

WFG Underwriting Bulletin



To: All Texas Policy Issuing Agents of WFG National Title Insurance Company

From: WFG Underwriting Department

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Subject: 2019 Legislative Update – 86th Session

The 86th 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 impacts our business. A complete text of each referenced bill can be found on the Texas Legislature web site: www.capitol.state.tx.us

Official Form - Transfer on Death Deed

Effective September 1, 2019, HB 2782 amended the Estates Code by deleting Subchapter D of Chapter 114 which contained the sample form of a TODD.

Experience showed that the sample form was confusing and the Legislature decided that it was doing more harm than good. TODDs executed using the form are still valid regardless of when they were executed.

NOTE: By amendment to Sect. 22.020(b) of the Government Code, the Legislature invited the Texas Supreme Court to draft “a form for use to create a transfer on death deed and a form for use to create an instrument of revocation of a transfer on death deed.”

Clarification of Inheritance Rights

Effective September 1, 2019, HB 2782 amended Section 201.003(c) of the Estates Code as follows:

(c) If the deceased spouse is survived by a child or other descendant who is not also a child or other descendant of the surviving spouse, the deceased spouse's undivided one-half interest in the community estate passes to the deceased spouse's children or descendants. The descendants inherit only the portion of that estate to which they would be entitled under Section 201.101. In every case, the community estate passes charged with the debts against the community estate.

NOTE: This does not represent a substantive change. The purpose is to clarify that the statute is only addressing the decedent's one-half interest in community property.

Authority to Appoint Personal Representative

Effective September 1, 2019, HB 2782 added Section 254.006 to the Estates Code as follows:

Sec. 254.006. DESIGNATION OF ADMINISTRATOR. (a) A testator may grant in a will to an executor named in the will or to another person identified by name, office, or function the authority to designate one or more persons to serve as administrator of the testator's estate.

(b) To be effective, a designation of an administrator of a testator's estate as authorized by a will under Subsection (a) must be in writing and acknowledged before an officer authorized to take acknowledgments and administer oaths.

(c) Unless the will provides otherwise, a person designated to serve as administrator of a testator's estate as provided by Subsection (a) may serve only if:

(1) each executor named in the testator's will:

(A) is deceased;

(B) is disqualified to serve as executor; or

(C) indicates by affidavit filed with the county clerk of the county in which the application for letters testamentary is filed or, if an application has not been filed, a county described by Section 33.001(a)(1) or (2) the executor's inability or unwillingness to serve as executor;

(2) the designation is effective as provided by Subsection (b); and

(3) the person is not disqualified from serving under Section 304.003.

(d) Unless the will or designation provides otherwise, a person designated as administrator of a testator's estate as provided by this section has the same rights, powers, and duties as an executor named in the will, including the right to serve as an independent administrator with the power to sell property without the need for consent of the distributees under Section 401.002 or 401.006.

NOTE: The gist of this new section is that a testator may delegate to third parties in his will the authority to name subsequent personal representatives.

Right to Appoint Personal Representative After Will Has Been Probated as a Muniment of Title

Effective September 1, 2019, HB 2782 added Section 257.151 to the Estates Code as follows:

Sec. 257.151. APPOINTMENT OF PERSONAL REPRESENTATIVE AND OPENING OF ADMINISTRATION AFTER WILL ADMITTED TO PROBATE AS MUNIMENT OF TITLE. A court order admitting a will to probate as a muniment of title under this chapter does not preclude the subsequent appointment of a personal representative and opening of an administration for the testator's estate if:

(1) an application under Chapter 301 is filed not later than the fourth anniversary of the testator's death; or

(2) the administration of the testator's estate is necessary for a reason provided by Section 301.002(b).

NOTE: The new section clarifies that a personal representative may be appointed within 4 years of the decedent's death even though the court has previously probated the will as a muniment of title.

