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August 27, 2015

To: Clients and Friends

From: David F. Dulock

Subject: 2015 Legislative Update from 84th Regular Session of the Texas Legislature

This legislative update summarizes the bills and one proposed constitutional amendment that we consider of interest to our clients, listed in order of importance and not when effective. The effective dates are noted in the applicable summary.

1. RESCISSION OR WAIVER OF ACCELERATION OF THE MATURITY DATE OF DEBT SECURED BY LIEN ON REAL PROPERTY (HB 2067)

Effective June 17, 2015, HB 2067 amends Chapter 16, Civil Practice and Remedies Code, by adding Section 16.038 to provide that if the maturity date of a series of notes or obligations or a note or obligation payable in installments and secured by a real property lien is accelerated, and the accelerated maturity date is rescinded or waived in accordance with Section 16.038 before the limitation period expires, the acceleration is deemed rescinded and waived and the note, obligation or series of notes or obligations will be governed by Section 16.035 as if no acceleration had occurred. Rescission or waiver of acceleration under HB 2067 is effective if:

- made by notice in writing;
- served by the lienholder, the servicer of the debt, or an attorney representing the lienholder; and
- served by first class or certified mail on all debtors who were obligated to pay the debt by deposit in the U.S. Mail, postage prepaid, at their last known address.

Notice served under HB 2067 does not affect a lienholder's right to accelerate the loan in the future, nor does it waive past defaults. HB 2067 does not create an exclusive method for waiving or rescinding the acceleration of a real property loan. It also does not affect the accrual of a cause of action and the running of the related limitations period on any subsequent maturity date (accelerated or otherwise) of the note or obligation or series of notes or obligations.

HB 2067 applies to a maturity date accelerated and any notice of rescission or waive of acceleration before, on, or after June 17, 2015.

2. RESCISSION OF NONJUDICIAL FORECLOSURE SALES (HB 2066)

Effective for nonjudical foreclosure sales that occur on or after September 1, 2015, HB 2066 amends Chapter 51, Property Code, by adding Section 51.016 to create a process to rescind a nonjudicial foreclosure sale of residential real property and specify the remedies available to the purchaser.

HB 2066 defines "residential real property" as a single family home, duplex, triplex, quadraplex, or a condominium or cooperative unit in a multiunit residential structure. HB 2066 applies to a sale conducted under Section 51.002 (Sale of Real Property under Contract Lien).

A mortgagee, trustee, or substitute trustee may rescind a foreclosure sale within 15 days after the sale if:

- the statutory requirements for the sale were not satisfied;
- the default leading to the sale was cured before the sale;
- a receivership or dependent probate administration involving the property was pending at the time of the sale;
- a condition of sale prescribed by the trustee or substitute trustee before the sale that was made available in writing to prospective bidders at the sale was not met;
- the mortgagee or mortgage servicer and the debtor agreed before the sale to cancel the sale based on a written agreement by the debtor to cure the default; or
- at the time of the sale, a court-ordered or automatic stay of the sale in a bankruptcy case filed by a person with an interest in the property was in effect.

To rescind a foreclosure sale, the party rescinding the sale must:

- notify the purchaser and each debtor who is obligated to pay the debt by a written notice of rescission that describes the reason for rescission and includes the recording information for the trustee's or substitute trustee's deed that was recorded;
- serve the notice by certified mail by depositing the notice in the U.S. Mail, postage prepaid, and addressed to the recipient at their last known address; and
- record a copy of each notice of rescission in the real property records of the county in which all or a part of the property is located.

After rescission, HB 2066 requires:

- the mortgagee within five business days after the foreclosure sale is rescinded to return to the purchaser by certified mail, electronic or wire transfer, or courier service the bid amount the purchaser paid for the property at the sale;
- the debtor to return to the trustee the amount of any excess proceeds received by the debtor from the sale; and
- the party rescinding the sale to record in the real property records of the county where the notice of rescission was recorded an affidavit stating the date the bid amount was returned together with the certified mail, electronic or wire transfer, or courier service delivery tracking information.

