

UNDERWRITING BULLETIN - TEXAS

No. 35

DATE: September 3, 2013

RE: 2013 Legislative Update - 83rd Session

Several laws were passed during the 83rd Session of the Texas Legislature 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 Texas Legislature web site: www.capitol.state.tx.us.

Changes which will not take effect until January 1, 2014 will be addressed in a later Bulletin.

Charging for Furnishing Title Evidence on Electric Energy Projects Valued Upon Completion at More than \$25 Million

Effective September 1, 2013, HB 3106 added new Section 2502.057 to the Insurance Code.

When a transaction involves an electric energy project which will be valued upon completion at more than \$25 Million, a title agent furnishing title evidence (on or after September 1, 2013) has the option of charging a flat fee or a fee calculated on an hourly rate, up to a maximum fee of \$25,000, payable on the date the title evidence is furnished. If a title policy is issued, the payment must be credited against the premium. The agent of course retains the option to instead be paid a portion of the title premium calculated pursuant to existing regulations. In no event can the total amount charged exceed the promulgated rate for a policy in the amount issued.

Forfeiture Clauses in Wills and Trusts

Effective September 1, 2013, HB 2380 amended Sect. 64 of the Probate Code and Sect. 112.038 of the Property Code.

The bill changes the burden of proof and presumptions regarding “no contest” or “in terrorem” clauses in wills and trusts. Such clauses will now be presumed valid unless the contestant proves that he had just cause for bringing the contest and that he did so in good faith.

Correction Instruments

Effective September 1, 2013, SB 887 amended Property Code Sect. 5.028 and Sect. 5.030 by clarifying that correction instruments may be used in the following circumstances:



- Correcting an inaccurate or incorrect reference to a plat or to other plat information, or block number;
- Supplying a legal description prepared in connection with the preparation of the original instrument but inadvertently omitted from the original instrument;
- Supply an omitted call in a metes and bounds legal description in the original instrument that is necessary to complete the description of the property.

A correction instrument replaces and is a substitute for the original instrument, but is subject to the interests of a creditor or a bona fide purchaser who acquired an interest in the property between the time the original instrument was filed and the correction instrument was filed.

A person with personal knowledge (such as a title company employee) may both prepare and sign a correction instrument.

Condominium Foreclosures

Effective September 1, 2013, HB 2075 amended Sect. 82.113(g) of the Property Code regarding the right of redemption following the foreclosure of an assessment lien on a condominium.

- The right of redemption is extended to owners who did not use the unit for residential purposes;
- An owner may redeem without regard to who purchased the property at foreclosure;
- Different rules are established for the amounts the redeeming prior owner must pay to redeem, depending on whether the association or a third party was the purchaser at the foreclosure sale.

Personal Property Tax Liens on MHUs

Effective September 1, 2013, HB 3613 amended Sect. 32.015(a) of the Tax Code to provide for a 4 year statute of limitation on delinquent personal property taxes on a MHU.

When the tax certificate showing no taxes due or tax paid receipt is filed with the department or when no suit to collect a personal property tax lien has been filed and the lien has been delinquent for more than four years, the tax lien is extinguished and canceled and shall be removed from the title records of the manufactured home.

HB 3613 also amended Sect. 1201.219 of the Occupations Code by adding the three (3) following sections:

(f) On request by any person, a tax collector shall file a tax lien release with the department if the four-year statute of limitations to file a suit for collection of personal property taxes in Section 33.05(a)(1), Tax Code, has expired.

(g) The department may request that a tax collector confirm that no tax suit has been timely filed on any manufactured home tax lien more than four years in delinquency. The department may make a request under this subsection electronically, and a taxing authority may provide notice of the existence or absence of a timely filed tax suit electronically.

(h) The department shall remove from a manufactured home's statement of ownership and location a reference to any tax lien delinquent more than four years for which no suit has been timely filed in accordance with Section 33.05(a)(1), Tax Code, (if certain requirements are met).

Closing of County Roads Leading to Cemeteries

Effective June 14, 2013, SB 1487 amended Sect. 251.057(b) of the Transportation Code by limiting the right of a county to declare a cemetery road as abandoned when the road has been fenced off for 20 years by an adjoining property owner.

The county may not abandon such a road to a cemetery unless,

. . . a property owner whose property adjoins the road enclosed with a fence under Subsection (a) files notice with the county clerk of the county in which the road is located that the owner agrees to provide reasonable access to the cemetery in accordance with Section 711.041, Health and Safety Code.

Foreclosure of Transferred Tax Liens

Effective September 1, 2013, SB 847 amended the Tax Code by adding Sect. 32.065 which deals with foreclosures of transferred tax liens.

Any tax lien transfer executed on or after the effective date must provide that it can only be foreclosed judicially, as in the manner of tax liens held by a government taxing entity; non judicial foreclosures will be prohibited as to transferred tax liens covered by the amendment.

Powers of a Series LLC

Effective September 1, 2013, SB 846 amended Sect. 101.052 of the Business Organizations Code to clarify that a series LLC has the right to buy, sell and grant liens on real property owned by the series.

Sec. 101.605. GENERAL POWERS OF SERIES. A series established under this subchapter has the power and capacity, in the series' own name, to:



- (1) sue and be sued;
- (2) contract;
- (3) acquire, sell, and hold title to assets of the series, including real property, personal property, and intangible property;
- (4) grant liens and security interests in assets of the series; and
- (5) exercise any power or privilege as necessary or appropriate to the conduct, promotion, or attainment of the business, purposes, or activities of the series.

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