Revisions in Statutes Governing the 4 Step Process

Effective September 1, 2019, HB 2782 amended Sections 356.451, 356.502, 356.551, 356.552, 356.553, 356.554, 356.556, 356.557 and 356.558(a).

Anyone who closes sales out of decedent's estates has encountered the problem of explaining to parties and attorneys why they have to comply with the 4-step process and how the statutory requirements mesh with our requirements. These amendments for the first time clarify that the "sale" is the act of entering into a contract to sell (an earnest money contract).

The new terms are in **bold**.

Sec. 356.451. TERMS OF SALE. **The personal representative of an estate may enter into a contract for the private sale of real estate** of the estate made in the manner the court directs in the order of sale. Unless the court directs otherwise, additional advertising, notice, or citation concerning the sale is not required.

Sec. 356.551. REPORT. A successful bid or **contract for the sale of estate real property** shall be reported to the court ordering the sale not later than the 30th day after the date the bid is made or **the property is placed under contract**. The report must:

- (1) be sworn to, in writing, and filed with the clerk;
- (2) include:
 - (A) the date of the order of sale;
 - (B) a description of the property being sold;
 - (C) the time and place of the auction or **date the property is placed under contract**;
 - (D) the purchaser's name;
 - (E) the amount of the successful bid or the purchase price for each parcel of property or interest in property auctioned or **placed under contract**;
 - (F) the terms of the sale;
 - (G) whether the proposed sale of the property was made at public auction or **by contract**;
 - and
 - (H) whether the purchaser is ready to comply with the order of sale; and
- (3) be noted on the probate docket.

Sec. 356.552. ACTION OF COURT ON REPORT. After the expiration of five days from the date a report is filed under Section 356.551, the court shall:

- (1) inquire into the manner in which the auction or **contract described in the report** was made;
- (2) hear evidence in support of or against the report; and
- (3) determine the sufficiency or insufficiency of the personal representative's general bond, if any has been required and given.

NOTE: Another change is that the term "Approval" has been substituted for the word "Confirmation." The court will no longer sign an order confirming the sale, the order will be approving the sale.

Sec. 356.556. **APPROVAL OR DISAPPROVAL ORDER.** (a) If the court is satisfied that the proposed sale of real property reported under Section 356.551 is for a fair price, properly made, and in conformity with law, and the court has approved any increased or additional bond that the court found necessary to protect the estate, the court shall enter an order:

- (1) **approving** the sale;
- (2) showing conformity with this chapter;

(3) detailing the terms of the sale; and
(4) authorizing the personal representative to convey the property on the purchaser's compliance with the terms of the sale.

(b) If the court is not satisfied that the **proposed sale of real property** is for a fair price, properly made, and in conformity with law, the court shall enter an order setting aside the bid **or contract** and ordering a new sale to be made, if necessary.

(c) The court's action in **approving** or disapproving a report under Section 356.551 has the effect of a final judgment. Any person interested in the estate or in the sale is entitled to have an order entered under this section reviewed as in other final judgments in probate proceedings.

Sec. 356.557. DEED. Real estate of an estate that is sold shall be conveyed by a proper deed that refers to and identifies the court order **approving** the sale. The deed:

(1) vests in the purchaser all right and title of the estate to, and all interest of the estate in, the property; and

(2) is prima facie evidence that the sale has met all applicable requirements of the law.

Sec. 356.558(a). DELIVERY OF DEED.

(a) After the court has **approved** a sale and the purchaser has complied with the terms of the sale, the personal representative of the estate shall promptly execute and deliver to the purchaser a proper deed conveying the property.

NOTE: The amendments to Sections 356.551, 356.552, 356.553, 356.554(a), (b), and (c), 356.556, 356.557, 356.558(a), apply only to the estate of a decedent who dies on or after September 1, 2019. The estate of a decedent who dies before that date is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose.

Right of Redemption Cannot Be Transferred

Effective May 22, 2019, SB 1642 amended Section 34.21 of the Tax Code to prohibit the transfer of a right of redemption following a tax sale.