Bona fide purchasers, lenders, other persons acquiring an interest in the property and title insurers may conclusively rely on the recorded notice of rescission and affidavit, and subsequent purchasers in good faith and for value have bona fide purchaser protection.

Rescission under HB 2066 restores the mortgagee and the debtor to their respective title, rights, and obligations under instrument(s) relating to the foreclosed property that existed immediately before the sale occurred. However, rescission under HB 2066 is void as to creditors and subsequent purchasers for a valuable consideration without notice unless notice of the rescission has been acknowledged, sworn to, or proved and recorded as required by law. A rescission under HB 2066 evidenced by an unrecorded instrument is binding on the parties to the instrument, their heirs, and on subsequent purchasers without valuable consideration or who have notice of the instrument.

A lawsuit challenging the effectiveness of the rescission must be filed within 30 days after the date the notices of rescission are recorded. Also, a lis pendens notice based on the rescission that is not recorded within that period has no effect. These limitations do not affect the limitations period for a lawsuit claiming damages resulting from the rescission.

In a lawsuit by the purchaser challenging the effectiveness of the rescission or claiming damages resulting from the rescission, HB 2066 limits the damages that may be awarded as follows:

- if the foreclosure sale is rescinded because a stay imposed in a bankruptcy case filed by a person with an interest in the property was in effect, the court may award as damages to the purchaser only the bid amount the purchaser paid for the property at the sale that has not been refunded to the purchaser; or
- if the foreclosure sale is rescinded for any other reason permitted by HB 2066, the court may award as damages to the purchaser only the bid amount the purchaser paid for the property at the sale that has not been refunded to the purchaser, plus interest of 10 percent per year on that amount until paid. The court may not order reinstatement of the sale as a remedy for the purchaser.

HB 2066 does not prohibit the rescission of a foreclosure sale by agreement of the affected parties on other terms or by a lawsuit to rescind a sale not rescinded under the provisions of HB 2066.

3. THE FORECLOSURE SALE OF PROPERTY SUBJECT TO OIL OR GAS LEASE (HB 2207)

Effective for nonjudical foreclosure sales for which notice of sale is given under Section 51.002, Property Code, on or after January 1, 2016, and for judicial foreclosures for which the judicial foreclosure action commenced on or after January 1, 2016, HB 2207 amends the Property Code by adding Chapter 66 to set out provisions relating to the foreclosure sale of real property that covers the mineral interest in hydrocarbons and is subject to an oil or gas lease.

HB 2207 provides that an oil or gas lease covering real property subject to a security instrument (*i.e.*, a deed of trust, mortgage, or other contract lien) that has been foreclosed remains in effect after the foreclosure sale if the oil or gas lease has not terminated or expired on its own terms and was executed and recorded in the real property records before the foreclosure sale. It further provides that the mortgagor's or the mortgagor's assigns' interest in the oil or gas lease (including royalties or other payments that become due and payable after the date of the foreclosure) passes to the purchaser of the foreclosed property to the extent that the security instrument under which the real property was foreclosed had priority over the mortgagor's or the mortgagor's assigns' interest in the oil or gas lease.

Notwithstanding the above, HB 2207 further provides that if real property that includes the mineral interest in hydrocarbons together with the surface overlying such mineral interest is subject to both an oil or gas lease and a security instrument that is foreclosed, the foreclosure sale terminates and extinguishes any surface use rights of the lessee under the oil or gas lease to the extent that the security instrument had priority over the lessee's rights under the oil or gas lease.

For its purposes, HB 2207 defines the terms "mortgagee," "mortgagor," "oil or gas lease," "real property," and "security instrument." It also provides for agreements, including subordination agreements, that, depending on the parties to the agreement, may control over conflicting provisions of HB 2207 or may or may not modify the application of HB 2207.

