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**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** Legislative Update from 79<sup>th</sup> Regular Session of the  
Texas Legislature, 2005 – Bills Effective on and after September 1, 2005

This legislative update summarizes those bills effective on and after September 1, 2005 that we consider of interest to our clients. The first legislative update, dated July 13, 2005, summarized those bills effective immediately that we consider of interest to our clients. The second legislative update, dated July 19, 2005, summarized House Bill 2438 relating to changes in manufactured housing law, which took effect June 18, 2005. The third legislative update, dated August 15, 2005, summarized Senate Bill 1587 and House Bill 2491 relating to the transfer and refinance of real property tax liens. The fourth legislative update, dated August 18, 2005, discussed House Bill 1547 and the Finance Commission proposed rules relating to the new second lien plain language Spanish disclosure. The legislative update that follows this update will summarize 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.

**1. Second Lien Loan Spanish Language Disclosure (HB 1547):** This bill amends the plain language provisions of Section 341.502 of the Finance Code to provide for a Spanish language disclosure by adding subsection (a-1) as follows:

(a-1) If the terms of the agreement for a loan under [*Chapter 342 or a Chapter 342 home equity loan*] were negotiated in Spanish, a copy of a summary of those terms and other pertinent information shall be provided to the debtor in Spanish in a form identical to disclosures required for a closed-end transaction under 12 C.F.R. Section 226.18 [*Regulation Z*].

***Note:*** *These plain language requirements only apply to a loan accruing interest at a per annum rate over 10% that is secured by an inferior lien on residential real property. The Finance Commission has proposed rules to implement this disclosure requirement, which are published in 7 T.A.C. §§1.1251-1.1256. Until these rules are final, the Office of Consumer Credit Legislative Update Memo (Bills Effective 9-1-05)*

*Commissioner has stated that compliance with the proposed rules will be deemed compliance with this new statutory requirement. We have prepared a separate memorandum on Section 341.502(a-1) and the proposed rules, dated August 18, 2005, which is on our website. A complete copy of the proposed rules and model Spanish language disclosure form is included in that memorandum.*

**2. Transfer, Refinance and Foreclosure of Ad Valorem Tax Lien (SB 1587 and HB 2491):**

For quite sometime Sections 32.06 and 32.065, Texas Tax Code, have provided the mechanism for lenders to refinance ad valorem tax debt secured by tax liens against Texas homestead (and other property) permitted by Section 50(a)(2), Article XVI, Texas Constitution. Over the years, many mortgage lenders have taken advantage of this mechanism by traditional refinance loans that refinance the ad valorem tax debt with other debt secured by homestead property. Senate Bill 1587 and House Bill 2491 have added new requirements to this procedure by amendments to Sections 32.06 and 32.065.

*Note: On our website is a memorandum, dated August 15, 2005, that summarizes these changes to Sections 32.06 and 32.065 of the Tax Code.*

**3. Disposal of Business Records (HB 698):** This bill amends Section 35.48 of the Business and Commerce Code relating to the disposal of certain business records that contain personal identifying information.

Section 35.48 is amended by adding subdivisions (1-a) and (3) to subsection (a) and adding subsections (d) through (i):

(1-a) "Personal identifying information" means an individual's first name or initial and last name in combination with any one or more of the following items:

- (A) date of birth;
- (B) social security number or other government-issued identification number;
- (C) mother's maiden name;
- (D) unique biometric data, including the individual's fingerprint, voice print, and retina or iris image;
- (E) unique electronic identification number, address, or routing code;
- (F) telecommunication access device, including debit and credit card information; or
- (G) financial institution account number or any other financial information.

(3) "Telecommunication access device" has the meaning assigned by Section 32.51, Penal Code (i.e. - a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another telecommunication access device may be used to obtain money, goods, services, or other thing of value; or initiate a transfer of funds other than a transfer originated solely by paper instrument.)

**(d) When a business disposes of a business record that contains personal identifying information of a customer of the business, the business shall modify, by shredding, erasing, or other means, the personal identifying information to make it unreadable or undecipherable.**

(e) A business is considered to comply with Subsection (d) if the business contracts with a person engaged in the business of disposing of records for the modification of personal identifying information on behalf of the business in accordance with Subsection (d).

(f) **A business that does not dispose of a business record of a customer in the manner required by Subsection (d) is liable for a civil penalty of up to \$500 for each record.** The attorney general may bring an action against the business to: (1) recover the civil penalty; (2) obtain any other remedy, including injunctive relief; and (3) recover costs and reasonable attorney's fees incurred in bringing the action.

(g) A business that modifies a record as required by Subsection (d) in good faith is not liable for a civil penalty under Subsection (f) if the record is reconstructed, in whole or in part, through extraordinary means.

(h) Subsection (d) does not require a business to modify a record if: (1) the business is required to retain the record under other law; or (2) the record is historically significant and: (A) there is no potential for identity theft or fraud while the record is in the custody of the business; or (B) the record is transferred to a professionally managed historical repository.

(i) **Subsection (d) does not apply to: (1) a financial institution as defined by 15 U.S.C. Section 6809 (a very broad definition under the Gramm-Leach-Bliley Act); or (2) a covered entity as defined by Section 601.001 or 602.001, Insurance Code (basically various insurance entities).**

These amendments apply to the disposal of business records without regard to whether the records were created before, on, or after September 1, 2005.

***Note: Based on the persons excluded under subsection (i), this new legislation may not have significant impact on traditional mortgage lenders and brokers.***

**4. Lien on Retained Funds and Termination/Abandonment of Work (HB 629):** This bill amends Chapter 53 of the Property Code by amending Section 53.103 and adding Section 53.107 relating to a lien on retained funds and notice to subcontractors by the owner when the work is terminated or abandoned. The amendment to Section 53.103 provides that in order to obtain a lien on retained funds (*see Section 53.101*) the claimant must file an affidavit not later than the 30<sup>th</sup> day after the earlier of completion, termination, or abandonment by the original contractor. Section 53.107 provides for the manner, type, and timing of owner notices to subcontractors of termination or abandonment of the work and the date of termination or abandonment. Subsection (e) to Section 53.107 states that Section 53.107 does not apply to “residential construction projects” (*see definition in Section 53.001*).

**HB 629** applies only to a subcontractor who claims a lien as provided by Subchapter E, Chapter 53, Property Code, as amended by **HB 629**, if that claim arises under an original contract entered into on or after September 1, 2005. A claim that arises under a contract entered into before September 1, 2005, is governed by the law as it existed immediately before September 1, 2005, and that law is continued in effect for that purpose.

