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**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** 2017 Legislative Update III from 85th Regular Session of the Texas Legislature

This legislative update summarizes bills from the 2017 Legislative Session that we consider of interest to our clients, listed in order of importance and not when effective. The effective dates of these bills are noted in the applicable bill summary. Previous to this legislative update, we issued Legislative Update I, summarizing proposed constitutional amendments and their enabling legislation, and Legislative Update II, summarizing three bills that substantially affect durable powers of attorney. Legislative Updates I and II are found on the Articles page of the firm's website [www.bmandg.com](http://www.bmandg.com).

1. PRELICENSING EDUCATION REQUIREMENTS FOR RESIDENTIAL MORTGAGE LOAN ORIGINATORS ([HB 3342](#))

Effective January 1, 2018, HB 3342 amends current law relating to the prelicensing education requirements for residential mortgage loan originators by amending Section 180.056(h), Finance Code, to change the period during which an individual fails to maintain a residential mortgage loan originator license that triggers the requirement that the individual retake the prelicensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act from "at least five consecutive years" to "the period established by rule of the rulemaking authority."

2. PUBLIC SALE OF REAL PROPERTY UNDER A POWER OF SALE IN A SECURITY INSTRUMENT ([HB 1470](#))

Effective September 1, 2017, HB 1470 amends the Business & Commerce Code by adding Chapter 22 (Public Sale of Residential Real Property under Power of Sale) and the Occupations Code by amending Chapter 1802 (Auctioneers). (*Note: To avoid confusion, we believe Chapter 22 should have been made part of Chapter 51, Property Code, relating to the sale of real property under a power of sale conferred by a deed of trust or other contract lien. The Senate Research Center's Bill Analysis for HB 1470 does not give a reason for placing Chapter 22 in the Occupations Code.*)

SECTION 1 of HB 1470 adds Chapter 22 to provide as follows:

Section 22.001 (Definitions) provides the following definitions: (1) "auction company" has the meaning defined by Section 1802.001 of the Occupations Code; (2) "residential real property" means (i) a single-family house, (ii) a duplex, triplex, or quadrplex, or (iii) a unit in a multiunit residential structure in which title to an individual unit is transferred to the owner of the unit under a condominium or cooperative system; and (3) "security instrument," "substitute trustee," and "trustee" have the meanings defined by Section 51.0001 of the Property Code. (*Note: The definition of residential real property in Section 22.001(2) above is the same definition in Section 51.016(a) of the Property Code.*)

(14 pages)

Section 22.002 (Applicability) provides that Chapter 22 applies only to a public sale of residential real property conducted under a power of sale in a security instrument.

Section 22.003 (Contracts Concerning Sale) provides that a trustee or substitute trustee conducting a public sale of residential real property under a power of sale in a security instrument may contract with an attorney to advise the trustee or substitute trustee or to administer or perform any of the trustee's or substitute trustee's functions or responsibilities under a security instrument or Chapter 22, or may contract with an auction company to arrange, manage, sponsor, or advertise a public sale.

Section 22.004 (Information from Winning Bidder). Subsection (a) requires a winning bidder at such a sale, other than the foreclosing mortgagee or mortgage servicer, to provide the following information to the trustee or substitute trustee at the time the trustee or substitute trustee completes the sale:

- (1) the name, address, telephone number, and e-mail address of the bidder and of the individual(s) tendering or who will tender the sale price for the winning bid;
- (2) if the bidder is acting on behalf of another individual or organization, the name, address, telephone number, and e-mail address of the individual or organization and the name of the organization's contact person;
- (3) the name and address of the person to be identified as the grantee in the trustee's or substitute trustee's deed;
- (4) the purchaser's tax identification number;
- (5) a government-issued photo identification to confirm the identity of the individual(s) tendering funds for the winning bid; and
- (6) any other information reasonably needed to complete the trustee's or substitute trustee's duties and functions concerning the sale.

Subsection (b) authorizes the trustee or substitute trustee to decline to complete the transaction or deliver a deed if a winning bidder required to provide the information fails or refuses to do so.