HB 2207 does not apply to a security instrument that does not attach to a mineral interest in hydrocarbons in the real property.

4. RECORDING AND EFFECTIVE DATE OF CERTAIN DOCUMENTS RELATING TO NONJUDICIAL FORECLOSURE SALES (HB 2063)

Effective September 1, 2105, HB 2063 amends Chapters 12 and 51, Property Code, by adding Sections 12.0012 and 51.0076, respectively, which concern the recording and effective date of certain documents relating to nonjudicial foreclosure sales for which a notice of sale is required under Section 51.002, Property Code, on or after September 1, 2015.

As added by HB 2063, Section 12.0012 provides that:

(a) Notwithstanding existing Section 12.0011(b) of the Property Code (which prohibits a paper document concerning real or personal property from being recorded or serving as notice of the paper document unless certain circumstances apply), the following documents received by the county clerk in the manner provided by Section 12.0012(b) must be recorded by the clerk and shall serve as notice of the matter document:

(1) an instrument appointing or authorizing a trustee or substitute trustee to exercise the power of sale in a security instrument;

(2) a notice of sale pursuant to which the sale under a power of sale occurred;

(3) a notice of default on which the sale evidenced by a deed conveying title from a trustee or substitute trustee to a purchaser occurred;

(4) documentation from the United States Department of Defense indicating that a debtor was not on active duty military service on the date of a foreclosure sale;

(5) a statement of facts regarding a foreclosure sale prepared by an attorney representing the trustee, substitute trustee, or mortgage servicer; or

(6) proof of service of the mailing of any notice related to a foreclosure sale.

(b) A document described by Section 12.0012(a) must be accepted for recording pursuant to Section 12.0012(a) if it is attached as an exhibit to:

(1) a deed that conveys title from a trustee or substitute trustee to a purchaser at a foreclosure sale and that meets the requirements for recording under Section 12.0011(b); or

(2) an affidavit of a trustee or substitute trustee that meets the requirements for recording under Section 12.0011(b) and relates to a foreclosure sale.

(c) Section 12.0012 does not prevent the recording of documents in any other manner allowed by law.

(***Note:*** It is difficult to understand the necessity of new Section 12.0012 in light of similar recording provisions in existing Section 12.0011(b) and the above nonexclusivity provision that Section 12.0012 does not prevent recording documents in any other lawful manner.)

As added by HB 2063, Section 51.0076 provides that the appointment or authorization of a trustee or substitute trustee made in a notice of sale is effective as of the date of the notice if the notice:

(1) complies with Sections 51.002 (Sale of Real Property under Contract Lien) and 51.0075(e) (requiring that the name and a street address for a trustee or substitute trustees be disclosed on the notice);

(2) is signed by an attorney or agent of the mortgagee or mortgage servicer; and

(3) contains a statement in all capital letters, boldface type, to read as follows:

> **THIS INSTRUMENT APPOINTS THE SUBSTITUTE TRUSTEE(S) IDENTIFIED TO SELL THE PROPERTY DESCRIBED IN THE SECURITY INSTRUMENT IDENTIFIED IN THIS NOTICE OF SALE. THE PERSON SIGNING THIS NOTICE IS THE ATTORNEY OR AUTHORIZED AGENT OF THE MORTGAGEE OR MORTGAGE SERVICER.**

5. REQUIRED TIME FOR RECORDING A DURABLE POWER OF ATTORNEY FOR CERTAIN REAL PROPERTY TRANSACTIONS (HB 3316)

Effective for real property transactions entered into on or after September 1, 2015, HB 3316 amends Section 751.151, Estates Code, to require that a durable power of attorney for a real property transaction requiring the execution and delivery of an instrument that is to be recorded (*e.g.*, release, assignment, mortgage, security agreement, deed of trust, deed of conveyance, oil, gas, or other mineral lease, memorandum of a lease, lien, or other claim or right to real property) must be recorded in the office of the county clerk of the county in which the property is located "**not later than the 30th day after the date the instrument is filed for recording**."

