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**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** 2013 Legislative Update from 83rd Regular Session of the Texas  
Legislature – Bills Effective Before September 1, 2013

This legislative update summarizes those bills effective before September 1, 2013, that we consider of interest to our clients. The legislative updates that follow this update will summarize the following bills that we consider of interest to our clients: (i) bills effective on and after September 1, 2013, and (ii) proposed constitutional amendments and, if applicable, their enabling legislation.

**BILLS EFFECTIVE BEFORE SEPTEMBER 1, 2013**

**1. AMENDMENTS TO PROCEDURES FOR EXPEDITED JUDICIAL  
FORECLOSURE PROCEEDINGS (HB 2978)**

House Bill 2978 amends the citation procedures for expedited judicial foreclosure proceedings under Rule 736 of the Texas Rules of Civil Procedure. Rule 736 establishes the procedure for obtaining an expedited court order to allow foreclosure of a lien containing a power of sale in the security instrument creating the lien that secures a home equity loan, reverse mortgage, or home equity line of credit under article XVI, sections 50(a)(6), 50(k), and 50(t) of the Texas Constitution. For service of notice of the application for an expedited order to be considered complete, the rule requires the court clerk to issue a separate citation to each named respondent and one additional citation for the occupant of the property sought to be foreclosed. The clerk must serve each citation by both first class mail and certified mail. The rule does not require return of the certified mail receipt, but many courts, citing constitutional concerns for due process, have held that service through certified mail is not complete until the delivery receipt has been returned to the court. To alleviate this problem, House Bill 2978 adds Section 17.031 to the Civil Practice and Remedies Code to require service of notice to be considered complete when a respondent in an expedited order for a foreclosure proceeding received a citation via mail according to Rule 736, or in accordance with 106 or in any other manner provided for petitions under the Texas Rules of Civil Procedure.

House Bill 2978 also adds Section 154.028 to the Civil Practice and Remedies Code that authorizes the court, in its discretion, after the filing of a response to an application for expedited foreclosure under Rule 736, to conduct a hearing to determine whether to order mediation and sets out procedural provisions regarding the hearing and mediation. It also provides that the court may not order mediation without conducting a hearing, which may be by telephone, and that the petitioner or respondent may request a hearing to determine whether mediation is necessary or whether an application is defective.

Lastly, House Bill 2978 adds Section 22.018 to the Government Code to require the Texas Supreme Court to promulgate the following forms for use in expedited foreclosure proceedings for home equity and reverse mortgage liens: (1) a form

for application for an expedited foreclosure proceeding; (2) a form for a supporting affidavit; and (3) a form for any court required citation. Section 4 of the bill requires the Supreme Court to promulgate these forms by not later than March 1, 2014.

## 2. AMOUNT OF OUTSTANDING TOTAL LIABILITY OF A MORTGAGE GUARANTY INSURER (SB 147)

Senate Bill 147 repeals Section 3502.158 of the Insurance Code, which required mortgage guarantee insurers to either: (i) limit the insurer's coverage, net of reinsurance, to a maximum of 25 percent of the entire indebtedness to the insured; or (ii) pay the entire indebtedness to the insured and acquire title to the authorized real estate security.

Senate Bill 147 also deletes from Section 3502.156(b) of the Insurance Code language that required mortgage guarantee insurers to compute an insurer's aggregate mortgage guaranty insurance liability as required by deleted Section 3502.158.

## 3. ASSIGNMENT OF RENTS TO HOLDERS OF CERTAIN SECURITY INTERESTS IN REAL PROPERTY (SB 848)

In 2011, the Texas Legislature passed Senate Bill 889 - the Assignment of Rents Act, Chapter 64 of the Property Code (*see* pages 3 through 9 of our July 27, 2011 Legislative Update on SB 889) - which clarified and made conforming changes to the law on perfecting a lien on proceeds from real property. Senate Bill 848 passed by the 2013 Regular Session of the Texas Legislature clarifies that the term "rents" as defined in Section 64.001(9) of the Assignment of Rents Act does not apply to consideration payable under an oil and gas lease, mineral lease, or other conveyance of a mineral interest in real property and also makes a number of technical corrections to the existing law so that it is uniform and consistent.

Section 11 of Senate Bill 848 states that the Texas Legislature finds that Section 64.051(c) ("An assignment of rents does not reduce the secured obligation except to the extent the assignee collects rents and applies, or is obligated to apply, the collected rents to payment of the secured obligation."), as added by SB 889 passed by the 2011 Regular Session of the Texas Legislature, was intended by the 2011 Legislature to eliminate confusion arising from language in the Texas Supreme Court's decision in *Taylor v. Brennan*, 621 S.W.2d 592 (Tex. 1981), to the effect that an absolute assignment of rents is a pro tanto payment of a secured obligation. Section 11 further states that in accordance with Section 64.051(c) quoted above, unless the parties expressly agree otherwise, a secured obligation is reduced only if and to the extent that the assignee collects rents and applies the rents to the obligation and that simply taking an assignment of rents does not reduce the secured obligation.

