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To: Clients and Friends

From: David F. Dulock

Subject: Legislative Update from 79th Regular Session of the
Texas Legislature, 2005 – Manufactured Housing (HB 2438)

This is the second of four legislative updates prepared by this firm and summarizes House Bill 2438 (HB 2438), signed into law June 18, 2005 to take effect immediately. Our first legislative update, dated July 13, 2005, summarizes those bills effective immediately that we consider of interest to our clients. The two 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; and (ii) the two proposed constitutional amendments (SJR 7 and SJR 21) to be submitted for voter approval at an election to be held November 8, 2005.

HB 2438 amends Chapter 1201 of the Occupations Code (the Texas Manufactured Housing Standards Act), and Chapter 2306 of the Government Code and various sections of the Tax Code relating to manufactured housing.

Portions of the following summary are redactions from the Senate Research Center's bill analysis of HB 2438. Not all Sections of HB 2438 are summarized in this legislative update, only those Sections relating to real estate secured transactions that we consider of interest to our clients. All references to "home" are to a manufactured home governed by Chapter 1201 of the Occupations Code. All references to "department" are to the Texas Department of Housing and Community Affairs. Our comments on the Sections of HB 2438 discussed in this legislative update are shown in ***bold italics***.

The Texas Manufactured Housing Act was originally created by the Texas Legislature in the mid-1970s and codified into Chapter 1201 of the Occupations Code in 2003. During this time the industry experienced significant change along with amendments to both the Texas Manufactured Housing Act and the pre-emptive Federal Manufactured Housing Standards Act. HB 2438 updates Chapter 1201, Occupations Code, to reflect current industry trends, deletes language that

is no longer applicable, references federal mandates, preserves consumer protections, and increases continuing education requirements.

1. **SECTION 11.** Amends Section 1201.2055, Occupations Code, by amending Subsection (d) and adding Subsections (e), (f), (g), and (h).

Prior to these amendments made by HB 2438, Section 1201.2055(d) provided that when the department issues a statement of ownership and location to an owner who has elected to treat a manufactured home as real property, the manufactured home is not considered to be real property until a certified copy of the statement of ownership and location has been filed in the real property records of the county in which the home is located. Only after the certified copy has been filed in the real property records of the county is the manufactured home considered to be real property, but if a certified copy of the statement of ownership and location has not been filed in the real property records of the county in which the manufactured home is located, the manufactured home continues to be treated as personal property until the certified copy is filed.

HB 2438 amends Section 1201.2055 by adding the following additional requirements to perfect a manufactured home as real property:

1. If an owner elects to treat a manufactured home as real property, the department shall issue to the owner a certified copy of the statement of ownership and location that reflects that the owner has elected to treat the manufactured home as real property at the location listed on the statement. Not later than the 60th day after the date the department issues a certified copy of the statement of ownership and location to the owner, the owner must:
 - (1) file the certified copy in the real property records of the county in which the manufactured home is located; and
 - (2) notify the department and the tax assessor-collector that the certified copy has been filed.
2. A manufactured home is not considered to be real property until the owner files a certified copy of the statement of ownership and location and notifies the department and the tax assessor-collector of the filing.
3. If notice is provided, the department and the tax assessor-collector shall note in their records that a real property election has been perfected. After the department and the tax assessor-collector note in their records that a real property election has been perfected, the manufactured home is considered to be real property for all purposes.
4. If notice is not provided, the department and the tax assessor-collector shall note in their records that a real property election has not been perfected and that the manufactured home remains personal property.

Section 1201.2055 also was amended to provide that the provisions of Chapter 1201 relating to the construction or installation of a manufactured home or to warranties for a manufactured home apply to a manufactured home regardless of whether the home is considered to be real or personal property.

HB 2438 does not state what happens if the owner files the certified copy and/or notifies the department and the tax assessor-collector after the 60-day period. Presumably, the department and the tax assessor-collector will have already noted in their records that a real property election has not been perfected and that the manufactured home remains personal property, which will necessitate corrective action as yet unspecified in Chapter 1201 or the department's manufactured housing rules.