6. INFORMATION IN AD VALOREM TAX APPRAISAL RECORDS THAT MAY NOT BE POSTED ON THE INTERNET BY AN APPRAISAL DISTRICT (HB 394)

Effective September 1, 2015, HB 394 amends Section 25.027, Tax Code, to prohibit information in appraisal records that indicates the age of a property owner, including information indicating that a property owner is 65 years of age or older, from being posted on the Internet. In addition, Section 2 of HB 394 requires the chief appraiser for each appraisal district to remove the above information from the Internet website controlled by the appraisal district not later than September 1, 2015.

(***Note:*** This amendment may adversely affect lenders and title companies from timely obtaining the necessary tax information for tax proration and escrow requirements in a purchase transaction involving a seller 65 years of age or older and a purchaser under 65 years of age.)

7. MORTGAGE SERVICER DISCLOSURE OF HOME MORTGAGE INFORMATION TO A SURVIVING SPOUSE (HB 831)

Effective September 1, 2015, HB 831 amends the Finance Code by adding Section 343.103 to require mortgage servicers to provide certain home loan information to the surviving spouse of a deceased mortgagor within 30 days of receiving the spouse's written request if the

spouse also provides the following documents proving the surviving spouse's status: (i) the mortgagor's death certificate; (ii) an affidavit of disinterested witnesses, in the form of the affidavit concerning the identity of a decedent's heirs set out in Section 203.002 of the Estates Code, stating that the surviving spouse was married to the mortgagor at the time of the mortgagor's death; and (iii) an affidavit by the surviving spouse stating that the spouse currently is residing in the mortgaged property as the primary residence. The surviving spouse's written request to the mortgage servicer for the home loan information must include the following notice in bold-faced, capital, or underlined letters:

> THIS REQUEST IS MADE PURSUANT TO TEXAS FINANCE CODE SECTION 343.103. SUBSEQUENT DISCLOSURE OF INFORMATION IS NOT IN CONFLICT WITH THE GRAMM-LEACH-BLILEY ACT UNDER 15 U.S.C. SECTION 6802(e)(8).

Within 30 days after receiving the request from the surviving spouse accompanied by the above described documents, the mortgage servicer is required to provide the surviving spouse the information that the mortgagor would have received in a standard monthly statement, including:

(1) the current balance information, including the due dates and the amount of any installments;

(2) whether the loan is current and any amounts that are delinquent;

(3) any loan number; and

(4) the amount of any escrow deposit for taxes and insurance purposes.

By providing the information to a surviving spouse as required by HB 831 the mortgage servicer is not be liable to the estate of the mortgagor or any heir or beneficiary of the mortgagor.

8. ACCESS TO A FINANCIAL INSTITUTION ACCOUNT OF A PERSON WHO DIES INTESTATE (HB 705)

Effective September 1, 2015, HB 705 amends the Estates Code by adding Chapter 153 to authorize a court, on the court's on motion or on application of an interested person having a property right in or claim against a decedent's estate (*i.e.*, heir, spouse, creditor or other person having such right or claim), to issue an order requiring a financial institution to release to the person named in the order information concerning the balance of certain accounts of a decedent who dies intestate that are maintained at the financial institution if:

(1) 90 days have elapsed since the decedent's death;

(2) no petition is pending for the appointment of a personal representative for the decedent's estate; and

(3) no letters testamentary or of administration have been granted for the decedent's estate.

Chapter 153 as added by HB 705 does not apply to the following accounts: (i) an account with a beneficiary designation; (ii) a P.O.D. account; (iii) a trust account; or (iv) an account providing for a right of survivorship.