Section 22.005 (Receipt and Deed) requires the trustee or substitute trustee to provide the winning bidder with a receipt for the sale proceeds tendered and, except when prohibited by law, within a reasonable time, to deliver the deed to the winning bidder or to file the deed for recording.

Section 22.006 (Sale Proceeds). Subsection (a) requires the trustee or substitute trustee to ensure that funds received at the sale are maintained in a separate account until distributed and to cause to be maintained a written record of deposits to and disbursements from the account.

Subsection (b) requires the trustee or substitute trustee to make reasonable attempts to identify and locate the persons entitled to all or any part of the sale proceeds.

Subsection (c) provides that, in connection with the sale and related post-sale actions to identify persons with legal claims to sale proceeds, determine the priority of any claims, and distribute proceeds to pay claims, a trustee or substitute trustee may receive reasonable actual

costs incurred (including for title evidence), a reasonable trustee's or substitute trustee's fee, and reasonable trustee's or substitute trustee's attorney's fees.

Subsection (d) provides that a Subsection (c) fee is considered earned at the time of the sale, may be paid from sale proceeds in excess of the payoff of the lien being foreclosed, and is conclusively presumed to be reasonable if: (i) the trustee's or substitute trustee's fee is not more than the lesser of 2.5 percent of the sale proceeds or \$5,000; or (ii) the trustee's or substitute trustee's attorney's fees incurred to identify persons with legal claims to sale proceeds and determine the priority of the claims is not more than 1.5 percent of the sale proceeds. (*Note: Reading Subsections (b) (c) and (d) together raises the question if a trustee or substitute who is an attorney may retain both a trustee's or substitute trustee's fee and attorney's fees when the trustee or substitute trustee performs both services.*)

Subsection (e) entitles a trustee or substitute trustee who prevails in a suit based on a claim that relates to the sale and that is found by a court to be groundless in fact or in law to recover reasonable attorney's fees necessary to defend against the claim and authorizes such fees to be paid from the excess sale proceeds, if any. (*Note: The phrase "that is found by a court to be groundless in fact or in law" raises the question if a trustee or substitute trustee who prevails in the suit for a reason other than that the claim "is found by a court to be groundless in fact or in law" is entitled to recover attorney's fees.*)

Subsection (f) provides that nothing in Section 22.006 precludes the filing of an interpleader action or the depositing of funds in a court registry.

SECTION 4 of HB 1470 provides that the changes in law made by HB 1470 apply only to a sale for which the notice of sale is given under Section 51.002, Property Code, on or after September 1, 2017 (the effective date of HB 1470) and further provides that a sale for which the notice of sale is given before September 1, 2017, is governed by the law applicable to the foreclosure sale immediately before September 1, 2017, and that law is continued in effect for that purpose.

### 3. DATE AND TIME FOR THE PUBLIC SALE OF REAL PROPERTY ([HB 1128](#))

Effective September 1, 2017, HB 1128 amends Section 51.002, Property Code, by amending Subsection (a) and adding Subsection (a-1) to provide an alternate date for a foreclosure sale pursuant to a power of sale in a deed of trust or other contract lien under the following circumstances.

Subsection (a) is amended to create an exception under Subsection (a-1).

Subsection (a-1) is added to provide that if the first Tuesday of a month occurs on January 1 or July 4, a public sale under Subsection (a) must be held between 10 a.m. and 4 p.m. on the first Wednesday of the month.

### 4. AUTHORITY OF CERTAIN PERSONS TO DEFER OR ABATE THE COLLECTION OF AD VALOREM TAXES ON A PERSON'S RESIDENCE HOMESTEAD ([HB 217](#))

Effective September 1, 2017, HB 217 amends Section 33.06(a), Tax Code, by expanding its entitlement to include a "disabled veteran" who is qualified to receive a residence homestead

exemption under Section 11.22 of the Tax Code to be permitted to defer collection of a property tax, abate a suit to collect a delinquent tax, or to abate a sale to foreclose a tax lien. (Currently, under Section 33.06(a), only an individual who is 65 years of age or older or who is disabled is entitled to defer the property tax, or abate a collections suit or foreclosure sale.)

