

AN ACT

relating to the exclusion of certain conveyances from classification as sham or pretended sales.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 41, Property Code, is amended by adding Section 41.0022 to read as follows:

Sec. 41.0022. CERTAIN CONVEYANCES NOT SHAM OR PRETENDED SALES. (a) In this section:

(1) "Entity" means a domestic or foreign:

(A) corporation, professional corporation, or professional association;

(B) limited liability company or professional limited liability company; or

(C) limited partnership.

(2) "Parcel" means one or more parcels.

(b) The conveyance of a parcel not meeting the definition of an urban homestead under Section 41.002(a) or (c) by an individual to an entity in which the individual or individual's spouse has a direct or indirect ownership interest is not a sham or pretended sale, including a pretended sale under Section 50(c), Article XVI, Texas Constitution, if:

(1) the deed conveying the parcel is recorded at least 30 days before the entity grants a mortgage, trust deed, or other lien on the parcel;

1 (2) the individual does not reside on the parcel at the
2 time of the conveyance;

3 (3) the parcel is not contiguous to the parcel on which
4 the individual resides;

5 (4) the deed conveying the parcel does not contain a
6 condition of defeasance; and

7 (5) the individual recorded contemporaneously with
8 the deed an affidavit substantially in the form prescribed by
9 Subsection (d).

10 (c) An individual executing a deed under Subsection (b) is
11 estopped from claiming that:

12 (1) the conveyance is a sham or pretended sale,
13 including a pretended sale under Section 50(c), Article XVI, Texas
14 Constitution; or

15 (2) the individual had not abandoned homestead rights,
16 if any, in the parcel by executing the deed.

17 (d) At the time of recording a deed under Subsection (b), an
18 individual grantor of the deed shall record an affidavit containing
19 the following:

20 (1) a title caption stating "Affidavit Regarding
21 Conveyance To An Entity";

22 (2) the date of the affidavit;

23 (3) a description of the deed containing:

24 (A) the title of the deed;

25 (B) the date of the deed;

26 (C) the name and address of the individual
27 grantor; and

- 1 (D) the name and address of the entity grantee;
2 (4) a description of the parcel being conveyed to the
3 entity;
4 (5) a description of the parcel upon which the
5 individual currently resides;
6 (6) a statement that the parcel being conveyed is not
7 contiguous to the parcel upon which the individual currently
8 resides;
9 (7) a statement that the parcel upon which the
10 individual currently resides is not:
11 (A) located within the limits of a municipality
12 or its extraterritorial jurisdiction or a platted subdivision; or
13 (B) served by police protection, paid or
14 volunteer fire protection, and at least three of the following
15 services provided by a municipality or under contract to a
16 municipality:
17 (i) electric;
18 (ii) natural gas;
19 (iii) sewer;
20 (iv) storm sewer; or
21 (v) water;
22 (8) a statement that:
23 (A) the individual is unmarried; or
24 (B) the individual is married, and including the
25 name of the individual's spouse;
26 (9) a statement that the individual or individual's
27 spouse owns a direct or indirect interest in the entity;

1 (10) a statement that the individual has executed the
2 deed conveying the parcel to the entity;

3 (11) a statement that the individual intends to vest
4 title in the entity;

5 (12) a statement that there are no written or oral
6 agreements regarding a defeasance of the parcel upon the passage of
7 time or occurrence or non-occurrence of any event;

8 (13) a statement that the individual acknowledges that
9 the individual will be estopped from claiming the conveyance to the
10 entity is a sham or pretended sale, including a pretended sale under
11 Section 50(c), Article XVI, Texas Constitution;

12 (14) a statement that the individual acknowledges that
13 the individual will be estopped from claiming the individual had
14 not abandoned homestead rights, if any, in the parcel by executing
15 the deed;

16 (15) a statement that the individual understands that
17 if the parcel is valued for ad valorem tax purposes as qualified
18 open-space land, the entity must reapply in its own name by the
19 applicable filing deadline; and

20 (16) a statement that the individual has had an
21 opportunity:

22 (A) to review the affidavit prior to the
23 affidavit's execution; and

24 (B) to consult with an attorney before the
25 affidavit's execution, whether or not the opportunity to consult
26 with an attorney was exercised.

27 (e) If the individual conveying a parcel under Subsection

1 (b) is married, the individual's spouse must join in the execution
2 of:

3 (1) the deed; and

4 (2) the affidavit described by Subsection (d).

5 (f) The entity or a lender for value may conclusively rely
6 on an affidavit described by Subsection (d).