9. AUTHORIZING A REVOCABLE DEED THAT TRANSFERS REAL PROPERTY AT THE TRANSFEROR'S DEATH (SB 462)

Effective September 1, 2015, SB 462 amends the Estates Code by adding Chapter 114 (Transfer on Death Deed) to authorize an individual (defined as the maker of a transfer on death deed (TOD deed)) to transfer the individual's interest in real property located in Texas to one or more beneficiaries (defined as a person who receives real property under a TOD deed) effective at the transferor's death by a TOD deed authorized under SB 462, applicable to a TOD deed executed and acknowledged on or after September 1, 2015, by a transferor who dies on or after September 1, 2015. SB 462 specifies that, for purposes of its provisions, the term "transfer on death deed" does not refer to any other deed that transfers an interest in real property on the death of an individual. SB 462 makes a TOD deed revocable regardless of whether the deed or another instrument contains a contrary provision. SB 462 specifies that a TOD deed is a nontestamentary instrument and that the capacity required to make or revoke a TOD deed is the same as that required to make a contract. SB 462 prohibits a TOD deed from being created through use of a power of attorney. SB 462 requires that to be effective a TOD deed must (i) contain the essential elements and formalities of a recordable deed, (ii) state that the transfer of an interest in real property to the designated beneficiary is to occur at the transferor's death, and (iii) be recorded before the transferor's death in the deed records in the county clerk's office of the county where the real property is located. SB 462 specifies that a TOD deed is effective (i) without consideration and (ii) without notice or delivery to or acceptance by the designated beneficiary during the transferor's life.

SB 462 specifies that an instrument is effective in revoking all or any part of a recorded TOD deed if the instrument: (i) is a subsequent TOD deed that expressly or by inconsistency revokes all or part of a preceding TOD deed, or an instrument of revocation that expressly revokes all or part of the TOD deed; (ii) is acknowledged by the transferor after the acknowledgment of the TOD deed being revoked; and (iii) is recorded before the transferor's death in the deed records in the county clerk's office of the county where the real property is located. Notwithstanding the above revocation procedures, SB 462 (i) prohibits a will from revoking or superseding a TOD deed; (ii) provides that a final judgment of a court dissolving a marriage between the transferor and a designated beneficiary after a TOD deed is recorded operates to revoke the TOD deed as to that designated beneficiary if notice of the judgment is recorded before the transferor's death in the deed records in the county clerk's office of the county where the deed is recorded; (iii) provides that if a TOD deed is made by more than one transferor, revocation by a transferor does not affect the TOD deed as to the interest of another transferor who does not make that revocation; and (iv) specifies that a TOD deed made by joint owners with right of survivorship is revoked only if it is revoked by all of the living joint owners. (***Note:*** HB 462 defines "joint owner with right of survivorship" (also called "joint owner") and expressly excludes from this definition "an owner of community property with a right of survivorship." It is unclear why this distinction is made. Perhaps it is to allow a TOD deed made by joint owners in community property to be revoked by either joint owner but only as to that joint owner's interest.)

HB 462 states that the above provisions relating to TOD deed revocation do not limit the effect of an inter vivos transfer of the real property. (***Note:*** It is difficult to understand the need for

this provision in light of the HB 462 nonexclusivity provision that HB 462 does not affect any other method of transferring real property permitted by the laws of Texas.)

SB 462 states that *during a transferor's life* a TOD deed does not (i) affect an interest or right of the transferor or any other owner in the real property (including the right to transfer or encumber the real property, any homestead rights in the real property, and ad valorem tax exemptions, including exemptions for residence homestead, persons 65 years of age or older, persons with disabilities, and veterans); (ii) affect an interest or right of a transferee of the real property, even if the transferee has actual or constructive notice of the TOD deed; (iii) affect an interest or right of a secured or unsecured or future creditor of the transferor, even if the creditor has actual or constructive notice of the TOD deed; (iv) affect the transferor's or designated beneficiary's eligibility for any form of public assistance (subject to applicable federal law); (v) trigger a "due on sale" or similar clause; (vi) cause statutory real estate notice or disclosure requirements; (vii) create a legal or equitable interest in favor of the designated beneficiary; or (viii) subject the real property to claims or process of the designated beneficiary's creditor(s).