## 5. TRUSTS ([SB 617](#))

Effective September 1, 2017, SB 617 amends current law in Title 9 of the Property Code relating to trusts. This summary of SB 617 only addresses its amendments directly related to real property transactions.

SECTION 12 of SB 617 amends Section 113.018 as follows:

Subsection (a) is created from existing text that currently provides, and will continue to provide as Subsection (a), that a trustee may employ attorneys, accountants, agents, including investment agents, and brokers reasonably necessary in the administration of the trust estate.

Subsection (b) is added to authorize a trustee, without limiting the trustee's discretion under Subsection (a), to grant an agent powers with respect to property of the trust to act for the trustee in any lawful manner for purposes of real property transactions.

Subsection (c) is added to authorize a trustee acting under Subsection (b) to delegate any or all of the duties and powers to:

- (1) execute and deliver any legal instruments relating to the sale and conveyance of the property, including affidavits, notices, disclosures, waivers, or designations or general or special warranty deeds binding the trustee with vendor's liens retained or disclaimed, as applicable, or transferred to a third-party lender;
- (2) accept notes, deeds of trust, or other legal instruments;
- (3) approve closing statements authorizing deductions from the sale price;
- (4) receive trustee's net sales proceeds by check payable to the trustee;
- (5) indemnify and hold harmless any third party who accepts and acts under a power of attorney with respect to the sale;
- (6) take any action, including signing any document, necessary or appropriate to sell the property and accomplish the delegated powers;
- (7) contract to purchase the property for any price on any terms;
- (8) execute, deliver, or accept any legal instruments relating to the purchase of the property or to any financing of the purchase, including deeds, notes, deeds of trust, guaranties, or closing statements;
- (9) approve closing statements authorizing payment of prorations and expenses;
- (10) pay the trustee's net purchase price from funds provided by the trustee;
- (11) indemnify and hold harmless any third party who accepts and acts under a power of attorney with respect to the purchase; or
- (12) take any action, including signing any document, necessary or appropriate to purchase the property and accomplish the delegated powers.

Subsection (d) is added to provide that a trustee who delegates a power under Subsection (b) is liable to the beneficiaries or to the trust for an action of the agent to whom the power was delegated.

Subsection (e) is added to require that a delegation by the trustee under Subsection (b) be in a written instrument acknowledged by the trustee before an officer authorized under the law of this state or another state to take acknowledgements to deeds of conveyance and administer oaths. Subsection (e) further provides that the signature on the delegation by the trustee is presumed to be genuine if the trustee acknowledges the signature in accordance with Chapter 121 (Acknowledgments and Proofs of Written Instruments), Civil Practice and Remedies Code. (**Note:** *It is our view that the two acknowledgment requirements for the trustee in Subsection (e), although worded differently, are substantially the same.*)

Subsection (f) is added to provide that a delegation to an agent under Subsection (b) terminates six months from the date of acknowledgement of the written delegation unless terminated earlier by the death or incapacity of the trustee, the resignation or removal of the trustee, or a date specified in the written delegation. (**Note:** *This means that the written delegation to the agent will not be durable – i.e., continue in effect on or after the trustee’s incapacity - even if the delegation so provides.*)

Subsection (g) is added to provide that a person who in good faith accepts a delegation under Subsection (b) without actual knowledge that the delegation is void, invalid, or terminated, that the purported agent’s authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent’s authority, may rely on the delegation as if the delegation were genuine, valid, and still in effect; the agent’s authority were genuine, valid, and still in effect; and the agent had not exceeded and had properly exercised the authority.