7 (g) Notwithstanding any other provision of this section, a
8 transaction that does not meet the requirements of this section is
9 not invalid if the homestead has been abandoned or disclaimed as
10 provided by other provisions of law.

11 SECTION 2. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 207 was passed by the House on April 20, 2023, by the following vote: Yeas 144, Nays 2, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 207 on May 19, 2023, by the following vote: Yeas 140, Nays 0, 3 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 207 was passed by the Senate, with amendments, on May 16, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to the release of a deed of trust or other contract lien securing a home loan after payoff by mortgagor.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 343, Finance Code, is amended by adding Section 343.108 to read as follows:

Sec. 343.108. RELEASE OF LIEN AFTER PAYOFF BY MORTGAGOR.

(a) In this section:

(1) "Mortgage servicer," "mortgagee," and "mortgagor" have the meanings assigned by Section 51.0001, Property Code.

(2) "Release of lien" means a release of a deed of trust or other lien securing a home loan.

(b) Except as provided by Subsection (c), not later than the 60th day after the date a mortgage servicer or mortgagee, as applicable, receives the correct payoff amount for a home loan from a mortgagor, the mortgage servicer or mortgagee shall:

(1) deliver to the mortgagor a release of lien for the home loan; or

(2) file the release of lien with the appropriate county clerk's office for recording in the real property records of the county.

(c) If, on or before the 20th day after the date of the payoff of the home loan, the mortgagor delivers a written request to the mortgagee or mortgage servicer for the release of lien to be

1 delivered to the mortgagor or filed with the county clerk, the
2 mortgagee or mortgage servicer shall deliver or file the release of
3 lien not later than the 30th day after the date the mortgagee or
4 mortgage servicer receives the written request from the mortgagor.

5 (d) Chapter 349 does not apply to this section.

6 (e) A mortgage servicer is required to comply with this
7 section only if the mortgage servicer has the authority to deliver
8 or file a release of lien for the home loan.

9 SECTION 2. To the extent of a conflict between Section
10 343.108, Finance Code, as added by this Act, and a provision of a
11 home loan agreement entered into before the effective date of this
12 Act, the provision of the home loan agreement prevails.

13 SECTION 3. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 219 was passed by the House on April 19, 2023, by the following vote: Yeas 146, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 219 was passed by the Senate on May 16, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to trusts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 41.0021(a), Property Code, is amended to read as follows:

(a) In this section, "qualifying trust" means an express trust:

(1) in which the instrument or court order creating the express trust, an instrument transferring property to the trust, or any other agreement that is binding on the trustee provides that a settlor or beneficiary of the trust has the right to:

(A) revoke the trust without the consent of another person other than a spouse who is also a settlor of the trust;

(B) exercise an inter vivos general power of appointment over the property that qualifies for the homestead exemption, either alone or when aggregated with property subject to an inter vivos general power of appointment held by a spouse who is also a settlor of the trust; or

(C) use and occupy the residential property as the settlor's or beneficiary's principal residence at no cost, or rent free and without charge, except for [~~to the settlor or beneficiary, other than payment of~~] taxes and other costs and

1 expenses specified in the instrument or court order:

2 (i) for the life of the settlor or
3 beneficiary;

4 (ii) for the shorter of the life of the
5 settlor or beneficiary or a term of years specified in the
6 instrument or court order; or

7 (iii) until the date the trust is revoked or
8 terminated by an instrument or court order that describes the
9 property with sufficient certainty to identify the property and
10 that is recorded in the real property records of the county in which
11 the property is located [~~and that describes the property with~~
12 ~~sufficient certainty to identify the property~~]; and

13 (2) the trustee of which acquires the property in an
14 instrument of title or under a court order that:

15 (A) describes the property with sufficient
16 certainty to identify the property and the interest acquired; and

17 (B) is recorded in the real property records of
18 the county in which the property is located.

19 SECTION 2. Section [112.035](#), Property Code, is amended by
20 adding Subsections (f-1), (f-2), and (f-3) to read as follows:

21 (f-1) A beneficiary of the trust or the estate of a
22 beneficiary of the trust may not be considered to be a settlor
23 merely because the beneficiary, in any capacity:

24 (1) held or exercised a testamentary power of
25 appointment other than a general power of appointment;

26 (2) held a testamentary general power of appointment;

27 or

1 (3) exercised a testamentary general power of
2 appointment in favor of or for the benefit of the takers in default
3 of the appointive assets.