SECTION 1. Section 34.21, Tax Code, is amended by adding Subsection (l) to read as follows:

(l) An owner of real property who is entitled to redeem the property under this section **may not transfer the owner's right of redemption** to another person. Any instrument purporting to transfer the owner's right of redemption is void.

SECTION 2. The change in law made by this Act does not affect a transfer of a property owner's right of redemption that occurred before the effective date of this Act.

Remote On-Line Notaries (RON)

Effective September 1, 2019, SB 2128 added Sect. 12.0013 to the Property Code, thus providing a method of filing a paper copy of a document notarized by a RON. Section 12.0013 of the Property Code is new. It provides a method by which a traditional notary may attach a Declaration of Authenticity for a paper copy of a document notarized by a RON, and a county clerk is authorized to record the Declaration and paper copy in the real property records of the county.

Note: One of the issues title companies are facing regarding the use of RON arises in those counties which do not accept electronic filing. Several statutes were amended or added to address the problem of "papering out" a document which was notarized by a RON.

Important provisions are in **bold**.

Sec. 12.0013. RECORDATION OF PAPER OR TANGIBLE COPY OF ELECTRONIC RECORD.

(a) In this section:

(1) "Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(2) "Electronic," "electronic record," and "electronic signature" have the meanings assigned by Section 322.002, Business & Commerce Code.

(b) A county clerk shall record a paper or tangible copy of an electronic record that is otherwise eligible under state law to be recorded in the real property records if the paper or tangible copy of the electronic record:

(1) **contains an image** of an electronic signature or signatures that are acknowledged, sworn to with a jurat, or proved according to law; and

(2) **has been declared by a notary public** or other officer who may take an acknowledgment or proof under Section 121.001, Civil Practice and Remedies Code, to be a true and correct copy of the electronic record as provided by Subsection (d).

(c) A document that is a paper or tangible copy of an electronic record and is printed and declared to be a true and correct copy as provided by Subsection (d) satisfies any requirement of law that, as a condition for recording, the document:

(1) be an original or be in writing;

(2) be signed or contain an original signature, if the document contains an image of an electronic signature of the person required to sign the document; and

(3) be notarized, acknowledged, verified, witnessed, made under oath, sworn to with a jurat, or proved according to law, if the document contains an image of an electronic signature of the person authorized to perform that act and all other information required to be included.

(d) A notary public or other officer who may take an acknowledgment or proof under Section 121.001, Civil Practice and Remedies Code, may declare that a paper or tangible copy of an electronic record is a true and correct copy of an electronic record by:

(1) executing and attaching an official seal to a tangible paper declaration under penalty of perjury; and

(2) affixing or attaching the declaration to the printed paper or tangible copy of an electronic record.

(e) The form of declaration required under Subsection (d) must be substantially as follows:

DECLARATION OF AUTHENTICITY

State of _____

County of _____

The attached document, _____ (insert title), dated _____ and containing ___ pages, is a true and correct copy of an electronic record printed by me or under my supervision. At the time of printing, no security features present on the electronic record indicated any changes or errors in an electronic signature or other information in the electronic record after the electronic record's creation or execution. This declaration is made under penalty of perjury.

Signed this ____ day of _____, ____.

_____ (signature of notary public or other officer)

(seal of office)

_____ (printed name of notary public or other officer)

My commission expires: _____

SECTION 4. This Act takes effect September 1, 2019.

Note: The county clerk is to index the Declaration under the names of the grantors and grantees of the document which was notarized by a RON. Local Government Code, Sect. 193.003(b).

Designation of Property for Agricultural Use

Effective January 1, 2020, HB 1254 repeated Tax Code Sect. 23.42(a-1) and amended Sect. 23.42(a); this clarifies that land which is currently burdened by a HEL may still be designated as agricultural.