Subsection (h) is added to authorize a trustee to delegate powers under Subsection (b) if the governing instrument does not affirmatively permit the trustee to hire agents or expressly prohibit the trustee from hiring agents. (**Note:** *This provision clarifies the trustee’s power to appoint an agent to act for the trustee in real property transactions involving trust property when the trust instrument is silent on the powers granted by Subsection (a) or does not expressly prohibit the trustee from exercising those powers.*)

SECTION 17 of SB 617 provides as follows:

(a) Except as otherwise expressly provided by a trust, a will creating a trust, or this Section, the changes in law made by SB 617 apply to a trust existing on or created on or after September 1, 2017.

(b) For a trust existing on September 1, 2017, that was created before that date, the changes in law made by SB 617 apply only to an act or omission relating to the trust that occurs on or after September 1, 2017.

## 6. EXPUNCTION OF A NOTICE OF LIS PENDENS ([SB 1955](#))

Effective September 1, 2017, SB 1955 amends the current law concerning the expunction of a notice of lis pendens in Chapter 12 of the Property Code, as follows:

SECTION 1 of SB 1955 amends Section 12.0071(f) to provide that, after a certified copy of an order expunging a notice of lis pendens has been recorded, the notice of lis pendens and any information “derived or that could be” derived from the notice does not constitute constructive or

actual notice of any matter contained in the notice or of any matter relating to “the action in connection with which the notice was filed,” and “an interest in the real property may be transferred or encumbered free of all matters asserted or disclosed in the notice and all claims or other matters asserted or disclosed in the action in connection with which the notice was filed.”

*(Note: In 2009, Section 12.0071 was enacted, whereby a notice of lis pendens could be expunged. Since then concerns have arisen whether, under current Section 12.0071, direct knowledge of the underlying legal proceeding would defeat the protection afforded by expunction of a notice of lis pendens. A recent example is the decision in Sommers v. Sandcastle Homes, Inc., 2017 WL 2608353 (Tex. Jun. 2017), in which the Texas Supreme Court held as a matter of first impression, that expungement of a notice of lis pendens does not legally eradicate any independently obtained information, stating “the expunction statute [current §12.0071] can [not] be read so far as to eradicate notice arising independently of the recorded instrument expunged [i.e., the notice of lis pendens]”. SB 1955’s amendment of Section 12.0071(f) solves this expunction problem created by current Section 12.0071(f) for future recorded expunction orders.)*

SECTION 2 of SB 1955 makes the change in law made by SB 1955 apply only to a certified copy of an order expunging a notice of lis pendens recorded on or after September 1, 2017, (the effective date of SB 1955) and further provides that a certified copy of an order expunging a notice of lis pendens recorded before September 1, 2017, is governed by the law in effect at that time, and that law is continued in effect for that purpose.

#### 7. REVOCABLE DEED THAT TRANSFERS REAL PROPERTY AT THE TRANSFEROR’S DEATH ([SB 2150](#))

Effective September 1, 2017, SB 2150 amends the Texas Real Property Transfer on Death Act (Chapter 114, Estates Code), enacted into law on June 17, 2015, that authorizes and provides statutory provisions regarding transfer on death deeds. See our firm’s August 27, 2015, legislative update on Chapter 114 in the Articles section of the firm’s website [www.bmandg.com](http://www.bmandg.com).

SECTION 1 of SB 2150 amends Section 114.103(a) to provide that the anti-lapse statute in Subchapter D, Chapter 255 (Failure of Devise; Disposition of Property to Devisee who Predeceases Testator), Estates Code, applies to a transfer on death deed regardless of the number of beneficiaries a deceased individual had designated, by making appropriate amendments to Subsections (a)(2) and (a)(3) and deleting (a)(4).

SECTION 2 of SB 2150 amends the language and content of the “Revocable Transfer on Death Deed” form in Section 114.151 to make relevant changes and to provide additional sections that would allow transferors to note their preference in the event of different scenarios involving predeceased beneficiaries, including when at least one primary beneficiary survived the property owner, when no primary beneficiary survived the property owner, and when no alternate beneficiaries survived the property owner. *(Note: See the Attachment to this legislative update for the text of the Revocable Transfer on Death Deed form, as amended by SB 2150.)*

SECTION 3 of SB 2150 makes the changes in law made by SB 2150 apply to a transfer on death deed executed and acknowledged on or after September 1, 2017 (the effective date of SB 2150). It further provides that a transfer on death deed executed and acknowledged before September 1, 2017, is governed by the law in effect on the date the transfer on death deed was executed and acknowledged, and the former law is continued in effect for that purpose.