SB 462 voids an otherwise valid TOD deed as to any interest in real property that is conveyed by the transferor during the transferor's lifetime after the TOD deed is executed and recorded if a valid instrument conveying the interest is recorded in the deed records in the county clerk's office of the same county in which the TOD deed is recorded and if the recording of the instrument occurs before the transferor's death.

Section 114.103(a) of Chapter 114, Estates Code, enacted by HB SB 462 provides that except as otherwise provided in the TOD deed, Section 114.103, or any other Texas law (statute or common law) governing a decedent's estate, on the death of the transferor, the following provisions apply to an interest in real property that is the subject of a TOD deed and owned by the transferor at death:

(1) if the designated beneficiary survives the transferor by 120 hours, the TOD deed transfers the interest in the real property to the designated beneficiary;

(2) if the designated beneficiary fails to survive the transferor by 120 hours, the interest of the designated beneficiary lapses;

(3) subject to (4) below, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship; and

(4) notwithstanding (2) above, if the transferor has identified two or more designated beneficiaries to receive concurrent interests in the real property, the share of a designated beneficiary who predeceases the transferor lapses and is subject to and passes in accordance with Subchapter D, Chapter 255, Estates Code, (Failure of Devise; Disposition of Property to Devisee Who Predeceases Testator) as if the TOD deed were a devise made in a will.

In Section 114.103(b), SB 462 specifies that if a transferor is a joint owner with right of survivorship and is survived by joint owner(s), the TOD deed real property belongs to the surviving joint owner(s), but if the transferor is the last surviving joint owner, the TOD deed is effective. In Section 114.103(c), SB 462 provides that if a TOD deed is made by transferors who are joint owner with right of survivorship, the last surviving joint owner may revoke the TOD deed. (***Note:*** This provision is similar to a preceding provision in HB 462 that a TOD deed made by

joint owners with right of survivorship is revoked only if it is revoked by all of the living joint owners (see Section 114.057(e).) In Section 114.103(d), SB 462 establishes that a TOD deed transfers real property without covenant of warranty of title even if the deed contains a contrary provision.

SB 462 specifies that subject to the provisions in Section 13.001 of the Property Code relating to the validity of unrecorded instruments, a beneficiary of a TOD deed takes the real property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the real property is subject at the transferor's death, and that for the foregoing purposes, including Section 13.001, the recording of the TOD deed is considered to have occurred at the transferor's death. SB 462 provides that if a personal representative has been appointed for the deceased transferor's estate and the TOD deed real property is subject to a lien or security interest, the personal representative must notify the creditor secured by the TOD deed real property in the same manner as any other secured creditor under the applicable provisions of the Estates Code. The creditor will then have the same election rights and be subject to the same election constraints as other secured creditors under the applicable provisions of the Estates Code. SB 462 authorizes a designated beneficiary to disclaim all or part of the designated beneficiary's interest as provided by Chapter 22 of the Estates Code relating to disclaimers and assignments.

SB 462 states that real property transferred by a TOD deed at the transferor's death is not property of the transferor's probate estate for any purpose, including for purposes relating to recovery of medical assistance under the Medicaid program (Section 531.077, Government Code). However, notwithstanding that exclusion, to the extent the transferor's estate is insufficient to satisfy a claim against the estate, expenses of administration, any estate tax owed by the estate, or an allowance in lieu of exempt property or family allowances, SB 462 authorizes the personal representative of the deceased transferor's estate to enforce that liability against the TOD deed real property transferred at the transferor's death as if the real property were part of the probate estate. SB 462 further provides that if the personal representative fails to timely commence a proceeding to enforce the liability, the appropriate party entitled to enforcement may do so. SB 462 specifies that if more than one real property interest is transferred by one or more TOD deeds or if there are other nonprobate assets of the transferor that may be liable, the liability may be apportioned among those real property interests and other assets in proportion to their net values at the transferor's death. SB 462 authorizes a court to award costs and reasonable and necessary attorney's fees in amounts the court considers equitable and just for any proceeding brought to enforce the foregoing liabilities. SB 462 provides that a proceeding to enforce a liability hereunder must be commenced not later than the second anniversary of the transferor's death, except for any rights arising under a matured secured claim (see Section 355.153, Estates Code).