***Note: By excluding residential construction projects, this bill leaves retainage claimants on residential construction projects without a definitive way of determining the start of the 30-day***

*retainage period when the work is terminated or abandoned. This is troubling because of the recent Texas Supreme Court case of Page v. Structural Wood Components, 102 S.W.3d 720, 726 (Tex.2003), which held that “a construction contract and the work performed thereunder are complete at the time that the contract is terminated or abandoned, so that the lien affidavit [for retainage] must therefore be filed within thirty days of termination.”*

**5. Finance Code Revisions (HB 955):** This bill extensively amends the Texas Finance Code relating to the regulation of financial businesses and practices. The below summaries are only some of the Finance Code amendments of which we believe our clients should be made aware.

(1) New Chapter 308 (Consumer Credit Protections). Title 4 of the Finance Code [*Regulation of Interest, Loans, and Financed Transactions*] is amended by adding Chapter 308 to provide as follows:

Sec. 308.001. Chapter 308 applies to a person regularly engaged in the business of extending credit under Subtitle A [*Interest*] primarily for personal, family, or household use. Chapter 308 does not apply to a transaction primarily for a business, commercial, investment, or agricultural purpose.

Sec. 308.002. (a) A creditor may not advertise or cause to be advertised a false, misleading, or deceptive statement or representation relating to a rate, term, or condition of a credit transaction or advertise credit terms that the person does not intend to offer to consumers who qualify for those terms.

(b) Section 308.002 does not create a private right of action.

(c) In interpreting Section 308.002, an administrative agency or a court shall be guided by the applicable advertising provisions of: (1) the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); (2) Federal Reserve Regulation Z (12 C.F.R. Part 226); and (3) the Official Staff Commentary and other interpretations of that statute and regulation by the Board of Governors of the Federal Reserve System and its staff.

(d) If a requirement of Section 308.002 and a requirement of a federal law, including a regulation or an interpretation of federal law, are inconsistent or in conflict, federal law controls and the inconsistent or conflicting requirements of Chapter 308 do not apply.

(e) A creditor who complies with the Truth in Lending Act and Federal Reserve Regulation Z in advertising a credit transaction is considered to have fully complied with Section 308.002.

Sec. 308.003. A judgment, consent decree, assurance of compliance, or other resolution of a claimed violation asserted by a federal agency under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) bars a subsequent action or other enforcement under Chapter 308 with respect to the same act or practice.

(2) New Chapter 350 (Creditors not Licensed or Registered). Subtitle B [*Loans and Financed Transactions*], Title 4, of the Finance Code is amended by adding Chapter 350 [*Requirements and Limitations Applicable to Consumer Creditors Not Licensed or Registered under this Title*] to provide as follows:

Sec. 350.001. (a) Chapter 350 applies to a person who extends credit primarily for personal, family, or household use and not for a business, commercial, investment, or agricultural

purpose. For the purposes of Chapter 350, credit means the right granted to a debtor to defer payment of debt or to incur debt and defer its payment. A creditor is subject to Chapter 350 if the creditor charges a finance charge or extends credit payable in one or more installments.

(b) Chapter 350 does not apply to a person who is: (1) licensed or registered under Title 4 or Title 3 [*Financial Institutions and Businesses*]; or (2) exempt from licensing or registration under Title 4.

Sec. 350.002. A person may not use any device, subterfuge, or pretense to evade the application of this section.

Sec. 350.003. A creditor who is not licensed, registered, or otherwise exempt under Title 4 must comply with the requirements of 15 U.S.C. Section 45. An enforcement action to compel compliance under this section may include an action to enjoin illegal activities or order restitution. ***Note: The reference to "15 U.S.C. Section 45" appears to be an incorrect cite to federal statutes. The title of Section 350.003 is "Compliance with Fair Trade Practices Act" and it is logical to assume this is the federal law that is the subject of Section 350.003.***

Sec. 350.004. Chapter 349 of the Finance Code applies to violations of Chapter 350 and the rules adopted under Chapter 350.

(3) Definition of Interest Amended. The basic definition of interest in Section 301.002(4), Finance Code, quoted below is amended by the addition of the underlined last sentence as follows:

"Interest" means compensation for the use, forbearance, or detention of money. The term does not include time price differential, regardless of how it is denominated. The term does not include compensation or other amounts that are determined or stated by this code or other applicable law not to constitute interest or that are permitted to be contracted for, charged, or received in addition to interest in connection with an extension of credit.

***Note: What the effect of this addition to the definition of interest will be is anyone's guess. It is basically saying what is not interest is not defined as interest.***

(4) Counterclaim Alleging Usurious Interest. Section 305.006(d), Finance Code, is amended to read as follows:

"With respect to a defendant filing a counterclaim action alleging usurious interest in an original action by the creditor, the defendant shall provide notice complying with Subsection (b) at the time of filing the counterclaim [i.e., *the defendant must give the creditor written notice stating in reasonable detail the nature and amount of the violation*] and, on application of the creditor to the court, the action is subject to abatement for a period of 60 days from the date of the court order. During the abatement period the creditor may correct a violation. As part of the correction of the violation, the creditor shall offer to pay the obligor's reasonable attorney's fees as determined by the court based on the hours reasonably expended by the obligor's counsel with regard to the alleged violation before the abatement. A creditor who corrects a violation as provided by this subsection is not liable to an obligor for the violation."

(5) Chapter 342 Appraisal Fees. Section 342.308(a), Finance Code, is amended to delete the requirement that an appraiser has to be licensed or certified in order for a lender to collect reasonable fees for an appraisal in connection with a secondary mortgage loan subject to Chapter 342.

(6) Name Changes. Section 13.0015 is added to Chapter 13, Finance Code, to change the names of the Savings and Loan Department and the Savings and Loan Commissioner. The Savings and Loan Department is renamed the *Department of Savings and Mortgage Lending* and the savings and loan commissioner is renamed the *savings and mortgage lending commissioner*. A reference in a statute or rule to the Savings and Loan Department means the Department of Savings and Mortgage Lending. A reference in a statute or rule to the savings and loan commissioner means the savings and mortgage lending commissioner.

(7) Fees Established by Finance Commission. Section 13.008(a), Finance Code, is amended to give the Texas Finance Commission the authority to establish reasonable and necessary fees for the administration of Chapter 156 [*Mortgage Broker License Act*] and Chapter 157 [*Mortgage Banker Registration Act*] not to exceed the fee limits set forth in those chapters.

(8) Lender Liability for Construction. Section 59.011 is added to Subchapter A, Chapter 59, Finance Code, to read as follows:

Sec. 59.011. (a) For purposes of Chapter 27 [*Residential Construction Liability*] and Title 16 [*Texas Residential Construction Commission Act*] of the Texas Property Code, a federally insured financial institution regulated under the Finance Code is not a builder.