## 8. REGULATION OF MANUFACTURED HOMES ([HB 2019](#))

Effective September 1, 2017, HB 2019 amends current law in Chapter 1201 of the Occupations Code (Texas Manufactured Housing Standards Act) by revising and updating certain statutory provisions relating to the regulation of manufactured homes. HB 2019 also makes conforming amendments to Section 63.005(a) of the Property Code and various Sections of the Finance Code and Tax Code relating to manufactured homes. This summary of HB 2019 only addresses its amendments that directly affect mortgage loan transactions secured by real property including a manufactured home.

SECTION 1 of HB 2019 amends the definition of the manufactured home title document in Section 1201.003(30) from “Statement of ownership and location” to “Statement of ownership” so that the definition reads “‘Statement of ownership’ means a statement issued by the department and setting forth: (A) the ownership of a manufactured home in this state as provided by Section 1201.205; and (B) other information required by this chapter.” **(Note: (1)** *In addition, HB 2019 makes conforming changes to the Sections in Chapter 1201 where the term “statement of ownership and location” appears. (2) The House Research Organization’s bill analysis of HB 2019 states the reason for this change in nomenclature is “out of respect for buyers and their investment, eliminating an unfortunate acronym, SOL, which has a slang definition that many find offensive.”*

SECTION 2 of HB 2019 adds Section 1201.010 (Electronic Public Records Required) requiring the Texas Department of Housing and Community Affairs to provide to the public through its Internet website searchable and downloadable information regarding manufactured home ownership records, lien records, installation records, license holder records, and enforcement actions.

SECTION 15 of HB 2019 amends Section 1201.151 by amending Subsection (e) and adding Subsection (f).

Subsection (e) is amended to provide that after the execution of a sales purchase contract for the purchase of manufactured home from a manufactured home retailer, if a consumer exercises the consumer’s three-day right of rescission under Section 1201.1521 (Rescission of Contract for Sale or Exchange of Home), the retailer may deduct from the required refund to the consumer the real property appraisal and title work expenses incurred by the retailer in accordance with Section 1201.1511. **(Note:** *For the purposes of Chapter 1201, Section 1201.003 provides the following definitions: Section 1201.003(8), as amended by HB 2019, defines “Consumer” as “a person, other than a person licensed under this chapter, who seeks to acquire or acquires by purchase or exchange a manufactured home.” Section 1201.003(24), as amended by HB 2019, defines “Retailer” in pertinent part, as “a person who ... is engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering manufactured homes for sale or exchange to consumers, including a person who maintains a location for the display of manufactured homes ... .” Section 1201.003(26-a), as added by HB 2019, defines “Sales purchase contract” as a “contract between a retailer and a consumer for the purchase of a manufactured home from the retailer.”*

Subsection (f) is added to provide that the retention of real property appraisal and title work expenses authorized by Subsection (e) is not allowed if the consumer exercises the right of rescission in accordance with 12 C.F.R. Section 1026.23. **(Note:** *I.e., the right to rescind under Regulation Z, which implements the Federal Truth in Lending Act*)

SECTION 16 of HB 2019 adds Section 1201.1511 (Real Property Appraisal and Title Work Expenses) to provide as follows:

Subsection (a) provides that notwithstanding Section 1201.151 or 1201.1521, a retailer may collect from a consumer in advance or deduct from the consumer's deposit or down payment any expenses incurred by the retailer if, after receiving a conditional notification of approval from a lender chosen by the consumer, the consumer:

(1) contracts with the retailer to arrange for services that are performed by an appraiser of real property or a title company in connection with real property that will be included in the purchase or exchange or is intended to be pledged by the consumer as collateral for the consumer's purchase or exchange of a manufactured home;

(2) is provided notice of laws relating to rescission and real property appraisal and title work expenses before signing the contract for real property appraisal and title work services; and

(3) is provided an itemized list of the specific real property appraisal and title work expenses incurred by the retailer.