Section 12 of Senate Bill 848 provides that Chapter 64 (as added by Senate Bill 889 and amended by Senate Bill 848):

(a) Except as otherwise provided by Section 12, Chapter 64 governs the enforcement of an assignment of rents, the perfection and priority of a security interest in rents, and the attachment and perfection of a security interest in proceeds regardless of whether the document

creating the assignment of rents was signed and delivered before June 14, 2013 (the effective date of SB 848) or before June 17, 2011.

(b) Chapter 64 does not affect an action or other proceeding commenced before June 17, 2011.

(c) Section 64.051(a) (“An enforceable security instrument creates an assignment of rents arising from real property described in that security instrument, unless the security instrument provides otherwise or the security instrument is governed by Section 50(a)(6) [home equity loan], (7) [reverse mortgage], or (8) [manufactured home], Article XVI, Texas Constitution.”) does not apply to a security instrument signed and delivered before June 17, 2011.

(d) Chapter 64 does not affect:

(1) the enforceability of an assignee’s security interest in rents or proceeds if, immediately before June 17, 2011, that security interest was enforceable;

(2) the perfection of an assignee’s security interest in rents or proceeds if, immediately before June 17, 2011, that security interest was perfected; or

(3) the priority of an assignee’s security interest in rents or proceeds with respect to the interest of another person if, immediately before June 17, 2011, the interest of the other person was enforceable and perfected and that priority was established.

#### 4. SERVICE OF CITATION ON A FINANCIAL INSTITUTION (SB 422)

Senate Bill 422 amends Section 17.028 of the Civil Practice and Remedies Code governing service of citation on a financial institution by adding subsection (f) to clarify that service on and delivery to a financial institution of claims against a customer of the financial institution are governed by Section 59.008 of the Finance Code that, among other requirements, requires the claim to be delivered or served at the address designated as the address of the financial institution’s registered agent in a registration filed with the secretary of state.

#### 5. REGULATION OF BANKS, TRUST COMPANIES, AND BANK HOLDING COMPANIES (HB 1664)

House Bill 1664 amends current law relating to the regulation of state banks, trust companies, bank holding companies, and interstate branches of out-of-state banks by the Texas Department of Banking (TDB). House Bill 1664:

- Clarifies and enhances TDB’s oversight ability and updates statutes pertaining to banks and trusts companies.
- Revises certain requirements and rules to establish parity with national banks and federal statutes.
- Amends the laws applicable to interstate branches and cooperative agreements entered into by the banking commissioner.
- Changes the limits for investment in trust company fixed assets.
- Authorizes the banking commissioner to obtain information from persons outside the bank under examination, such as a former employee or director of the bank or its holding company.

- Clarifies the instances under which advisory directors may be privy to confidential information pertaining to a bank or the bank's customers.
- Clarifies the instances under which advisory directors or advisory managers may be privy to confidential information pertaining to a state trust company or the company's clients.
- Clarifies the instances under which a bank may hold a non-participating royalty interest.

#### 6. DESIGNATING FEBRUARY 16 AS TEXAS HOMEMADE PIE DAY (HCR 36)

House Concurrent Resolution 36 designates February 16 as Texas Homemade Pie Day. The art of making pies from scratch is a beloved tradition that has stood the test of time for generations of families in Texas and beyond. Historians believe that pie originated with the ancient Greeks, who developed the first pastry shell. Later, the Romans published the world's first pie recipe, which included rye-crusts goat cheese and honey, though fillings also included savory ingredients like meat and seafood. The English brought mincemeat pies with them as they crossed the ocean to America and the colonists continued the tradition, using dried fruit, cinnamon, and nutmeg to season the filling. In Texas, bakers often incorporate local produce into their pies, from peaches grown in Central Texas to sweet potatoes grown in the northeastern part of our state. The pecan, the fruit of the state tree, continues to be one of the most well-known native ingredients. For generations, families have come together to create and enjoy the fruits of their labor - an exceptionally American dish, with a special place in our shared culture. By taking the time to bake pies from scratch, older and younger Texans bridge the years between them to create new memories and culinary delights in kitchens across the Lone Star State.

#### *LEGISLATIVE UPDATE CONCLUSION*

No attempt was made by this legislative update to summarize all the bills effective before September 1, 2013, 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 effective before September 1, 2013, that we believe are of interest to our clients. The above summaries are not complete descriptions of these bills, and you are urged to review the entirety of any bill summarized above that you believe affects your business. You may request copies of these bills from us, if you so desire.

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