These changes to the real property perfecting requirements of Section 1201.2055 will require additional post-closing procedures by either the lender or the title company in order to assure that these real property perfecting requirements are met within the 60-day period. They will also require changes to closing instructions to include these additional requirements as conditions for the closing.

2. SECTION 12 and SECTION 16. Section 12 amends Section 1201.206(d), Occupations Code, to provide that at a subsequent sale or transfer of a manufactured home, a new statement of ownership and location is only required for a manufactured home that is considered to be personal property.

Section 16 amends Section 1201.216(a), Occupations Code, to provide that if the owner of a manufactured home notifies the department that the owner intends to treat the manufactured home as real property, the department shall indicate on the statement of ownership and location that:

- (1) the owner has elected to treat the manufactured home as real property; and
- (2) the department no longer considers the manufactured home to be a manufactured home for purposes of regulation under Chapter 1201 except for the provisions relating to construction or installation or to warranties for a manufactured home.

The effect of these amendments is to limit the real property perfecting requirements of Section 1201.2055 discussed above only to the first retail sale of a manufactured home that is to be treated as real property. Once those requirements are satisfied, subsequent sales will not require the issuance of a new statement of ownership and location. These changes also will require additional post-closing procedures by either the lender or the title company in order to assure that the real estate perfecting requirements for the manufactured home were satisfied in a prior transaction. It will mean, at a minimum, that the title commitment reflect the recording of a statement of ownership and location for the manufactured home(that indicates that the owner has elected to treat the manufactured home as real property) in the real property records of the county where it is located and that the title company or lender verify that the department and the tax assessor-collector for that county have noted in their records that a real property election for the manufactured home has been perfected. It will also require changes to closing instructions to include these additional requirements as conditions for the closing.

3. SECTION 13. Amends Section 1201.207(a), Occupations Code, to require the department to process a completed application for the issuance of a statement of ownership and location not later than the 15th, rather than 10th, working day after the date the application is received by the department.

4. SECTION 17. Adds Section 1201.217, Occupations Code, to provide as follows:

(a) Authorizes the owner of real property on which a manufactured home owned by another is located to declare the home abandoned as provided by section 1201.217 if the home has been continuously unoccupied for at least four months and any indebtedness secured by the manufactured home is also delinquent.

(b) Requires the owner of real property on which a manufactured home is located, before declaring the home abandoned, to send a notice of intent to declare the home abandoned to the owner of the home and all lienholders at the addresses listed on the home's statement of ownership and location on file with the department. Provides that mailing of the notice by certified mail, return receipt requested, postage prepaid, to the above persons required to be notified constitutes conclusive proof of compliance with section 1201.217.

(c) Authorizes the owner of the home or a lienholder, on receipt of a notice of intent to declare a manufactured home abandoned, to freely enter the real property on which the home is located to remove the home.

(d) Provides that, if the manufactured home remains on the real property for at least 45 days after the date the notice is postmarked, all liens on the home are extinguished and the real property owner may declare the home abandoned and may apply to the department for a statement of ownership and location listing the real property owner as the owner of the manufactured home.

(e) Provides that a new statement of ownership and location issued by the department under section 1201.217 transfers, free of any liens, title to the manufactured home to the real property owner, if there is evidence of United States Postal Service return receipt from all lienholders.

This new section applies to manufactured homes that are treated by the department as personal property, so it should have minimal effect on real property secured transactions involving manufactured housing.

5. **SECTION 29.** Amends Subchapter Z, Chapter 2306, Government Code, by adding Section 2306.591 as follows:

“Sec. 2306.591. MANUFACTURED HOMES INSTALLED IN COLONIAS.

(a) For a manufactured home to be approved for installation and use as a dwelling in a colonia:

(1) the home must be a HUD-code manufactured home, as defined by Section 1201.003, Occupations Code;

(2) the home must be habitable, as described by Section 1201.453, Occupations Code; and

(3) ownership of the home must be properly recorded with the manufactured housing division of the department.