Subsection (b) provides that a retailer may not charge to the consumer any fees or expenses other than the real property appraisal and title work expenses disclosed to the consumer under Subsection (a)(3).

Subsection (c) provides that the Texas Department of Housing and Community Affairs may demand copies of contracts, invoices, receipts, or other proof of any real property appraisal and title work expenses retained by a retailer.

SECTION 18 of HB 2019 amends Section 1201.1521 (Rescission of Contract for Sale or Exchange of Home) by amending the Section Heading, amending Subsection (a), adding a new Subsection (b), and redesignating existing Subsection (b) as Subsection (c).

Subsection (a) is amended to provide that a person who acquires a manufactured home from or through a licensee by purchase or exchange in a cash transaction occurring not later than the third day after the date the sales purchase contract is signed, may rescind the contract without penalty or charge other than the real property appraisal and title work expenses incurred in accordance with Section 1201.1511.

Subsection (b) is added to provide that a person who acquires a manufactured home from or through a licensee by purchase or exchange, in a transfer that is based wholly or partly on a credit transaction occurring not later than the third day after the date of the signing of the binding note, security agreement, or other financing credit contract with respect to which the consumer's purchased manufactured home will serve as collateral for the credit transaction, may rescind the contract without penalty or charge other than the real property appraisal and title work expenses incurred in accordance with Section 1201.1511.

*(Note: We have difficulty understanding how Sections 1201.151, 1201.1511 and 1201.1521 apply so that they do not violate the Federal right of rescission provisions of the Federal Truth in Lending Act (15 U.S.C. §1635) and*



*Regulation Z (12 C.F.R. §1026.23) unless these Sections apply only when the retailer is not a creditor or the transaction is not subject to the Federal right of rescission.)*

SECTION 27 of HB 2019 amends Section 1201.205 (Statement of Ownership Form) by deleting “or personal property” from subdivision (10) – the statement that the “owner has elected to treat the home as real property or personal property”; and adding “or for another nonresidential use” to the end of the statement in subdivision (11) – the statement that involves a salvaged manufactured home.

SECTION 28 of HB 2019 amends Section 1201.2055 (Election By Owner) by amending Subsections (d), (e), and (i) to delete “certified” in all places where this word appears in connection with the copy of the statement of ownership that must be filed and notification of filing given to perfect the manufactured home as real property.

SECTION 30 of HB 2019 amends Section 1201.206 (Application for Issuance of Statement of Ownership) by amending Subsection (g) to require the statement from the tax assessor-collector also be filed when an application is filed for the issuance of a statement of ownership for a used home that is being converted from personal property to real property in accordance with Section 1201.2075 (which requirement is in addition to the existing Subsection (g) requirement for the filing of the statement from the tax assessor-collector when an application is filed for the issuance of a statement of ownership for a used manufactured home that is not in a retailer’s inventory); and by amending Subsection (g) by requiring the statement from the tax assessor-collector to include a statement that there are no perfected and enforceable tax liens on the manufactured home that have not been extinguished and canceled in accordance with Section 32.015 of the Tax Code.

SECTION 33 of HB 2019 amends Section 1201.2075 (Conversion from Personal Property to Real Property) by amending Subsection (b) to also permit the Texas Department of Housing and Community Affairs to issue a statement of ownership without receiving the tax assessor-collector statement required by Section 1201.206(g) if the department releases a copy of the statement of ownership to the licensed title insurance company, federal insured financial institution or licensed attorney described in Subsection (b)(1) or (2), respectively.

SECTION 43 of HB 2019 amends Section 1201.217 (Manufactured Home Abandoned) by adding Subsections (d-1) and (g).

Subsection (d-1) requires the owner of real property on which an unoccupied manufactured home owned by another is located, who wishes to declare the home abandoned, when applying for a statement of ownership under Section 1201.217, to include with the application an affidavit stating that the person owns the real property where the home is located and that the name of the person to whom title to the home will be transferred under Section 1201.217 is the same name that is listed in the real property or tax records indicating the current ownership of the real property.