(b) A lender regulated by the Finance Code that forecloses on or otherwise acquires a home through the foreclosure process or other legal means when the loan is in default is not liable to a subsequent purchaser for any construction defects of which the lender had no knowledge that were created prior to the acquisition of the home by the lender.

(c) A builder hired by a lender to complete the construction of a foreclosed home is not liable for any construction defects of which the builder had no knowledge that existed prior to the acquisition of the home by the lender, but the builder is subject to Chapter 27 and Title 16, Texas Property Code, for work performed for the lender subsequent to the acquisition of the home by the lender.

(9) New Subchapter M (Limited Savings Bank). Subchapter M [*Sections 92.601 - .611*] is added to Chapter 92, Finance Code, to provide for the creation of a limited savings bank. Under Subchapter M, five or more adult residents of this state may apply to organize a savings bank as a limited savings bank by submitting to the savings and mortgage lending commissioner: (1) an application to organize a limited savings bank; and (2) the filing fee. To the extent not inconsistent with Subtitle C. Savings Banks, or the proper business of a savings bank, or a rule adopted by the Finance Commission related to savings banks, an application must contain (among other items) other provisions included in: (i) the articles of organization of a limited liability company organized under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) if the limited savings bank was organized before January 1, 2006; or (ii) the certificate of formation of a limited liability company organized under Chapter 101, Business Organizations Code, if: (a) the limited savings bank was organized on or after January 1, 2006; or (b) the organizers elect to include those provisions, if the limited savings bank was organized

before January 1, 2006. A reference in a statute or rule to a savings bank includes a savings bank organized as a limited savings bank unless the context clearly requires that a limited savings bank is not included within the term or the provision contains express language excluding a limited savings bank.

(10) Mortgage Broker License Act Amendments. Pertinent parts of the Mortgage Broker License Act [*Chapter 156, Finance Code*] amended by **HB 955** are summarized below:

1. Section 156.201(c) is amended to read as follows: "Each mortgage broker licensed under Chapter 156 is responsible to the commissioner and members of the public for any act or conduct performed by the mortgage broker or a loan officer sponsored by or acting for the mortgage broker in connection with: (1) the origination of a mortgage loan; or (2) a transaction that is related to the origination of a mortgage loan in which the mortgage broker knew or should have known of the transaction."

*Note: This amendment expands the savings and mortgage lending commissioner's authority beyond the authority in the Mortgage Broker License Act as originally enacted. It also provides the statutory authority for the Rules issued by the commissioner, effective January 9, 2005, under 7 TAC §80.10 of the Mortgage Broker Regulations relating to false, misleading, or deceptive practices and improper dealings.*

2. Section 156.202 is amended to exempt from the Mortgage Broker License Act a subsidiary, affiliate, or credit union service organization of a state or federal credit union.

3. Section 156.204(c) [*Qualifications for Loan Officer License*] is amended by increasing the hours of approved education courses required for a loan officer license from 15 hours to **30 hours**. Senate Bill 988 makes the same amendment.

4. Section 156.208 is amended by adding subsection (i) to authorize the commissioner to deny the renewal of a mortgage broker license or a loan officer license if: (1) the mortgage broker or loan officer is in violation of Chapter 156, a rule adopted under Chapter 156, or any order previously issued to the individual by the commissioner; or (2) the mortgage broker or loan officer is in default in the payment of any administrative penalty, fee, charge, or other indebtedness owed under Title 3 of the Finance Code.

5. Section 156.2081 is amended by deleting subsection (d) and amending subsection (c) to provide that a person whose license has been expired for 91 days or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

*Note: Prior to these amendments, Section 156.2081(c) permitted a person whose license has been expired for more than 90 days but less than one year, but who is otherwise eligible to renew the license, to renew the license by paying a renewal fee equal to two times the normally required renewal fee.*

6. Section 156.209 is amended by adding subsection (g) to provide that a person whose application for a license has been denied is not eligible to be licensed for a period of two

years after the date the denial becomes final, or a shorter period determined by the commissioner pursuant to rules adopted by the Finance Commission.

7. Section 156.303 is amended by adding subsections (g) and (i). Subsection (g) provides that if a person fails to pay an administrative penalty or fails to comply with an order of the commissioner that has become final, in addition to any other legal remedy the commissioner, on 10 days' notice, may without a prior hearing suspend the person's mortgage broker or loan officer license. The suspension continues until the person has complied with the order or paid the administrative penalty. During the period of suspension, the person may not originate a mortgage loan and all compensation received by the person during the period of suspension is subject to forfeiture as provided by Section 156.406(b). Subsection (i) provides that an order revoking a mortgage broker or loan officer license may provide that the person is prohibited, without obtaining the commissioner's prior written consent, from: (1) engaging in the business of originating or making mortgage loans; (2) being an employee, officer, director, manager, shareholder, member, agent, contractor, or processor of a mortgage broker or loan officer; or (3) otherwise affiliating with a person for the purpose of engaging in the business of originating or making mortgage loans.

8. Section 156.305 is added to read as follows: "The commissioner may order a person to make restitution for any amount received by that person in violation of this chapter. A mortgage broker may be required to make restitution for any amount received by a sponsored loan officer in violation of this chapter."

9. Section 156.406(c) is amended to provide that if the commissioner issues a cease and desist order to a person who is not licensed or exempt under Chapter 156 who the commissioner has reasonable cause to believe has engaged, or is about to engage, in an act or practice for which a license is required under Chapter 156, the order may assess an administrative penalty in an amount not to exceed \$1,000 per day for each violation and may require a person to pay to a mortgage applicant any compensation received by the person from the applicant in violation of Chapter 156.

10. Section 156.501(b) is amended to provide that payments from the Mortgage Broker Recovery Fund may not be made to a lender who makes a mortgage loan originated by the mortgage broker or loan officer or who acquires a mortgage loan originated by the mortgage broker or loan officer.

(11) State and Federal Law Comparison Study. **HB 955** requires that not later than December 31, 2006, the Finance Commission of Texas and the Credit Union Commission shall: (1) compare state laws related to financial institutions with applicable federal laws; (2) determine which state laws may be preempted by federal law, rule, or order; (3) determine which state laws may be invalidated by state or federal court ruling; and (4) report their findings to the legislature, with recommended statutory changes.