SB 462 authorizes an optional form to be used to create a TOD deed and an optional form to be used to create an instrument of revocation of a TOD deed and sets out the contents of both forms along with instructions for completing each form. SB 462 does not affect any method of transferring real property otherwise permitted under Texas law. SB 462 modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (E-Sign), except for certain specified sections of E-Sign, and establishes that SB 462 does not authorize electronic delivery of certain notices described in E-Sign.

10. CONFIRMING THE EXCLUSIVE JURISDICTION OF THE STATE TO REGULATE OIL AND GAS OPERATIONS IN TEXAS AND THE EXPRESS PREEMPTION OF LOCAL REGULATION OF THOSE OPERATIONS (HB 40)

It is well established Texas law that when land ownership is divided into the surface estate and the mineral estate because each is owned by different owners, the owner of the mineral estate has certain rights regarding use of the surface estate, unless waived by the mineral estate owner, for the development of the mineral estate – *e.g.*, drilling wells and constructing storage tanks, pipelines, roads, and canals.

Effective May 18, 2015, HB 40 amends Chapter 81, Natural Resources Code, by adding Section 81.0523 in order to explicitly confirm the authority of the state of Texas to regulate oil and gas operations and to expressly preempt the regulation of oil and gas operations by municipalities and other political subdivisions, which is impliedly preempted by statues already in effect.

HB 40 stipulates that an oil and gas operation is subject to the exclusive jurisdiction of the state of Texas. HB 40 expressly preempts the authority of a municipality or other political subdivision to regulate an oil and gas operation and that, except under certain limited circumstances, may not enact or enforce ordinances, regulations or other measures, or amendments or revisions of same, that ban, limit, or otherwise regulate an oil and gas operation within the boundaries or extraterritorial jurisdiction of the municipality or other political subdivision.

Notwithstanding the above, HB 40 permits a municipality to enact, amend, or enforce an ordinance or other measure that:

(1) regulates only aboveground activity related to an oil and gas operation occurring at or above the surface of the ground, including a regulation governing fire and emergency response, traffic, lights, or noise, or imposing notice or reasonable setback requirements;

(2) is commercially reasonable;

(3) does not effectively prohibit an oil and gas operation conducted by a reasonably prudent operator; and

(4) is not otherwise preempted by state or federal law.

HB 40 defines "oil and gas operation" as "an activity associated with the exploration, development, production, processing, and transportation of oil and gas, including drilling, hydraulic fracture stimulation, completion, maintenance, reworking, recompletion, disposal, plugging and abandonment, secondary and tertiary recovery, and remediation activities." HB 40 defines "commercially reasonable" as "a condition that would allow a reasonably prudent operator to fully, effectively, and economically exploit, develop, produce, process, and transport oil and gas, as determined based on the objective standard of a reasonably prudent operator and not on an individualized assessment of an actual operator's capacity to act."

HB 40 specifies that an ordinance or other measure is considered prima facie to be commercially reasonable if it has been in effect for at least five years and has allowed the oil and gas operation to continue during that period.

11. COMPELLING PRODUCTION OF CERTAIN CUSTOMER RECORDS BY A FINANCIAL INSTITUTION (HB 2394)

Effective for record requests submitted on or after September 1, 2015, HB 2394 amends Section 59.006, Finance Code, by adding Subsection (b-1) to prohibit a court from ordering a financial institution to produce a record or finding the financial institution in contempt of court for failing to produce a record if the requesting party has not paid the financial institution's reasonable costs of complying with the record request or posted a cost bond as required by existing Subsection (b)(2).