Subsection (g) authorizes an owner of real property on which a manufactured home has been abandoned, notwithstanding Subsection (f) (relating to the non-applicability of Section 1201.217 if the real property owner, a relative or affiliate has or had an ownership interest in the

home), to apply for a new statement of ownership with respect to a home that was previously declared abandoned and then resold and abandoned again.

SECTION 47 of HB 2019 amends Section 1201.222(a)(2) to require a copy, instead of a certified copy, of the statement of ownership to be filed in the real property records of the county in which the manufactured home is located in order for it to be treated as real property.

SECTION 78 of HB 2019 amends Section 63.005(a), Property Code, by replacing the words “certificate of attachment” with “appropriate statement of ownership.”

#### 9. THE TAKING OF DEPREDATING FERAL HOGS AND COYOTES USING A HOT AIR BALLOON ([HB 3535](#))

Effective September 1, 2017, HB 3535 amends the Parks and Wildlife Code by adding Section 43.1076 to authorize a qualified landowner or landowner's agent, as determined by Parks and Wildlife Commission rule, to contract to participate as a hunter or observer in using a hot air balloon to take depredating feral hogs or coyotes under the authority of a permit to manage wildlife and exotic animals from aircraft. *(Note: It is estimated that there are currently 5 to 6 million feral hogs living within the United States; half of which are located in Texas. So hunters get your guns ready, as there is nothing as tasty as bacon from a genuine Texas depredating feral hog. For those of you in Reo Linda, the term “depredating” means to plunder, ravage or lay waste. We think the Legislature should have designated this bill HB 3006 or HB 3030.)*

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

Attachment: Revocable Transfer on Death Deed

**This Memorandum is provided as general information in regard to the subject matter covered, but no representations or warranty of the accuracy or reliability of the content of this information are made or implied. Opinions expressed in this memorandum are those of the author alone. In publishing this information, neither the author nor the law firm of Black, Mann & Graham L.L.P. is engaged in rendering legal services. While this information concerns legal and regulatory matters, it is not legal advice and its use creates no attorney-client relationship or any other basis for reliance on the information. Readers should not place reliance on this information alone, but should seek independent legal advice regarding the law applicable to matters of interest or concern to them. The law firm of Black, Mann & Graham L.L.P. expressly disclaims any obligation to keep the content of this information current or free of errors.**



~~beneficiaries, if designated, my interest in the property, to have and hold forever. If the primary and alternate beneficiaries do not survive me, this transfer on death deed shall be deemed canceled by me.]~~

**A. IF AT LEAST ONE PRIMARY BENEFICIARY SURVIVES ME**

(Select either option (1) or (2) by placing your initials next to the option chosen. If you do not choose an option, then option (1), which is the anti-lapse election, will apply.)

If at least one primary beneficiary survives me, I grant and convey the primary beneficiaries' share or shares of the property, to have and hold forever, as follows:

\_\_\_\_\_ (1) Anti-Lapse Election. To the surviving primary beneficiary or beneficiaries, but if a deceased primary beneficiary, if any, was a child or other descendant of mine or of one or both of my parents, that deceased primary beneficiary's share will pass to the surviving children or other descendants of that deceased primary beneficiary.

\_\_\_\_\_ (2) Surviving Primary Beneficiaries Election. To the surviving primary beneficiary or beneficiaries only. If a deceased primary beneficiary, if any, was a child or other descendant of mine or of one or both of my parents, I do not want that deceased primary beneficiary's share to pass to the children or other descendants of that deceased primary beneficiary.

**B. IF NO PRIMARY BENEFICIARY SURVIVES ME**

(Select either option (1) or (2) by placing your initials next to the option chosen. If you do not choose an option, then option (1), which is the anti-lapse election, will apply.)