(12) Study to Limit Use of Social Security Numbers. **HB 955** requires the Office of Consumer Credit Commissioner, with the attorney general's assistance, to conduct a study to develop and evaluate proposals to limit the use of social security numbers by businesses in this state. In conducting the study, the consumer credit commissioner shall receive input from credit reporting agencies, businesses, and consumer groups. The consumer credit commissioner shall



evaluate whether, when a business contacts a credit reporting agency for a credit check of a customer, the business and credit reporting agency should create a unique code that: (1) would allow the business to retrieve the social security number of the customer for collection purposes; and (2) would permit the business to delete the social security number of the customer from the records of the business. The consumer credit commissioner shall determine the date on which the system described above could be implemented and the feasibility of monitoring compliance with the system. Not later than July 1, 2006, the consumer credit commissioner must submit a report to the legislature regarding the results of the study.

***Note: The studies described in (11) and (12) are an opportunity for mortgage lenders and brokers to lobby for legislative changes beneficial to their interests.***

**6. Mortgage Broker/Loan Officer Licensing (SB 988):** This bill amends Chapter 156, Finance Code, [*Mortgage Broker License Act*] relating to education courses required for a mortgage broker or loan officer license by amending Sections 156.204 and 156.208.

Section 156.204 [*Qualifications for Loan Officer License*] is amended by increasing the hours of approved education courses required under subsection (c)(4)(B) from 15 hours to **30 hours**; and by adding subsection (e), which requires that the 30 hours of education courses for a loan officer license cover the following subjects: ethics, the Real Estate Settlement Procedures Act, the Truth in Lending Act, the Equal Credit Opportunity Act, and the Mortgage Broker License Act.

The changes in law to Section 156.204 apply only to an individual who applies for a license as a loan officer on or after September 1, 2005. An individual who applies for a license before September 1, 2005, must comply with the requirements in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

Section 156.208 [*License Renewal*] is amended by the addition of subsection (i), which requires the Texas Finance Commission to adopt a rule that requires a mortgage broker or loan officer to attend, during the term of the current license, not less than **eight hours** of continuing education courses related to residential mortgage lending before renewing a license.

The changes in law made to Section 156.208 apply only to an individual who applies to renew the individual's license on or after September 1, 2005. An individual who applies to renew a license before September 1, 2005, must comply with the requirements in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

**7. Appointment of Substitute Trustee (HB 1234):** This bill relates to the appointment of substitute trustees in foreclosures. It amends subsection (c) and adds subsections (d) and (e) to Section 51.0075, Property Code. Subsection (c) is amended to provide that a mortgagee may appoint or may authorize a mortgage servicer to appoint a substitute trustee or substitute trustees to succeed to all title, powers, and duties of the original trustee. A mortgagee or mortgage servicer may make such appointment or authorization by power of attorney, corporate resolution, or other written instrument. The amendment deletes the previous requirement that the appointment be signed by the mortgagee's representative, acknowledged, and sworn to with a jurat. Subsections (d) and (e) are added to provide that a mortgage servicer may authorize an attorney to appoint a substitute trustee or substitute trustees on behalf of a mortgagee and requires

the notice of sale required by Section 51.002(b) to disclose the name and a street address for a trustee or substitute trustees.

The changes in law made by **HB 1234** apply to a security instrument or other contract executed on or after September 1, 2005, and to a security instrument or other contract executed before September 1, 2005, that does not conflict with the changes in law made by **HB 1234**. A security instrument or other contract executed before September 1, 2005, that conflicts with the changes in law made by **HB 1234** is governed by the law in effect at the time the security instrument or other contract was executed, and the former law is continued in effect for that purpose.

**8. Foreclosure Notices (HB 1235):** This bill amends Sections 51.002(b) and 51.0025, Property Code, regarding the notice of sale required for a foreclosure of real property under a contract lien. Section 51.002(b) [*Notice of Sale*] is amended to delete the requirement that only the mortgage servicer may serve the notice of sale on the debtor. As amended, Section 51.002(b) permits other parties to serve the notice of sale on the debtor. Section 51.0025 [*Administration of Foreclosure by Mortgage Servicer*] is amended to require **the notice of sale required by Section 51.002(b) to include the mortgage servicer's address.**

Except as provided by a security instrument or other contract executed before September 1, 2005, the changes to Section 51.002 made by **HB 1235** apply to the notice required under Section 51.002 that is posted, filed, and served on or after September 1, 2005. If a security instrument or other contract executed before September 1, 2005, conflicts with the changes to Section 51.002 made by **HB 1235** as to the notice required under Section 51.002, the notice provisions of the security instrument or other contract prevail, and the security instrument or other contract is governed by the law in effect at the time the security instrument or other contract was executed, and that former law is continued in effect for that purpose.

Except as provided by a security instrument or other contract executed before September 1, 2005, the changes to Section 51.0025 made by **HB 1235** apply to the administration of a sale of real property under a contract lien that is conducted on or after September 1, 2005. If a security instrument or other contract executed before September 1, 2005, conflicts with the changes made to Section 51.0025 made by **HB 1235** as to the administration of a sale of real property under a contract lien, the security instrument or other contract prevails, and the security instrument or other contract is governed by the law in effect at the time the security instrument or other contract was executed, and the former law is continued in effect for that purpose.

**9. Delivery of Blanks Check Forms (HB 607):** This bill amends Chapter 35, Business and Commerce Code, by adding Section 35.395 to regulate the delivery of blank check forms by courier as follows:

**Sec. 35.395. Delivery Of Check Form.**

(a) In this section:

(1) "Addressee" means a person to whom a check form is sent.

(2) "Check form" means a device for the transmission or payment of money that: (A) is not a negotiable instrument under Section 3.104; (B) if completed would be a check as that term is described by Section 3.104; and (C) is printed with information relating to the financial institution on which the completed check may be drawn.

(3) "Courier" means any entity that delivers parcels for a fee.

(4) "Check form provider" means a business that provides check forms to a customer for a personal or business account.

(b) When an addressee requests of a check form provider, courier delivery of a check form with signature required, and such service is available in the delivery area of the addressee, the entity making the arrangement for courier delivery pursuant to the request of the addressee must provide the addressee with the option to require that a signature of the addressee, or the representative of the addressee, be obtained on delivery. The option to require such a signature may be provided on a printed check form order form, on an electronic check form order form where check form orders are offered on the Internet, to an electronic mail address established for such purpose by the entity making the offer, or by another method reasonably calculated to effectively communicate the addressee's intent.

(c) An entity making the arrangement for the courier delivery of a check form to an addressee pursuant to the provisions of Subsection (b) shall notify the courier of the check form that the signature of the addressee is required for delivery under Subsection (b).