- (a) An individual is entitled to have land he owns designated for agricultural use if, on January 1:
- (1) the land has been devoted exclusively to or developed continuously for agriculture for the three years preceding the current year;
 - (2) the individual is using and intends to use the land for agriculture as an occupation or a business venture for profit during the current year; and
 - (3) agriculture is the individual's primary occupation and primary source of income.

Note: This change has been needed since the constitution was amended to permits HELs on ag value property.

Waiver of Penalties and Interest on a Tax Account

Effective January 1, 2020, HB 1885 added subsection (k) to Sect. 33.001 of the Tax Code and created a narrow window in which a tax collector is granted the discretion to waive penalties and interest.

- (k) The governing body of a taxing unit may waive penalties and interest on a delinquent tax if:
- (1) the property for which the tax is owed is subject to a mortgage that does not require the owner of the property to fund an escrow account for the payment of the taxes on the property;
 - (2) the tax bill was mailed or delivered by electronic means to the mortgagee of the property, but the mortgagee failed to mail a copy of the bill to the owner of the property as required by Section 31.01(j); and
 - (3) the taxpayer paid the tax not later than the 21st day after the date the taxpayer knew or should have known of the delinquency.

SECTION 2. The change in law made by this Act applies only to penalties and interest on an ad valorem tax that becomes delinquent on or after the effective date of this Act.

SECTION 3. This Act takes effect January 1, 2020.

NOTE: The scope of the section is narrow. It only applies when the lender is not maintaining an escrow account for taxes but the tax bill is sent to the lender and not to the property owner. The property owner has a 21-day grace period to pay the taxes after he knew or should have known of the delinquency.

Affidavit of Authority to Transfer

Effective September 1, 2019, HB 1833 amended the Property Code by adding Sect. 12.019 titled "Affidavit of Authority to Transfer."

1. The intent of this legislation, as it was originally conceived before the TLTA Legislation Committee, was to create a way to alleviate the burden to title companies of having to require and review sometimes voluminous amounts of entity documents in order to ascertain which person or persons had the authority to engage in a proposed transaction. As with any legislation, during the process the objections and concerns of many interested stakeholders had to be addressed.

NOTE: The new statute applies only to transactions of \$1 Million or less, and applies only if the entity is an LLC, a limited partnership or a professional entity as defined by Section 301.003 of the Business Organizations Code.

2. The benefit of using an Affidavit of Authority to Transfer as opposed to a resolution from the entity is found in Section j:

(j) A person who in good faith acts in reliance on an affidavit that complies with this section and that contains transfer authority that has not been terminated under Subsection (n) or has not expired under Subsection (o) is not liable to any person for that act and may assume without inquiry the existence of the facts contained in the affidavit if the person does not have actual knowledge that any material representations contained in the affidavit are incorrect.

3. The Affidavit can only be executed by:

- (1) For a limited liability company, a manager or member of the limited liability company;
- (2) For a limited partnership, a general partner of the limited partnership; or
- (3) For a professional entity, a director or officer of the applicable professional entity.

4. The individual executing the affidavit may not be the individual identified in the affidavit as authorized to transfer an estate or interest in the real property described in the affidavit **unless:**

- (1) the entity is a limited liability company and the affiant is the sole member and manager of the limited liability company;
- (2) the entity is a limited partnership and the affiant is the sole general partner of the limited partnership;
- (3) the entity is a professional entity and the affidavit includes a representation by the affiant that the affiant is the sole director and officer of the applicable professional entity; or
- (4) the most recent franchise tax public information report of the entity under Section 171.203, Tax Code, available on the date the affidavit is executed identifies only the affiant and no other person as an officer, director, member, manager, or general partner of the entity.

Note: At this time WFG will **not** require our agents to use the Affidavit procedure. We hope that in the next legislative session amendments will be made to broaden the scope of the statute and make it a better tool for the title insurance industry.

5. The Affidavit can be used when the entity is purchasing, mortgaging or selling real property.

Note: The authority granted in the Affidavit expires on the first anniversary after the Affidavit was filed.

Click [HERE](#) to download the sample form of the Affidavit.

NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.