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July 13, 2005

To: Clients and Friends

From: David F. Dulock

Subject: Legislative Update from 79th Regular Session of the
Texas Legislature, 2005 – Bills Effective Immediately

This is the first of four legislative updates prepared by this firm and summarizes those bills effective immediately that we consider of interest to our clients. The three legislative updates that follow this update will summarize, respectively, (i) bills effective on and after September 1, 2005 that we consider of interest to our clients; (ii) the proposed constitutional amendments to be submitted for voter approval at an election to be held November 8, 2005; and (iii) changes in statutory law relating to manufactured housing.

1. Confidentiality Rights Notice in Texas Deeds and Deeds of Trust (SB 461): Among other amendments, this bill amends subsections (a), (b), and (d), Section 11.008, of the Property Code as follows:

- (1) The notice is amended to include the words “or all” so that the notice now reads:

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

- (2) The amended notice must now appear at the top of the first page. Prior to the amendment, the notice could appear at any location on the first page.
- (3) The notice requirement now applies only to deeds and deeds of trust disclosing the individual's social security number or driver's license number. This means that a deed or deed of trust that does not contain a social security number or driver's license number is not required to have the notice.

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- (4) The county clerk may not refuse to record an instrument solely because it fails to comply with one or more of the requirements of Section 11.008 of the Property Code.

Although this amendment to the confidentiality rights notice limits its requirement only to those deeds and deeds of trust that contain either an individual's driver's license number or social security number, we recommend the notice continue to be included on all deeds and deeds of trust to cover the possibility that such information may be added later by the closing agent or notary public for identification purposes. **(Effective 5-13-05)**

2. Homeowners Insurance Requirements (HB 2761): In order to clarify existing law and avoid a possible conflict, HB 2761 adds Section 549.0551 (quoted in full below) and amends Section 549.056(a) and (d) of the Insurance Code (Codified), and repeals Subsection (g) to Section 2 of Article 21.48A of The Insurance Code of 1951(Not Codified).

“Sec.549.0551. REQUIRING CERTAIN AMOUNTS OF COVERAGE. (a) A lender may not require as a condition of financing a residential mortgage or providing other financing arrangements for residential property, including a mobile or manufactured home, that a borrower purchase homeowners insurance coverage, mobile or manufactured home insurance coverage, or other residential property insurance coverage in an amount that exceeds the replacement value of the dwelling and its contents, regardless of the amount of the mortgage or other financing arrangement entered into by the borrower.

(b) For purposes of this section, a lender may not include the fair market value of the land on which a dwelling is located in the replacement value of the dwelling and its contents.”

As stated in the Bill Analysis to HB 2761, under current law, Sections 549.0551 and 549.056 of the Insurance Code (Codified) govern practices relating to insurance of real estate or personal property. In 2003 the Texas legislature amended Article 21.48A of The Insurance Code of 1951(Not Codified) by adding Subsection (g) to Section 2 of that Article to prohibit a lender from requiring an amount of insurance greater than the replacement value of the dwelling. Section 549.0551 of the Insurance Code (Codified) is a codification of Subsection (g). However, Section 549.056(a) and (d) of the Insurance Code (Codified) provided that a lender may require evidence that insurance has been obtained in an amount sufficient to cover the debt or loan. Therefore, as Section 549.0551 and Section 549.056 might possibly be construed to conflict, HB 2761 amended Section 549.056(a) and (d) to acknowledge the limitations of Section 549.0551 as to residential real estate transactions. **(Effective 5-17-05)**

3. New Foreclosure Sale Locations (HB 961): Section 51.002 of the Texas Property Code regulates the public sale of real property under a power of sale in a deed of trust. It requires that the sale take place in an area designated by the commissioners court at the county courthouse in a county where any part of the property is located. This bill amends Section 51.002 by adding subsection (h) to provide that the commissioners court may designate an area other than an area at the courthouse where foreclosure sales will take place. This area must be in a public place within a reasonable proximity of the county courthouse and in a location as accessible to the public as the courthouse door. The commissioners court shall record that designation in the real property records of the county. For the notice of a sale designated to take place at an area other than an area of the courthouse, the posting of that notice remains at the courthouse door of the appropriate county, as required by Section 51.002(b)(1). **(Effective 6-17-05)**

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4. Persons Who Conduct Foreclosure Sales (HB 1236): This bill amends Section 1101.005 of the Occupations Code by adding subsection (10)(D) to exempt from The Real Estate License Act (Chapter 1101 of the Occupations Code) those persons who conduct foreclosure sales under a power of sale conferred by a deed of trust or other contract lien. **(Effective 5-17-05)**

5. Filing Requirements for Legal Instruments (HB 1140): Section 191.007 of the Local Government Code regulates the requirements for legal instruments presented to the county clerk for recording and the increased fees for failure to meet those requirements. This bill amends subsection (a) to provide that except as provided by Section 191.007, a county clerk may not impose additional requirements or fees for filing or recording a legal paper. **(Effective 6-18-05)**

6. Negligence by Registered Land Surveyors – Action for Damages (HB 854): Chapter 150, Civil Practice and Remedies Code, requires the plaintiff in an action for damages alleging professional negligence by a “licensed or registered professional” to file with the complaint an affidavit by a third-party licensed or registered professional practicing in the same area of expertise as the defendant professional. The affidavit must specify at least one negligent act, error, or omission claimed to exist and the factual basis for each claim. This bill amends Sections 150.001 and 150.002(a) and (b) of Chapter 150 to add registered professional land surveyors to the list of “licensed or registered professionals” that requires such an affidavit. As amended, Section 150.001 defines a “licensed or registered professional” to mean a registered architect, registered professional land surveyor, or licensed professional engineer. **(Effective 5-27-05)**

7. Installment Payment of Ad Valorem Taxes by Certain Veterans (SB 580): Section 31.072 of the Tax Code permits a tax collector to enter into a contract with a property owner under which the property owner deposits money in an escrow account maintained by the collector to provide for the payment of property taxes collected by the collector on any property the person owns. This bill amends Section 31.072 by adding subsection (h) which requires the tax collector to enter into an escrow account contract if requested by a property owner if: (i) the property is the property owner’s residence homestead, and (ii) the property owner is a disabled veteran as defined by Section 11.22 of the Tax Code or a recipient of the Purple Heart, the Congressional Medal of Honor, the Bronze Star Medal, the Silver Star, the Legion of Merit, or a service cross awarded by a branch of the United States armed forces. **(Effective 5-17-05)**

Unless otherwise stated in this legislative update, the above bills are effective immediately. No attempt was made by this legislative update to summarize all the bills effective immediately that could affect mortgage lending or mortgage lenders or brokers. This memo is simply an attempt to advise our clients as to those bills effective immediately that we believe are of interest to our clients. These 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.

This Memorandum is provided for the general information of the clients and friends of our firm only and is not intended as specific legal advice. You should not place reliance on this general information alone but should consult counsel regarding the application of the laws discussed in this Memorandum to your specific case or circumstances.