4 (f-2) If a beneficiary of the trust exercised a testamentary
5 general power of appointment in favor of or for the benefit of any
6 appointee other than the takers in default of the appointive
7 assets, the appointive assets are:

8 (1) subject to the claims of creditors of the
9 beneficiary, but only to the extent the beneficiary's own property
10 is insufficient to meet the beneficiary's debts; and

11 (2) unless appointed to the beneficiary's estate, not
12 subject to:

13 (A) administration as a part of the beneficiary's
14 estate;

15 (B) recovery by the personal representative of
16 the beneficiary's estate, except as provided by Section 2207B,
17 Internal Revenue Code of 1986; or

18 (C) the payment of taxes or administration
19 expenses of the beneficiary's estate.

20 (f-3) For the purposes of Subsections (f-1) and (f-2),
21 "general power of appointment" has the meaning assigned by Section
22 2041(b)(1), Internal Revenue Code of 1986.

23 SECTION 3. Sections 112.036(b) and (c), Property Code, are
24 amended to read as follows:

25 (b) For purposes of this section, the effective date [~~of a~~
26 ~~trust~~] is the date the governing instrument creating an interest in
27 the trust becomes irrevocable with respect to that interest. If an

1 interest in one trust is distributed to another trust with a
2 different effective date, the effective date of that interest in
3 the second trust becomes the earlier of the effective dates of the
4 two trusts.

5 (c) An interest in a trust must vest, if at all:

6 (1) [~~not later than 300 years after the effective date~~
7 ~~of the trust,~~] if the effective date [~~of the trust~~] is on or after
8 September 1, 2021, not later than the later of:

9 (A) 300 years after the effective date; or

10 (B) 21 years after some life in being at the time
11 of the effective date, plus a period of gestation; or

12 (2) if the effective date is before September 1, 2021,
13 except as provided by Subsection (d), not later than 21 years after
14 some life in being at the time of the effective date [~~creation of~~
15 ~~the interest~~], plus a period of gestation [~~, if the effective date~~
16 ~~of the trust is before September 1, 2021~~].

17 SECTION 4. Sections 112.0715(a) and (b), Property Code, are
18 amended to read as follows:

19 (a) A second trust may be created by a distribution of
20 principal under Section 112.072 or 112.073 to a second trust that
21 retains the name used by the first trust. The second trust may
22 retain, subject to applicable federal law, the tax identification
23 number of the first trust [~~created under the same trust instrument~~
24 ~~as the first trust from which the principal is distributed or to a~~
25 ~~trust created under a different trust instrument~~].

26 (b) If a second trust is created by a distribution of
27 principal under Section 112.072 or 112.073 to a trust that retains

1 ~~[created under]~~ the name of ~~[same trust instrument as]~~ the first
2 trust ~~[from which the principal is distributed]~~, the property is
3 not required to be retitled.

4 SECTION 5. Section 115.014(b), Property Code, is amended to
5 read as follows:

6 (b) At any point in a proceeding a court may appoint an
7 attorney ad litem to represent any interest that the court
8 considers necessary, including an attorney ad litem to defend an
9 action under Section 114.083 for a beneficiary of the trust who is a
10 minor or who has been adjudged incompetent, if the court determines
11 that representation of the interest otherwise would be inadequate.

12 SECTION 6. Section 112.0715(c), Property Code, is repealed.

13 SECTION 7. Sections 112.0715(a) and (b), Property Code, as
14 amended by this Act, are intended by the legislature to be a
15 codification of the common law of this state in effect immediately
16 before the effective date of this Act.

17 SECTION 8. Except as otherwise provided by this Act, the
18 changes in law made by this Act apply to a trust created before, on,
19 or after the effective date of this Act.

20 SECTION 9. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 2196 was passed by the House on April 21, 2023, by the following vote: Yeas 141, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2196 was passed by the Senate on May 17, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to online notarizations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 406.101, Government Code, is amended by adding Subdivisions (1-a), (13), and (14) and amending Subdivision (11) to read as follows:

(1-a) "Document" means a tangible instrument or electronic document.

(11) "Principal" means an individual:

(A) whose ~~[electronic]~~ signature is notarized in an online notarization; or

(B) taking an oath or affirmation from the online notary public but not in the capacity of a witness for the online notarization.

(13) "Sign" means, with the present intent to authenticate or adopt a record, to:

(A) execute or adopt a tangible symbol; or

(B) execute an electronic signature, as defined by Section 322.002, Business & Commerce Code.