If no primary beneficiary survives me, I grant and convey the share of the property that would have transferred to a deceased primary beneficiary, to have and hold forever, as follows:

\_\_\_\_\_ (1) Anti-Lapse Election. To the surviving children or other descendants of the deceased primary beneficiary, if the deceased primary beneficiary was a child or other descendant of mine or of one or both of my parents.

\_\_\_\_\_ (2) Surviving Alternate Beneficiaries Election. To the alternate beneficiary or beneficiaries designated above. If the deceased primary beneficiary was a child or other descendant of mine or of one or both of my parents, I do not want that deceased primary beneficiary's share to pass to the children or other descendants of that deceased primary beneficiary.

If no primary beneficiary survives me and the anti-lapse election is not chosen or that election is chosen, but a deceased primary beneficiary is not a child or other descendant of mine or of one or both of my parents, I grant and convey to the alternate beneficiary or beneficiaries my share in the property that otherwise would have transferred to the deceased primary beneficiary, to have and hold forever. If I have not designated alternate beneficiaries, this transfer on death deed shall be considered cancelled by me.

**C. IF AN ALTERNATE BENEFICIARY DOES NOT SURVIVE ME**

**(Select either option (1) or (2) by placing your initials next to the option chosen. If you do not choose an option, then option (1), which is the anti-lapse election, will apply.)**

**If an alternate beneficiary does not survive me, I grant and convey that alternate beneficiary's share of the property as follows:**

**\_\_\_\_\_ (1) Anti-Lapse Election. To the surviving alternate beneficiary or beneficiaries, but if the deceased alternate beneficiary was a child or other descendant of mine or of one or both of my parents, that deceased alternate beneficiary's share will pass to the surviving children or other descendants of that deceased alternate beneficiary.**

**\_\_\_\_\_ (2) Surviving Alternate Beneficiaries Election. To the surviving alternate beneficiary or beneficiaries only. If the deceased alternate beneficiary was a child or other descendant of mine or of one or both of my parents, I do not want that deceased alternate beneficiary's share to pass to the children or other descendants of that deceased alternate beneficiary.**

**If no alternate beneficiary survives me and the anti-lapse election is not chosen or that election is chosen, but no deceased alternate beneficiary was a child or other descendant of mine or of one or both of my parents, this transfer on death deed shall be considered cancelled by me.**

7. Printed Name and Signature of Owner Making this Deed:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

BELOW LINE FOR NOTARY ONLY

Acknowledgment

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

After recording, return to:  
(insert name and mailing address)

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## INSTRUCTIONS FOR TRANSFER ON DEATH DEED

### DO NOT RECORD THESE INSTRUCTIONS

#### Instructions for Completing the Form

1. Owner (Transferor) Making this Deed: Enter your first, middle (if any), and last name here, along with your mailing address.
2. Legal Description of the Property: Enter the formal legal description of the property. This information is different from the mailing and physical address for the property and is necessary to complete the form. To find this information, look on the deed you received when you became an owner of the property. This information may also be available in the office of the county clerk for the county where the property is located. Do NOT use your tax bill to find this information. If you are not absolutely sure, consult a lawyer.
3. Address of the Property: Enter the physical address of the property.
4. Primary Beneficiary or Beneficiaries: Enter the first and last name of each person you want to get the property when you die. If you are married and want your spouse to get the property when you die, enter your spouse's first and last name (even if you and your spouse own the property together).
5. Alternate Beneficiary or Beneficiaries: Enter the first and last name of each person you want to get the property if no primary beneficiary survives you.
6. Transfer on Death: **You should carefully read the language describing the options and choose an option under both A and B of Paragraph 6, and if you have listed any alternate beneficiaries, choose an option under C of Paragraph 6** [~~No action needed~~].
7. Printed Name and Signature of Owner: Do not sign your name or enter the date until you are before a notary. Include your printed name.
8. Acknowledgment: This deed must be signed before a notary. The notary will fill out this section of the deed.

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**\* This Attachment contains the amendments to the Revocable Transfer on Death Deed form made by SB 2150. The amendments are in bold: added text is underlined and deleted text is enclosed in brackets with strikethroughs.**