(d) If the addressee suffers a pecuniary loss through the use of check forms stolen at the time of delivery to the addressee, a civil penalty of up to a maximum amount of \$1,000 per delivery may be levied upon:

(1) an entity that violates Subsection (b) or (c); or

(2) a courier who is properly notified under Subsection (c) that a signature is required for delivery, and delivers the check form without obtaining a signature of the addressee or a representative of the addressee.

(e) The attorney general may bring suit to recover a civil penalty imposed under this section. The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses. **(Sec. 35.395 takes effect June 1, 2006.)**

**10. Notice of Public Improvement District (HB 1919):** This bill adds Section 5.014 to Chapter 5, Property Code, to require in certain real property transactions the following written notice concerning public improvement districts established under Chapter 372, Local Government Code.

NOTICE OF OBLIGATION TO PAY PUBLIC IMPROVEMENT DISTRICT ASSESSMENT  
TO (municipality or county levying assessment) CONCERNING THE PROPERTY AT (street  
address)

As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment.

The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Purchaser

(a) A seller of residential real property that is located in a public improvement district established under Chapter 372, Local Government Code, and that consists of not more than one dwelling unit must give to the purchaser of the property a written notice that reads substantially similar to the above notice.

(b) The seller shall deliver the notice to the purchaser before the effective date of an executory contract binding the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser. If the notice is included as part of the executory contract or another notice, the title of the notice, the references to the street address and date, and the purchaser's signature on the notice may be omitted.

(c) Among other excluded transfers, Section 5.014 does not apply to a transfer: (1) under a foreclosure sale; (2) to a beneficiary of a deed of trust by a trustor or successor in interest; (3) by a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure; (4) from one co-owner to another co-owner of an undivided interest in the real property; (5) to a spouse or a person in the lineal line of consanguinity of the seller; (6) of only a leasehold interest or security interest; or (7) of a real property interest in a condominium.

(d) If an executory contract is entered into without the seller providing the notice, the purchaser may terminate the contract for any reason not later than the earlier of: (1) the seventh day after the date the purchaser receives the notice; or (2) the date the transfer occurs as provided by the executory contract.

(e) The purchaser's right to terminate the executory contract is the purchaser's exclusive remedy for the seller's failure to provide the notice.

Section 5.014, Property Code applies only to an executory contract that is binding on a seller and purchaser on or after **January 1, 2006**.

***Note:*** *This notice requirement only applies to a single-family property located in a public improvement district. Under Chapter 372 of the Local Government Code, if the governing body of a municipality or county finds that it promotes the interests of the municipality or county, the governing body may undertake an improvement project [§372.003 of Chapter 372] that confers a special benefit on a definable part of the municipality or county or the municipality's extraterritorial jurisdiction ["public improvement district"].*

**11. Filing Fees Real Property Records (HB 950):** This bill amends Section 118.011(a), Local Government Code, to increase the filing fees for filing documents with a county clerk in the Real Property Records. For the first page the fee is increased from \$3.00 to **\$5.00**. For each additional page or part of a page on which there are visible marks of any kind and for all or part of each 8-1/2" X 14" attachment or rider the fee is increased from \$2.00 to **\$4.00**.

***Note:*** *This fee increase may require lenders to revise the estimate of recording fees disclosed on their federal Truth in Lending disclosure statements.*

**12. Extension of Credit to Victim of Identity Theft (SB 99):** This bill amends Chapter 35, Business and Commerce Code, by adding Section 35.585 relating to the extension of credit to a victim of identity theft. Section 35.585 defines "victim of identity theft" as an individual who has filed a criminal complaint alleging the commission of an offense under Section 32.51, Penal Code, [*Fraudulent Use or Possession of Identifying Information*] other than a person who is convicted of an offense under Section 37.08, Penal Code, [*False Report to Peace Officer or Law Enforcement Employee*] with respect to that complaint. **A person who has been notified that an individual has been the victim of identity theft may not deny the individual an extension of credit, including a loan, in the individual's name or restrict or limit the credit extended solely because the individual has been a victim of identity theft.** Section 35.585 does not prohibit a person from denying an individual an extension of credit for a reason other than because the individual has been a victim of identity theft. A license issued under Chapter 342, Finance Code, held by a person who violates Section 35.585 is subject to revocation or suspension.

**13. Recording Electronic Documents (SB 335):** This bill amends the Texas Property Code and the Local Government Code relating to the recording of electronic documents. Pertinent sections of the bill are summarized below.

The Property Code is amended by adding Chapter 15 as follows:

Sec. 15.001. Chapter 15 may be cited as the Uniform Real Property Electronic Recording Act.

Sec. 15.002. In Chapter 15: (1) "Document" means information that is: (A) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and (B) eligible to be recorded in the real property records maintained by a county clerk.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by a county clerk in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Paper document" means a document that is received by a county clerk in a form that is not electronic.

Sec. 15.003. In applying and construing Chapter 15, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of Chapter 15 among states that enact a law substantially similar to Chapter 15.

Sec. 15.004. (a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document that complies with the requirements of Chapter 15.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

Sec. 15.005. (a) A county clerk who implements any of the functions described by this section shall act in compliance with rules adopted by the Texas State Library and Archives Commission under Chapter 195, Local Government Code, and standards established by the Texas State Library and Archives Commission under Section 15.006.

(b) A county clerk may: (1) receive, index, store, archive, and transmit electronic documents; (2) provide for access to, and for search and retrieval of, documents and information by electronic means; (3) convert paper documents accepted for recording into electronic form; (4) convert into electronic form information recorded before the county clerk began to record electronic documents; (5) accept electronically any fee or tax that the county clerk is authorized to collect; and (6) agree with other officials of a state, a political subdivision of a state, or the United States on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

(c) A county clerk who accepts electronic documents for recording shall: (1) continue to accept paper documents; and (2) place entries for paper documents and electronic documents in the same index.

Sec. 15.006. (a) The Texas State Library and Archives Commission by rule shall adopt standards to implement Chapter 15.

(b) To keep the standards and practices of county clerks in Texas in harmony with the standards and practices of recording offices in other jurisdictions that enact a law that is substantially similar to Chapter 15 and to keep the technology used by county clerks in Texas compatible with technology used by recording offices in other jurisdictions that enact a law that is substantially similar to Chapter 15, the Texas State Library and Archives Commission, so far as is consistent with the purposes, policies, and provisions of Chapter 15, in adopting, amending, and repealing standards shall consider: (1) standards and practices of other jurisdictions; (2) the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association; (3) the views of interested persons and governmental officials and entities; and (4) the needs of counties of varying size, population, and resources.