(14) "Signature" means a tangible symbol or electronic signature that evidences the signing of a record executed or adopted by a person with the intent to sign the document.

SECTION 2. Section 406.108, Government Code, is amended by amending Subsection (a) and adding Subsection (d) to read as

1 follows:

2 (a) An online notary public shall keep a secure electronic
3 record of electronic documents notarized by the online notary
4 public. The electronic record must contain for each online
5 notarization:

6 (1) the date and time of the online notarization;

7 (2) the type of notarial act;

8 (3) the type, the title, or a description of the
9 [~~electronic~~] document or proceeding;

10 (4) the printed name and address of each principal
11 involved in the transaction or proceeding;

12 (5) evidence of identity of each principal involved in
13 the transaction or proceeding in the form of:

14 (A) a statement that the person is personally
15 known to the online notary public;

16 (B) a notation of the type of identification
17 document provided to the online notary public;

18 (C) a record of the identity verification made
19 under Section [406.110](#), if applicable; or

20 (D) the following:

21 (i) the printed name and address of each
22 credible witness swearing to or affirming the person's identity;

23 and

24 (ii) for each credible witness not
25 personally known to the online notary public, a description of the
26 type of identification documents provided to the online notary
27 public;

1 (6) a recording of any video and audio conference that
2 is the basis for satisfactory evidence of identity and a notation of
3 the type of identification presented as evidence; and

4 (7) the fee, if any, charged for the notarization.

5 (d) For documents that are tangible instruments, an online
6 notary public shall keep a record of the documents notarized by the
7 online notary public with a tangible symbol. The record for each
8 online notarization with a tangible symbol must contain the same
9 elements required by Subsection (a) for an electronic record.

10 SECTION 3. Section 406.109, Government Code, is amended by
11 adding Subsection (f) to read as follows:

12 (f) An online notary public shall authenticate all online
13 notarizations with the online notary public's:

14 (1) electronic seal, if the online notarization was
15 performed with respect to an electronic document; or

16 (2) seal of office as provided under Section 406.013,
17 if the online notarization was performed with respect to a tangible
18 document.

19 SECTION 4. The heading to Section 406.110, Government Code,
20 is amended to read as follows:

21 Sec. 406.110. ONLINE NOTARIZATION PROCEDURES GENERALLY.

22 SECTION 5. Sections 406.110(b) and (d), Government Code,
23 are amended to read as follows:

24 (b) In performing an online notarization, an online notary
25 public shall verify the identity of a person signing a document
26 [creating an electronic signature] at the time of the online
27 notarization ~~[that the signature is taken]~~ by using two-way video

1 and audio conference technology that meets the requirements of this
2 subchapter and rules adopted under this subchapter. Identity shall
3 ~~may~~ be verified by:

4 (1) the online notary public's personal knowledge of
5 the person signing a document ~~[creating the electronic signature]~~;
6 or

7 (2) each of the following:

8 (A) remote presentation by the person signing a
9 document ~~[creating the electronic signature]~~ of a
10 government-issued identification credential, including a passport
11 or driver's license, that contains the signature and a photograph
12 of the person;

13 (B) credential analysis of the credential
14 described by Paragraph (A); and

15 (C) identity proofing of the person described by
16 Paragraph (A).

17 (d) The ~~[electronic]~~ notarial certificate for an online
18 notarization must include a notation that the notarization is an
19 online notarization and must indicate if the signature was a
20 tangible symbol or an electronic signature.

21 SECTION 6. Subchapter C, Chapter 406, Government Code, is
22 amended by adding Sections 406.1103 and 406.1107 to read as
23 follows:

24 Sec. 406.1103. ONLINE NOTARIZATION PROCEDURES FOR TANGIBLE
25 DOCUMENTS. (a) In performing an online notarization in which the
26 principal signs with a tangible symbol and not an electronic
27 signature, an online notary public shall reasonably confirm that a

1 document before the online notary public is the same document in
2 which the principal made a statement or on which the principal
3 executed a signature.

4 (b) An online notary public satisfies the requirement of
5 Subsection (a) to take an acknowledgment of a signature on a
6 tangible document if:

7 (1) during a video and audio recording described by
8 Section 406.108(a)(6):

9 (A) the acknowledgment is displayed to and
10 identified by the principal; and

11 (B) the principal signs the document and a
12 declaration in substantially the following form that is a part of or
13 securely attached to the document:

14 "I declare under penalty of perjury that the
15 document of which this declaration is a part or to which it is
16 attached is the same document on which (name of online notary
17 public), an online notary public, performed an online notarization
18 and before whom I appeared by means of two-way video and audio
19 conference technology on (date).

