment of an employee occurs.

Section 21.141 defines "employer" and "sexual harassment" for the purposes of Subchapter C-1:

"Employer" means a person who employs one or more employees or acts directly in the interests of an employer in relation to an employee.

"Sexual harassment" means an unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if: (**1**) submission to the advance, request, or conduct is made a term or condition of an individual's employment, either explicitly or implicitly; (**2**) submission to or rejection of the advance, request, or conduct by an individual is used as the basis for a decision affecting the individual's employment; (**3**) the advance, request, or conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or (**4**) the advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment."

Section 21.142 provides that an employer commits an unlawful employment practice if sexual harassment of an employee occurs and the employer or the employer's agents or supervisors know or should have known that the conduct constituting sexual harassment was occurring and fail to take immediate and appropriate corrective action.

Senate Bill 45 provides that the change in law made by the bill applies only to a claim based on conduct that occurs on or after the bill's September 1, 2021 effective date. Senate Bill 45 also provides that a claim that is based on conduct that occurs before September 1, 2021, is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

14. MANDITORY NONRENEWAL OF PERSONAL AUTOMOBILE INSURANCE POLICY FOR THE INSURED'S FAILURE TO COOPERATE IN A CLAIM INVESTIGATION, SETTLEMENT, OR DEFENSE (Senate Bill 1602)

Senate Bill 1602 amends Chapter 551, Subchapter C, of the Insurance Code by adding Section 551.1053. Although Senate Bill 1602 does not affect mortgage lending, it is included because it may affect the personal automobile insurance policy of a Texas-based individual lender or loan originator.

Section 551.1053(a) requires an insurer, if an insured under a private passenger automobile insurance policy fails or refuses to cooperate with the insurer in the investigation, settlement, or defense of a claim or action or the insurer is unable to contact the insured using reasonable efforts for those purposes, to provide the following written notice to the named insured: (1) how the insured failed or refused to cooperate, including failure as a result of the insurer's inability to contact the insured; (2) the claim or action for which the insurer is requesting cooperation; and (3) the insurer will not renew the policy if the insured continues to fail or refuse to cooperate.

Section 551.1053(b) prohibits an insurer, notwithstanding Sections 551.105 (Nonrenewal of Policies; Notice Required) and 551.106 (Renewal and Reinstatement of Personal Automobile Insurance Policies), from renewing the policy if the named insured fails or refuses to cooperate with the insurer in the investigation, settlement, or defense of the claim or action described by the above provided written notice.

Senate Bill 1602 provides that Section 551.1053 takes effect September 1, 2021, and applies only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2022.

No attempt was made by this legislative update to address all the bills effective on September 1, 2021, that could affect residential mortgage lending, lenders, or loan originators. This legislative update is simply an attempt to advise our clients of those bills we believe are of interest to them. This legislative update does not contain complete descriptions of these bills, and you are advised to review the entirety of any bill above that you believe affects your business. You may request copies of these bills from us, or you may click on the bill hyperlink in the title to each bill.

Attachment: BILL INDEX

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