Sec. 15.007. Chapter 15 modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

Sec. 15.008. Except as otherwise provided by Chapter 15, Chapter 195 of the Local Government Code and the rules adopted by the Texas State Library and Archives Commission under Chapter 195 apply to electronic documents filed in accordance with Chapter 15.

The Local Government Code is amended to conform the terms in Section 191.009 of Chapter 191[*Electronic Filing and Recording*] and Chapter 195 [*Electronic Filing of Records with and Recording by County Clerk*] to the new Chapter 15 of the Texas Property Code.

A rule adopted before September 1, 2005, by the Texas State Library and Archives Commission under Chapter 195, Local Government Code, applies to an electronic document filed for recording in accordance with Chapter 15, Property Code, on or after September 1, 2005.

**14. Right of First Refusal on Condominium - Prohibited Fees (SB 810):** This bill adds Section 5.014 to Chapter 5, Property Code, to prohibit the charging of a fee to decline a right of first refusal on a condominium unit as follows:

Sec. 5.014. A person who has a right of first refusal in real property that is a condominium subject to Chapter 81 or Chapter 82 may not charge a fee for declining to exercise that right, such as a fee for providing written evidence of the declination.

Except as provided by a contract entered into before September 1, 2005, Section 5.014 applies only to a fee that is solicited on or after September 1, 2005, for declining the exercise of a right of first refusal.

**15. Loan on Residence Homestead of a Minor or Ward (HB 637):** This bill amends the Probate Code to authorize a home equity extension of credit secured by a homestead in which a minor or ward has an ownership interest.

Section 781 is amended by adding Subsections (a-1) and (a-2) to permit the guardian of the estate to make a loan on the ward's behalf that is secured by a lien on the ward's real property homestead to: (1) make improvements or repairs to the homestead; or (2) pay for education or medical expenses of the ward. Proceeds of the home equity loan may be used only for the above purposes and to pay the outstanding balance of the loan.

**HB 637** further amends the Probate Code by the addition of Sections 889A and 890A, the pertinent parts of which are summarized as follows:

Sec. 889A. Mortgage of Residential Homestead Interest of a Minor Without Guardianship:

Defines "Home equity loan" and "Residence homestead" as having the meanings assigned them, respectively, by Section 50(a)(6), Article XVI, Texas Constitution, and Section 11.13, Tax Code.

Provides that when a minor has an interest of a net value not exceeding \$100,000 in a residence homestead, a natural or adoptive parent or the managing conservator of a minor who is not a ward may, without being appointed guardian, make a home equity loan on the minor's behalf secured by a lien on the homestead. Proceeds of the home equity loan attributable to the minor's interest may be used only to: (1) make improvements to the homestead; (2) pay for education or medical expenses of the minor; or (3) pay the outstanding balance of the loan.

The parent or conservator must make application to the court for an order authorizing the loan and, before the hearing, must file with the county clerk a surety bond in an amount at least equal to two times the amount of the proposed home equity loan: (1) payable to and approved by the court, and (2) conditioned on the parent or managing conservator using the proceeds of the home equity loan attributable to the minor's interest solely for the above purposes.

A parent of a minor may file an application under Section 889A only if the parent has a homestead interest in the property that is the subject of the application. The minor may not disaffirm a home equity loan authorized by the court under Section 889A.

Sec. 890A. Mortgage of Residential Homestead Interest of a Minor Ward:

Section 890A applies only to a minor ward who has a guardian of the person but does not have a guardian of the estate.

Defines "Home equity loan" and "Residence homestead" as having the meanings assigned them, respectively, by Section 50(a)(6), Article XVI, Texas Constitution, and Section 11.13, Tax Code.

Provides that when a minor ward has an interest of a net value not exceeding \$100,000 in a residence homestead, the guardian of the person of the ward may make a home equity loan on the minor ward's behalf secured by a lien on the homestead. Proceeds of the home equity loan attributable to the minor ward's interest may be used only to: (1) make improvements to the homestead; (2) pay for education or medical expenses of the minor ward; or (3) pay the outstanding balance of the loan.

The guardian of the person of the ward must make application to the court for an order authorizing the loan and, before the hearing, must file with the county clerk a surety bond in an amount at least equal to two times the amount of the proposed home equity loan: (1) payable to and approved by the court, and (2) conditioned on the guardian of the person using the proceeds of the home equity loan attributable to the minor ward's interest solely for the above purposes.

The minor ward may not disaffirm a home equity loan authorized by the court under Section 890A.

***Note: It appears the additional borrowing authority authorized by HB 637 is limited to a home equity loan even though under Texas law a home equity loan is not required for a loan to make improvements or repairs to the homestead. In addition, Sections are limited to "improvements to the homestead", whereas Section 781(a-1)(1) permits "improvements or repairs to the homestead." This may appear to be a distinction without a difference, but in light of the definitions for "existing improvements", "new improvements" and "repair or renovate" contained in the home improvement interpretations (7 TAC §152.1(2), (3) and (7)), jointly issued by the Texas Finance Commission and Texas Credit Union Commission, interpreting Section 50(a)(5), Article XVI, Texas Constitution, which authorizes home improvement liens against Texas homestead, a court ultimately may have to decide whether Sections 889A and 890A permit "repairs" to the homestead.***

**16. Privacy Policy for Disclosure of Social Security Number (HB 1130):** This bill adds Section 35.581 to the Business and Commerce Code to require the adoption of a privacy policy by certain persons who require the disclosure of an individual's social security number. It excludes from its coverage (among other persons): (1) a person who is required to maintain and disseminate a privacy policy under the Gramm-Leach-Bliley Act (15 U.S.C. Sections 6801 to 6809) and (2) with respect to a loan transaction, a person not engaged in the business of making loans.

Among other requirements, Section 35.581 provides that a person may not require an individual to disclose the individual's social security number to obtain goods or services from or enter into a business transaction with the person, unless the person: (1) adopts a privacy policy; (2) makes the



privacy policy available to the individual; and (3) maintains under the privacy policy the confidentiality and security of a social security number disclosed to the person. A privacy policy adopted under Section 35.581 must include how personal information is collected, how and when the personal information is used, how the personal information is protected, who has access to the personal information, and how the personal information is disposed.

A person who violates these privacy policy requirements is liable to the state for a civil penalty in an amount not to exceed \$500 for each calendar month during which a violation occurs. The civil penalty may not be imposed for more than one violation that occurs in a month. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring suit to recover the civil penalty. In addition, the attorney general may bring an action to restrain or enjoin a person from violating these privacy policy requirements.