(b) An owner of a manufactured home is not eligible to participate in a grant loan program offered by the department, including the single-family mortgage revenue bond program under Section 2306.142, unless the owner complies with Subsection (a).”

Section 2306.581 of the Government Code defines a colonia as “a geographic area located in a county some part of which is within 150 miles of the international border of this state and that: (A) has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under Section 17.921, Water Code; or (B) has the physical and economic characteristics of a colonia, as determined by the department.”

Because subsection 2306.591(a)(3) requires the manufactured home to be “properly recorded with the manufactured housing division of the department,” Section 2306.591 does not appear to apply to a manufactured home that is considered real property under Chapter 1201 of the Occupations Code [see SECTIONS 11, 12 and 16 discussed above]. However, this is not clear, as subsection (a)(3) does not define “properly recorded with the manufactured housing division” or otherwise explain its meaning.

6. SECTION 31. Amends Section 32.014, Tax Code, to provide follows:

(a) Requires the tax lien on a manufactured home to be attached to the land on which the manufactured home is located, if the owner of a manufactured home has elected to treat the home as real property. Prior to this amendment, Section 32.014 required the tax lien on a manufactured home to attach to the land if the manufactured home is listed together with the land on which the manufactured home is located.

(b) Provides that, if the owner of a manufactured home does not elect to treat the home as real property with the land on which the manufactured home is located, the tax lien on the manufactured home does not attach to the land on which the home is located. Prior to this amendment, Section 32.014 provided that if the manufactured home is listed separately from the land on which the manufactured home is located, the tax lien did not attach to the land on which the home is located.

(c) Deletes the existing text of section 32.014 that provided if a manufactured home is listed together with the land on which the manufactured home is located, a taxing unit with jurisdiction to impose taxes on the land may place a lien on the manufactured home to secure payment of those taxes to the same extent that it can place a lien on the land, and that if the home is moved from its location and a new statement of ownership and location is not issued, a taxing unit with jurisdiction to impose taxes on the land on which the manufactured home was located retains the right to record and enforce liens on that home to secure the payment of taxes, regardless of where the home is currently located.

The amendments noted in (a) and (b) above are clarifications and do not change the substance of Section 32.014 of the Tax Code. However, the deletion noted in (c) above relating to a taxing unit’s jurisdiction to follow the change in location of a manufactured home for the purpose of imposing a tax lien is a signification change to Section 32.014 of the Tax Code, and should provide more certainty regarding the tax status of a relocated manufactured home.

7. SECTION 34. The following section and subsections of Chapter 1201, Occupations Code, are repealed: 1201.206(a) (Retailer to Provide Purchaser with Application for Statement of Ownership and Location); 1201.215 (Abandoned Manufactured Home); and 1201.222(b)

(Closing Location for Acquisition Transaction for Manufactured Home Considered Real Property).

- (1) 1201.206(a): The repeal of subsection 206(a) means the manufactured housing retailer is no longer required to provide to the purchaser an application for the issuance of a statement of ownership and location and any information necessary to complete the application.
- (2) 1201.215: This section was repealed because it has been replaced by the more extensive requirements of new Section 1201.217. [*See SECTION 17 discussed above.*]
- (3) 1201.222(b): The repeal of subsection 222(b) means that the closing of a transaction for the acquisition of a manufactured home considered real property under Chapter 1201 no longer must occur at the office of a federally insured financial institution, a title insurance company, or an attorney at law. ***This is a significant change that will allow these manufactured home transactions to be closed in the same locations as other real estate secured transactions.***

Unless otherwise stated in this legislative update, HB 2438 is effective as of June 18, 2005. This update is not a complete description of HB 2438 and no attempt was made to summarize HB 2438 in its entirety. This legislative update is simply an attempt to advise our clients of those Sections of HB 2438 that we believe are of interest to our clients. You are urged to review the full text of HB 2438 if you believe it affects your business. You may request a copy of HB 2438 from us, if you so desire.

<p>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.</p>
