

UNDERWRITING BULLETIN - TEXAS

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RE: 2011 Legislative Update- 82nd Session

The 82nd Session of the Texas Legislature passed several laws which affect real estate and the title insurance industry. This is a synopsis of the legislation that most significantly impacts our business. A complete text of each referenced bill can be found on the State of Texas Legislature web site: www.capitol.state.tx.us.

P-53 and Rebates

Effective September 1, 2011, HB 2408 amended Section 2502.055(a) of the Insurance Code by adding a new subsection (5).

It is not a rebate for a title company to provide continuing education courses at market rates, regardless of whether participants receive credit hours.

Payoff Statements

Effective September 1, 2011, HB 558 amended the Finance Code by adding Section 343.106.

The Finance Commission must adopt rules and forms as soon as practicable after September 1, 2011; compliance is not required by lenders until 90 days thereafter. WFG will issue a separate Bulletin on this legislation at a later date.

Correction Instruments

Effective September 1, 2011, SB 1496 amended the Property Code by adding new Sections 5.027 through 5.031.

NON-MATERIAL CORRECTIONS

1. Certain types of clerical errors in a recorded original instrument of conveyance (including deeds and deeds of trust) may be corrected by an instrument executed by a person with personal knowledge of the facts, **even if that person was not one of the parties to the original instrument.**

2. The statute describes **non-material** types of errors as follows:
 - A. A correction of an inaccurate or incorrect element in an appurtenant easement or in a legal description, such as a distance, angle, direction, bearing or chord, a lot, block, unit, building designation or section number, a township name or number, a municipality, county, or state name, a range number or meridian, a certified survey map number, or a subdivision or condominium name; or

Example: John owns lot 5, which he meant to convey. The deed as drafted says lot 6. If John does not own lot 6, the typographical error in the deed can be corrected by anyone with personal knowledge.
 - B. An addition, correction, or clarification of:
 1. a party's name, including the spelling of a name, a first or middle name or initial, a suffix, an alternate name by which a party is known, or a description of an entity as a corporation, company, or other type of organization; or,
 2. a party's marital status, the date on which the conveyance was executed, the recording data for an instrument referenced in the correction instrument, or a fact relating to the acknowledgment or authentication.
3. When the correction instrument is not signed by each party who signed the original instrument, the person who executes a correction instrument must disclose in the instrument the basis for his/her personal knowledge of the facts relevant to the correction of the original instrument.
4. When the correction instrument is not signed by each party who signed the original instrument, the persons who execute the correction instrument must send a copy of it and notice of the correction by first class mail, e-mail, or other reasonable means to each party to the original instrument of conveyance and, if applicable, a party's heirs, successors, or assigns.

MATERIAL CORRECTIONS

5. **All of the parties to the original instrument**, or their heirs, successors, or assigns, must sign in order to make the following corrections in a recorded original instrument of conveyance:
 - A. When the purpose of the correction is:
 1. to add a buyer's disclaimer of an interest in the real property that is the subject of the original instrument of conveyance;

2. to add a mortgagee's consent or subordination to a recorded document executed by the mortgagee or an heir, successor, or assign of the mortgagee; or,

3. to add land to a conveyance that correctly conveys other land; or,

Example: Mary owns lots 8 and 9. She sold lots 8 and 9, but the deed says only lot 9. Mary must sign the correction deed to add lot 8.

4. to remove land from a conveyance that correctly conveys other land; or,

Example: Mary owns lots 8 and 9. She sold only lot 9, but the deed says lots 8 and 9. Mary must sign the correction deed to remove lot 8.

5. to accurately identify a lot or unit number or letter of property owned by the grantor that was inaccurately identified as another lot or unit number or letter of property owned by the grantor in the recorded original instrument of conveyance.

Example: Mary owns lots 8 and 9. She only sold lot 9, but the deed says lot 8. Mary must sign the correction deed.

Example: Mary owns Units 2A and 2B. She sold only Unit 2B, but the deed says Unit 2A. Mary must sign the correction deed.

SUBSTITUTE TRUSTEE DEEDS

6. Substitute Trustee Deeds may be corrected if the only mistake was in the preparation of the deed itself. A correction instrument may not be used to correct errors made in other documents used in the foreclosure process, such as the notice of sale. Whether the error is material or non material will determine who can sign the correction instrument.

MISCELLANEOUS PROVISIONS

7. All correction instruments (and any notices which are required to be sent) must be recorded in each county in which the original instrument that is being corrected was recorded.

8. A correction instrument that satisfies the statute is effective as of the effective date of the recorded original instrument and is notice to a subsequent buyer of the facts stated in the correction instrument.

9. A bona fide purchaser of property that is subject to a correction instrument may rely on the instrument against any person making an adverse or inconsistent claim.

10. A correction instrument recorded before September 1, 2011, that substantially complies with the new law and that purports to correct a recorded original instrument is effective to the same extent as if it were executed on or after September 1, 2011, unless a court of competent jurisdiction renders a final judgment determining that the correction instrument does not substantially comply with the new law.

Indexing of Lis Pendens

Effective September 1, 2011, SB 1187 amends Sect. 13.004 of the Property Code.

A lis pendens is notice to the world from the time it is filed for record and indexed as provided by Section 12.007(c) of the Property Code. The county clerk shall index the record in a direct and reverse index under the name of each party to the proceedings.

Proof of Identity

Effective September 1, 2011, SB 1320 amends Sect. 121.005 of the Civil Practice and Remedies Code.

In a transaction involving residential real property, a notary may accept a current passport issued by a foreign country as proof of identification for the purpose of affixing an acknowledgment to an instrument.

Note: This does not authorize taking a matricula card, a foreign driver's license or a visa as proof of ID.

Private Transfer Fees

Effective June 20, 2011, HB 8 amended the Texas Property Code by adding a new Subchapter G to Chapter 5.

1. These new provisions void new private transfer fees and place restrictions on existing private transfer fees.
2. A private transfer fee created on or after June 20, 2011 is void. Sect. 5.202
3. Certain items are excluded from the definition of "private transfer fees"; there is no prohibition against a party charging or receiving these amounts:
 1. Purchase price, including profit;
 2. Real estate commissions;
 3. Customary and ordinary fees charged by lenders
 4. Various fees paid to a lessor;



5. Fees related to options or rights of first refusal;
6. Recording fees;
7. Fees and dues payable to a property owners' association; and fees and dues payable to effectuate a transfer of a club membership related to the property;
8. Fees and dues payable to a tax exempt organization, but only if the organization uses the payment to directly benefit the property; and,
9. Fees payable to or imposed by the Veterans' Land Board. (Sect. 5.202[b]-[e])

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