HOT TOPICS and QUICK TIPS

Recent Developments and a Look into the Crystal Ball

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LEGISLATION

1. **House Bill 3879** (*Attachment "A"*) One of the most interesting pieces of legislation passed this session allows non-lawyers to practice in County and District Courts. House Bill 3879 amends Tx. Prop. Code, Section 24.011 effective September 1, 2017. This amendment provides that in an appeal of an eviction suit for nonpayment of rent, an individual owner of a multifamily residential property may be represented by an authorized agent who need not be an attorney, or, if the owner is a corporation or other legal entity, then by an employee, owner, officer, or partner of the landlord who need not be an attorney. It says:

> *(b) In an appeal of an eviction suit for nonpayment of rent in a county or district court, an owner of a multifamily residential property may be represented by the owner's authorized agent, who need not be an attorney, or, if the owner is a corporation or other entity, by an employee, owner, officer, or partner of the entity, who need not be an attorney.*

2. House Bill 1470 (*Attachment "B"*) **and House Bill 1128** (*Attachment "C"*) In two pieces of legislation this year the legislature decided to alter the non-judicial foreclosure process in Texas. Chapter 22 was added to the Business & Commerce Code and various sections of Occupations Code were amended by House Bill 1470 and House Bill 1128, relating to the date and time for the public sale of real property, amends Civil Practice and Remedies Code, Section 34.041; amends Property Code, Section 51.002; and amends Tax Code, Sections 34.01 and 34.07

First, House Bill 1470 details the procedure for the public sale of residential real property under a power of sale contained in a security instrument. It now allows a trustee or substitute trustee to contract with an attorney and auction company. This law requires the winning bidder at the public sale, provided it is not the foreclosing mortgagee or mortgage servicer, to provide the trustee or substitute trustee various information. If the winning bidder fails to do so, then the trustee may reject the winning bid. A trustee or substitute trustee must now keep funds from a sale in a separate account and maintain account records of deposits and disbursements. Disbursement of sale proceeds is provided in this bill and it now requires the trustee to make "*reasonable attempts to identify and locate the persons*" entitled to those sales proceeds. What is considered a reasonable fee for the trustee is outlined and even though such fee is earned at the time of the sale, the fee and any reasonable actual costs are only paid from funds remaining after the unpaid lien that is the basis of the foreclosure sale is paid. This foreclosure law change will become effective on September 1, 2017

Previously, if the first Tuesday of the month fell on January 1 or July 4, nonjudicial foreclosure sales were still held at the location designated by the Commissioners Court in each Texas County. Starting September 1, 2017, House Bill 1128 changed the date and time for non-

judicial foreclosures to between 10 a.m. and 4 p.m. on the first Wednesday of those months. It also establishes that public sales of real property by court order and foreclosures of tax liens (unless conducted by online bidding and sale) will also be carried out on the same date and time as non-judicial foreclosures (i.e. between 10 a.m. and 4 p.m. on the first Tuesday of a month, or if the first Tuesday of a month occurs on January 1 or July 4, between 10 a.m. and 4 p.m. on the first Wednesday of the month).

Foreclosures of tax liens conducted using online bidding may begin at any time and must conclude by 4 p.m. on the first Tuesday of a month, or if the first Tuesday of a month occurs on January 1 or July 4, then they must be concluded by 4 p.m. on the first Wednesday of that month.

3. House Bill 1974 (*Attachments "D-1" & "D-2"*) relating to Durable Powers of Attorney amends Chapter 751 of the Estates Code. These changes do not apply to Medical Powers of Attorney, power of attorney coupled with an interest given in a credit transaction, proxy or other voting rights power or a governmental form given for government purpose. There is a statutory presumption on 751.022 of the Estates Code (Section references below are to the Estate Code) that the signature is genuine if it is notarized. The agent may make gifts under Section 751.032 and create or change beneficiary designations under 751.033.

A Durable Power of Attorney for a real property transaction requiring an instrument that is to be recorded must be recorded in the same county where the instrument is filed within thirty days of its filing.

Perhaps the biggest change with regard to Powers of Attorney is contained in Sections 751.021 and 751.213, below is an excerpt from the memo attached in its entirety as D-2.

> Subchapter E. Acceptance of and Reliance on Durable Power of Attorney: *(***Note:** *Unlike the existing Durable Power of Attorney Act, which has no such provisions, new Subchapter E limits a person's right to reject a Durable Power of Attorney.)*
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> **Section 751.201. Acceptance of Durable Power of Attorney Required; Exceptions.**
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> Subsection (a) provides that, unless one or more grounds for refusal exist as provided in Section 751.206 (Grounds for Refusing Acceptance), a person presented with and asked to accept a durable power of attorney by the agent must accept the power of attorney or, before accepting the power of attorney, must request an agent's certification under Section 751.203 or an opinion of counsel under Section 751.204 not later than the 10th business day after the date the power of attorney is presented or, if applicable, to request an English translation under Section 751.205 not later than the fifth business day after the date the power of attorney is presented.
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> Subsection (b) provides that, unless one or more grounds for refusal under Section 751.206 exist, a person who requests an agent's certification or an opinion of counsel is required to accept the durable power of attorney not later than seventh business day after

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