***Note: Based on the persons excluded from these privacy policy requirements, it does not appear this new legislation will have much impact on traditional mortgage lenders and brokers.***

**17. Executory Contract for Conveyance of Real Property (HB 1823):** Among other amendments to Subchapter D, Chapter 5, Property Code, relating to an executory contract for conveyance of real property, this Bill adds Sections 5.081 and 5.082 to provide, in pertinent part, as follows:

Sec. 5.081. (a) A purchaser, at any time and without paying penalties or charges of any kind, is entitled to convert the purchaser's interest in property under an executory contract into recorded, legal title in accordance with section 5.081.

(b) If the purchaser tenders to the seller an amount of money equal to the balance of the total amount owed by the purchaser to the seller under the executory contract, the seller shall transfer to the purchaser recorded, legal title of the property covered by the contract.

(c) Subject to subsection (d), if the purchaser delivers to the seller a promissory note that is equal in amount to the balance of the total amount owed by the purchaser to the seller under the executory contract and that contains the same interest rate, due dates, and late fees as the contract: (1) the seller shall execute a deed containing any warranties required by the contract and conveying to the purchaser recorded, legal title of the property; and (2) the purchaser shall simultaneously execute a deed of trust that: (A) contains the same terms as the contract regarding the purchaser's and seller's duties concerning the property; (B) secures the purchaser's payment and performance under the promissory note and deed of trust; and (C) conveys the property to the trustee, in trust, and confers on the trustee the power to sell the property if the purchaser defaults on the promissory note or the terms of the deed of trust.

(d) On or before the 10th day after the date the seller receives a promissory note under subsection (c) that substantially complies with that subsection, the seller shall: (1) deliver to the purchaser a written explanation that legally justifies why the seller refuses to convert the purchaser's interest into recorded, legal title under subsection (c); or (2) communicate with the purchaser to schedule a mutually agreeable day and time to execute the deed and deed of trust under subsection (c).

(f) On the last date that all of the conveyances described by subsections (b) and (c) are executed, the executory contract: (1) is considered completed; and (2) has no further effect.

(g) The appropriate use of forms published by the Texas Real Estate Commission for transactions described by Section 5.081 constitutes compliance with Section 5.081.

Sec. 5.082. On written request, a purchaser under an executory contract is entitled to receive from the seller: (1) the amount owed by the purchaser under the contract; and (2) the name and address of the seller's desired trustee for a deed of trust to be executed under Section 5.081. If the seller does not timely respond to a request made under Section 5.082, the purchaser may: (1) determine or pay the amount owed under the contract, including determining the amount necessary for a promissory note under Section 5.081; and (2) select a trustee for a deed of trust under Section 5.081.

Sections 5.081 and 5.082, Property Code, apply to a conversion of title initiated or a request for information made on or after September 1, 2005, regardless of the date on which the purchaser and seller entered into the executory contract that is the subject of the conversion or request.

***Note:** This bill is included in this legislative update as a possible source for additional refinance transactions for our mortgage lending clients.*

**18. Residence Homestead Timber Land Tax (HB 312):** This bill amends Section 23.76 of the Tax Code by adding subsection (h) relating to the roll-back tax imposed on land appraised for ad valorem taxation as *timber land* that is claimed as part of a residence homestead. Subsection (h) provides that the use of land does not change for the purposes of imposing roll-back taxes solely because the owner claims it as part of the owner's residence homestead for the tax exemptions provided by Section 11.13 of the Tax Code.

**HB 312** applies only to a change of use of land that occurs on or after September 1, 2005. A change of use of land that occurs before September 1, 2005, is governed by the law in effect when the change of use occurs, and that law is continued in effect for that purpose.

**19. Municipal Authority to Establish Sales Price for Residential Property (HB 2266):** This bill adds Section 214.904 to Subchapter Z, Chapter 214, Local Government Code, relating to the authority of municipalities to enact a requirement that establishes the sales price for certain housing units or residential lots.

Under Section 214.904, a municipality may not adopt a requirement in any form, including through an ordinance or regulation or as a condition for granting a building permit, that establishes a maximum sales price for a privately produced housing unit or residential building lot. However, Section 214.904 does not affect any authority of a municipality to: (1) create or implement an incentive, contract commitment, density bonus, or other voluntary program designed to increase the supply of moderate or lower-cost housing units; or (2) adopt a requirement applicable to an area served under the provisions of Chapter 373A, Local Government Code, which authorizes homestead preservation districts [*see item 21 of this update*]. Nor does Section 214.904 apply to a requirement adopted by a municipality for an area as a part of a development agreement entered into before September 1, 2005, or to property that is part of an urban land bank program.

**20. Water Wells (SB 343):** This bill adds Subchapter C [Sections 240.041-.048] to Chapter 240, Local Government Code, to authorize commissioners courts in counties with populations of 1.4 million or more to adopt rules (prior to drilling) for the placement of water wells in unincorporated areas of the county in order to prevent: (1) the contamination of a well from an on-site sewage disposal system; (2) rendering a pre-existing on-site sewage disposal system out

of compliance with applicable law because of the well placement; and (3) drilling of a domestic well into a contaminated groundwater plume or aquifer.

A person who drills a private water well without approval from a county that has chosen under Subchapter C to regulate the placement of private water wells commits a Class C misdemeanor.

Subchapter C does not apply to: (1) private water wells drilled (i) on a parcel of land that is 10 acres or more in size or is qualified open-space land, or (ii) within the boundaries of a groundwater conservation district, or (iii) within the boundaries of a subsidence district other than the Harris-Galveston Coastal Subsidence District, or (iv) incident to the exploration, development, or production of oil, gas, or other minerals; or (2) public water systems that have been permitted under rules adopted by the Texas Commission on Environmental Quality.

Before the rules may take effect, the commissioners court must publish notice of the adoption of the rules, on two separate dates, in a newspaper of general circulation in the county. The rules may not take effect until after the 14th day after the date of the required second publication.

**21. Homestead Preservation Districts (HB 525):** This bill adds Chapter 373A to the Local Government Code relating to the creation of homestead preservation districts, reinvestment zones, and other programs to increase home ownership and provide affordable housing. The following brief summary is taken from various sections of the bill and the bill analysis.

**HB 525** creates a new kind of zone for the reclamation of neighborhoods adjacent to central business districts that may be permissively established by the City of Austin. It provides three development/economic tools that may be utilized by the municipality in an effort to coordinate future development in concert with the needs of the existing population.

Sec. 373A.001. The purpose of Chapter 373A is to: (1) promote the ability of municipalities to increase home ownership, provide affordable housing, and prevent the involuntary loss of homesteads by existing low-income and moderate-income homeowners living in disadvantaged neighborhoods; (2) protect a municipality's interest in improving economic and social conditions within disadvantaged communities by enhancing the viability of home ownership among low-income and moderate-income residents in areas experiencing economic pressures; and (3) provide municipalities with a means to expand and protect the homestead interests of low-income and moderate-income families.

Sec. 373A.003. Chapter 373A applies only to a municipality with a population of more than 650,000 that is located in a uniform state service region with fewer than 550,000 occupied housing units as determined by the most recent United States decennial census. [*City of Austin*]

Sec. 373A.051. Authorizes the governing body of a municipality to designate as a homestead preservation district (district) an area in the municipality composed of census tracts forming a spatially compact area contiguous to a central business district and with certain specifications, to promote and expand the ownership of affordable housing and to prevent the involuntary loss of homesteads by existing homeowners living in the area.

Sec. 373A.054. Authorizes a municipality that designates a homestead preservation district to provide tax-exempt bond financing, offer density bonuses, or provide other incentives to increase the supply of affordable housing and maintain the affordability of existing housing for low-income and moderate-income families.

Sec. 373A.101. Authorizes the governing body of a municipality to create or designate one or more homestead land trusts to operate in an area that includes a homestead preservation district designated by the municipality under Chapter 373A.

Sec. 373A.103. The purpose of a homestead land trust is to: (1) control local land use and reduce absentee ownership; (2) provide affordable housing for low-income and moderate-income residents in the community; (3) promote resident ownership and control of housing; (4) keep housing affordable for future residents; and (5) capture the value of public investment for long-term community benefit.

Sec. 373A.105. Authorizes a homestead land trust to retain title to land it acquires and to lease housing units located on the land or sell housing units located on the land under long-term ground leases, as provided by Section 373A.106.

Sec. 373A.106. Requires a trust to sell or lease all housing units only to families with a yearly income at the time of purchase or lease of the housing unit at or below 70 percent of the area median family income, adjusted for family size.

Sec. 373A.107. Authorizes a governmental entity to transfer land to a trust without competitive bidding. Authorizes a taxing unit to forgive outstanding taxes and fees on property transferred under this section if otherwise allowed by law.

Sec. 373A.152. Authorizes a municipality to create a homestead preservation reinvestment zone within the boundaries of a homestead preservation district if the municipality finds that the area to be included in the zone is unproductive, underdeveloped, or blighted as provided by Section 1-g(b), Article VIII, Texas Constitution. Requires the governing body of the municipality to administer the zone.

Sec. 373A.154. Requires the governing body of the municipality to establish a tax increment fund for the zone.

Sec. 373A.155. Requires each taxing unit that taxes real property located in a zone to provide for the collection of its taxes in the zone as for any other property taxed by the unit. Requires each taxing unit to pay into the tax increment fund for the zone an amount equal to the tax increment produced by the unit, except that a taxing unit other than the municipality is not required to pay into the tax increment fund any of its tax increment produced from property located in a zone unless the taxing unit enters into an agreement to do so with the governing body of the municipality that created the zone.

Sec. 373A.157. Sets forth guidelines for the tax increment fund administered by the governing body of the municipality in accordance with the annual plan developed by the governing body of the municipality that details the amount of money in the tax increment fund

and the proposed uses for the money. The municipality must spend at least 80 percent of the revenue expended annually from the tax increment fund for the purchase of real property and the construction or rehabilitation of affordable housing in the zone.

Sec. 373A.201. Authorizes subchapter E, Chapter 373A, to be cited as the Homestead Land Bank Program Act. Provides that subchapter E applies only to a municipality that has designated a homestead preservation district.

Sec. 373A.203. Defines "Land bank" as an entity established or approved by the governing body of a municipality for the purpose of acquiring, holding, and transferring unimproved real property under subchapter E; and "Qualified participating developer" as a developer who meets the requirements of Section 373A.205 and includes a qualified organization under Section 373A.211.

Sec. 373A.204. (a) Authorizes the governing body of a municipality to adopt a homestead land bank program (program) in which the officer charged with selling real property ordered sold pursuant to foreclosure of a tax lien is authorized to sell certain eligible real property by private sale for purposes of affordable housing development as provided by subchapter E. Requires the governing body of a municipality that adopts a homestead land bank program to establish or approve a land bank for the purpose of acquiring, holding, and transferring unimproved real property under subchapter E.

Sec. 373A.205. Sets forth requirements for a developer to qualify to participate in a homestead land bank program. To qualify to participate in the program, a developer must:(1) have developed three or more housing units within the 10-year period preceding the submission of a proposal to the land bank seeking to acquire real property from the land bank; (2) have a development plan approved by the municipality for the land bank property; and (3) meet any other requirements adopted by the municipality in the homestead land bank plan.

Sec. 373A.206. Requires a municipality that adopts a homestead land bank program to operate the program in conformance with a homestead land bank plan (plan). Requires annual adoption of the plan and authorizes the plan to be amended. Sets forth requirements for the plan.

Sec. 373A.208. (a) Authorizes property that is ordered sold pursuant to foreclosure of a tax lien to be sold in a private sale to a land bank by the officer charged with the sale of the property without first offering the property for sale as otherwise provided by Section 34.01, Tax Code, if certain requirements are met.

Sec. 373A.209. (d) The deed conveying a property sold by the land bank must include a right of reverter so that if the qualified participating developer does not apply for a construction permit and close on any construction financing within the two-year period following the later of the date of the conveyance of the property from the land bank to the qualified participating developer or the expiration of the period specified by the municipality under Section 373A.211(d), the property will revert to the land bank for subsequent resale to another qualified participating developer or conveyance to the taxing units who were parties to the judgment for disposition as otherwise allowed under the law.

Sec. 373A.210. Requires the land bank to impose deed restrictions on property sold to qualified participating developers requiring the development and sale or rental of the property to low income households. Authorizes the land bank or the governing body of the municipality to modify or add to the deed restrictions imposed under this section.

Sec. 373A.211. (b) Requires the land bank to first offer a property for sale to qualified organizations, which are defined in subsection (a).

(d) Requires the municipality to specify the period during which the right of first refusal may be exercised by a qualified organization in its plan. Sets forth the required timeline for such period.

(f) Prohibits the land bank from selling the property to a qualified participating developer other than a qualified organization during the specified period. Authorizes the land bank to sell the property under certain conditions.

Unless otherwise stated in this legislative update, the above bills are effective on September 1, 2005. No attempt was made by this legislative update to summarize all the bills effective on or after September 1, 2005 that could affect mortgage lending or mortgage lenders or brokers. This memorandum is simply an attempt to advise our clients of those bills 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.**