12. PROPOSED CONSTITUTIONAL AMENDMENT *(I)* INCREASING THE RESIDENCE HOMESTEAD EXEMPTION; *(II)* PROVIDING FOR A REDUCTION OF THE LIMITATION ON THE AD VALOREM TAXES IMPOSED FOR THOSE PURPOSES ON THE HOMESTEAD OF AN ELDERLY OR DISABLED PERSON; *(III)* AUTHORIZING THE LEGISLATURE TO PROHIBIT A POLITICAL SUBDIVISION FROM REDUCING OR REPEALING AN OPTIONAL RESIDENCE HOMESTEAD EXEMPTION; AND *(IV)* PROHIBITING THE ENACTMENT OF A REAL PROPERTY TRANSFER TAX (SJR 1)

Contingent on voter approval at the election to be held November 3, 2015, SJR 1 proposes amendments to Sections 1-b(c), (d), and (e), Article VIII, of the Texas Constitution to (i) increase the amount of the residence homestead exemption from property taxation by a school district from $15,000 to $25,000; (ii) provide for a reduction of the limitation on the total amount of school district property taxes that may be imposed on the homestead of an elderly or disabled person to reflect the increased exemption amount; and (iii) authorize the legislature to prohibit a political subdivision that has adopted an optional residence homestead property tax exemption from reducing the amount of or repealing the exemption. If SJR 1 is approved by the voters at the November 3, 2015 election, the amendments to Sections 1-b(c), (d), and (e) of Article VIII take effect for the tax year beginning January 1, 2015.

Contingent on voter approval at the election to be held November 3, 2015, SJR 1 also proposes to add Section 29 to Article VIII to prohibit after January 1, 2016, the enactment of a law that imposes a transfer tax on a transaction that conveys fee simple title to real property.

13. MODIFIES NONPROFIT EXEMPTIONS FROM THE APPLICABILITY OF CHAPTERS 156, 157 AND 180 OF THE FINANCE CODE APPLICABLE TO RESIDENTIAL MORTGAGE LOAN ORIGINATORS (SB 1203)

Effective September 1, 2015, SB 1203 amends the Finance Code as follows:

- Section 156.202(a-1) to exempt from Chapter 156 (Residential Mortgage Loan Company Licensing and Registration Act) a nonprofit organization that is designated as a Section 501(c)(3) organization by the Internal Revenue Service and originates residential mortgage loans for borrowers who, through a self-help program, have provided at least 200 labor hours or 65 percent of the labor to construct the dwelling securing the loan;

- Section 157.0121(c) to exempt the employees of such a nonprofit organization from the licensing and other requirements of Chapter 157 (Mortgage Banker Registration and Residential Mortgage Loan Originator License Act) applicable to residential mortgage loan originators; and
- Section 180.003(a) to remove from Chapter 180 (Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009) the exemption for a nonprofit organization providing self-help housing that originates zero interest residential mortgage loans for borrowers who provide part of the labor to construct the dwelling securing the loan. (***Note:*** This exemption is in Section 156.202(a-1) and Section 157.0121(c).)

14. DESIGNATING THE WESTERN HONEY BEE AS THE OFFICIAL STATE POLLINATOR OF TEXAS (HCR 65)

A creature as beautiful and memorable as the Texas sky, the western honey bee, known as Apis mellifera, is a familiar sight in Texas, where its distinctive black-and-yellow abdomen and its zigzagging flight from flower to flower make the insect instantly recognizable and a truly fitting symbol for the majestic spirit of the Lone Star State. The City of Austin, our state capital, having already recognized the importance of this insect to Texas by passing a resolution forbidding the destruction of feral bees within its city limits, instead allowing colonies to be sustainably relocated by Central Texas Bee Rescue, it is only fitting, therefore, that the Texas Legislature follow suit and by HCR 65 designate the western honey bee as the official state pollinator of Texas.

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 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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