20 _____
21 (Signature of principal)

22 _____
23 (Printed name of principal)";

24 (2) the principal sends the document and declaration
25 to the online notary public not later than the third day after the
26 date the online notarization was performed; and

27 (3) the online notary public:

1 (A) in the video and audio recording under
2 Subdivision (1), records the principal signing the document and
3 declaration;

4 (B) receives the document and declaration sent by
5 the principal under Subdivision (2) not later than the 10th day
6 after the date the online notarization was performed; and

7 (C) after receipt of the document and declaration
8 from the principal, executes a notarial certificate that includes a
9 statement in substantially the following form:

10 "I, (name of online notary public),
11 witnessed, by means of video and audio conference technology, (name
12 of principal) sign the attached document and declaration on
13 (date)."

14 (c) An online notarization performed in compliance with
15 Subsection (b) complies with any requirement regarding the
16 execution of a notarial certificate and is effective on the date the
17 principal signed the declaration under Subsection (b)(1)(B).

18 (d) A notarial certificate executed in the form described by
19 Subsection (b)(3)(C) may be relied on as conclusive evidence of
20 compliance with Subsections (b)(2) and (b)(3)(B).

21 (e) Subsection (b) does not preclude use of another
22 procedure to satisfy Subsection (a) for an online notarization
23 performed with respect to a tangible document.

24 Sec. 406.1107. ONLINE NOTARIZATION PROCEDURES FOR OATHS OR
25 AFFIRMATIONS. An online notary public may administer an oath or
26 affirmation to a principal as an online notarization if, except as
27 otherwise provided by other law of this state, the online notary

1 public:

2 (1) identifies the principal under Section
3 406.110(b);

4 (2) creates or causes the creation under Section
5 406.108 of a video and audio recording of the principal taking the
6 oath or affirmation; and

7 (3) retains or causes the retention under Section
8 406.108 of the recording.

9 SECTION 7. This Act takes effect January 1, 2024.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1780 passed the Senate on May 1, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1780 passed the House on May 12, 2023, by the following vote: Yeas 139, Nays 1, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

AN ACT

relating to an instrument that names a trust as a party.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 114, Property Code, is amended by adding Section 114.087 to read as follows:

Sec. 114.087. INSTRUMENT NAMING TRUST AS PARTY. (a) The trustee of a trust is considered for all purposes to be the named party to an instrument that names the trust as a party to the instrument in any capacity, unless the trust is a legal entity under state law.

(b) Subsection (a) is effective as of the effective date of the original instrument.

(c) The trustee of a trust that is the named party to a recorded instrument may be, but is not required to be, identified by a correction instrument under Section 5.028.

(d) A document purporting to be a certification of trust under Section 114.086 that is recorded in the county in which real property of the trust is located is presumed to correctly identify the trust and the trustee and may be relied upon by a good faith purchaser or lender for value.

SECTION 2. Section 5.028(a), Property Code, is amended to read as follows:

(a) A person who has personal knowledge of facts relevant to the correction of a recorded original instrument of conveyance may

1 prepare or execute a correction instrument to make a nonmaterial
2 change that results from a clerical error, including:

3 (1) a correction of an inaccurate or incorrect element
4 in a legal description, such as a distance, angle, direction,
5 bearing or chord, a reference to a plat or other plat information, a
6 lot or block number, a unit, building designation, or section
7 number, an appurtenant easement, a township name or number, a
8 municipality, county, or state name, a range number or meridian, a
9 certified survey map number, or a subdivision or condominium name;
10 or

11 (2) an addition, correction, or clarification of:

12 (A) a party's name, including the spelling of a
13 name, a first or middle name or initial, a suffix, an alternate name
14 by which a party is known, the identity of the trustee of a trust
15 named as party, or a description of an entity as a corporation,
16 company, or other type of organization;

17 (B) a party's marital status;

18 (C) the date on which the conveyance was
19 executed;

20 (D) the recording data for an instrument
21 referenced in the correction instrument; or

22 (E) a fact relating to the acknowledgment or
23 authentication.

24 SECTION 3. The changes in law made by this Act apply to an
25 instrument executed on, before, or after the effective date of this
26 Act.

27 SECTION 4. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 801 passed the Senate on March 16, 2023, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendment on May 17, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 801 passed the House, with amendment, on May 12, 2023, by the following vote: Yeas 138, Nays 2, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor