

LEGISLATIVE UPDATE:
SIGNIFICANT BILLS OF THE 85TH TEXAS LEGISLATURE, REGULAR SESSION AFFECTING REAL ESTATE, LENDING AND OTHER COMMERCIAL MATTERS

REAL ESTATE LEGISLATIVE AFFAIRS COMMITTEE
REAL ESTATE, PROBATE AND TRUST LAW SECTION
STATE BAR OF TEXAS
FINAL REPORT

JUNE 23, 2017

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I. INTRODUCTION

This is the final report of the Real Estate Legislative Affairs Committee of the Real Estate, Probate and Trust Law Section of the State Bar of Texas ("**RELACs**"). This report summarizes significant bills passed during the Regular Session of the 85TH Texas Legislature affecting real estate, mortgage lending, and other business and commercial issues of interest to Texas real estate law practitioners.

During the Session, Texans' elected representatives introduced 6,800 bills. Among those bills, RELACs identified over 2,116 to track throughout the Session. From among the bills that were being tracked and passed, RELACs chose for inclusion in this report 100 bills that were believed would be of general interest to practitioners of Texas real estate law.

This report categorizes bill summaries by code in alphabetical order. Some bills may be broad enough in scope to justify placement under multiple codes and/or under multiple titles within a code; however, in the interest of brevity, each bill summary appears in this report only once, under the primarily affected code and title. Consequently, we encourage the reader to carefully review the entire report to ensure recognition of every bill of relevance to a particular topic.

Bill captions in this report are copied from the actual legislation. However, neither the bill caption, nor RELACs' general summary can address all relevant aspects of each bill. Rather, this report serves only to alert the reader to each bill's general scope and effect. The reader must choose which bills, if any, merit closer scrutiny for their potential effect on his or her practice.

II. EFFECTIVE DATES

Pursuant to Section 39, Article III, of the Texas Constitution, the effective date of acts without specific effective dates (and without provisions for immediate effect) passed by the Legislature in regular session is ninety-one days after adjournment of the regular session. For the 85TH Legislature's Regular Session this date is Monday, August 28, 2017. If, however, a bill has a provision for immediate effect and is passed by a two-thirds majority in each of the House and Senate, then the bill becomes law immediately upon: (a) the date the Governor signs it, (b) the date the Governor files it with the Secretary of State (with neither signature, nor veto), (c) in the absence of signing or filing, the date the deadline for gubernatorial action expires, or (d) if the Governor vetoes the bill, the date the Legislature overrides the veto.

To reduce the potential for confusion and uncertainty as to effective dates, this report states the earliest effective date for each summarized bill as reported by the Texas Legislative Service on its website. Readers are advised to review these effective dates because a substantial number of bills included in this report have effective dates prior to August 28, 2017. Note as well that different portions of a bill may have different effective dates and the summaries in this report do not necessarily indicate all effective dates within a bill.

III. INTERNET RESOURCES

Bills from the 85th Texas Legislature can be accessed the official website for the Texas legislature at:

http://www.capitol.state.tx.us/.

Additionally, this report hyperlinks each bill summary to the final, enrolled version of the bill as posted on the Texas Legislature's website. Simply right-click on the bill number, choose "Open Hyperlink" from the drop-down menu, and the enrolled bill will appear in your web browser.

IV. ACKNOWLEDGMENTS

RELACs is almost entirely dependent on volunteer efforts from real estate lawyers across the State. Without these lawyers' collective efforts, this report would not be feasible.

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V. SUMMARIES OF NEW LEGISLATION

BUSINESS AND COMMERCE CODE

Title 2. Competition and Trade Practices

House Bill 1470
Relating to the public sale of real property under a power of sale in a security instrument.

Adds Business & Commerce Code, Chapter 22, and amends various sections of Occupations Code

Author: Villalba Sponsor: Creighton

Details procedure for the public sale of residential real property under a power of sale in a security instrument. Allows a trustee or substitute trustee to contract with an attorney and auction company. Requires the winning bidder at the public sale – provided it is not the foreclosing mortgagee or mortgage servicer – to provide a trustee with various information. The failure to do so allows the trustee to reject the winning bid. Requires trustee to keep funds from sale in a separate account and maintain account records of deposits and disbursements. Provides for disbursement of sale proceeds and requires the trustee to make "reasonable attempts to identify and locate the persons" entitled to sale proceeds. Outlines what is considered a reasonable fee for the trustee and though the fee is earned at the sale, the fee and any reasonable actual costs are paid from funds remaining after the unpaid lien that is the cause of the foreclosure sale is paid.

Effective Date: September 1, 2017

Title 9. Applicability of Law to Commercial Transactions

Senate Bill 807
Relating to choice of law and venue for certain construction contracts.

Amends Business & Commerce Code, Chapter 272, various sections

Author: Creighton Sponsor: Workman

Defines "construction contract." Provides that a provision in a construction contract affecting real property in Texas that stipulates the laws of another State apply to any dispute is "voidable by a party obligated by the contract or agreement to perform the work that is the subject of the construction contract." Carves out and does not apply to construction contracts (1) resulting from a partnership; (2) existing because of a loan with the party's performance of the work based on an agreement with the lender; or (3) where work is related to the management of real property.

Effective Date: September 1, 2017

BUSINESS ORGANIZATIONS CODE

Title 1. General Provisions

House Bill 2856
Relating to names of domestic and foreign filing entities for transacting business in this state.

Amends Business Organizations Code, Sections 1.002, 5.002, 5.053, 5.102, 5.153, 9.105, 11.203

Author: Villalba Sponsor: Estes

Changes the requirement that entity filing names (for corporations, LLCs, etc.) and foreign entity filing names and fictitious names may not be the "same as," "deceptively similar to," or "similar to," the name of other such entities, to the concept that a name must be "distinguishable" in the records of the Secretary of State from other entity names in its records.

Effective Date: June 1, 2018

Title 2. Corporations

Senate Bill 1518
Relating to corporations, associations, real estate investment trusts, and related entities; authorizing fees.

Adds Business Organizations Code, Section 6.157; Amends Business Organizations Code, Section 21.218(b)

Also available as part of the eCourse
2017 Texas Real Estate Legislature, Case Law Updates, and Hot Topics

First appeared as part of the conference materials for the
51st Annual William W. Gibson, Jr. Mortgage Lending Institute session
"Developments from the Texas Legislature"