

Texas Legislative Update
by Randy Lee & John Rothermel



House Keeping

Please do not place the conference on hold. Background/Hold music makes it hard to hear the speaker.

Please mute your phones. (Un-mute to ask questions) Everything you say, every paper that gets shuffled can be heard by all participants. We are voice recording the conference.

Note: Materials for the July webinar on the Title Search Periods by Sarah Schneider are now available online at www.stewarttexas.com.



2007 Legislative Update

Stewart Title Guaranty Company

Randy Lee

John Rothermel

It was a very good year

- 2007 was a busy year in the Texas Legislature. 6198 bills were introduced and 1478 were passed. A significant number of bills affected real estate and title insurance.

Public records and SSNs

- **HB 2061** was the emergency bill made necessary by Attorney General's Opinion GA 05-19. The opinion initially had the effect of causing a number of county clerk offices around the state to shut down. Some even put crime scene tape around their records. The bill restored a measure of calmness to the situation and public information remained public. Effective March 28, 2007.
- ***Changes/actions required: none***

AJ's and SSNs

- **SB 699** addresses the need for title companies to have sufficient information in abstracts of judgment to determine if an party to the transaction is the same party against whom the abstract was filed. A large percentage of AJs do not contain any identifying information. This bill requires that all AJs have the last 3 numbers of the judgment debtor's social security number and last 3 numbers of the drivers license number. Partial numbers provide a significant measure of certainty when reviewing AJs while still providing arithmetic certainty against disclosing the full social security and drivers license numbers. Obtaining the numbers from defendants will be done by contempt orders brought by the other party or by the court. Effective September 1, 2007

AJ's and SSNs Continued

- Changes/actions required: For AJs filed after 9-1-2007, all not same person affidavits should contain only the last 3 social security number digits and the last 3 digits of the drivers license number.

A judgment in favor of the state or a state agency does not become dormant

- **SB 300** amends Section 52.006, Property Code, as follows:
- **A judgment in favor of the state or a state agency does not become dormant.** A properly filed abstract of the judgment continues to constitute a lien under Section 52.001 until the earlier of the **20th anniversary** of the date the abstract is recorded and indexed or the date the judgment is satisfied or the lien is released. The judgment lien **may be renewed for one additional 20-year period** by filing, before the expiration of the initial 20-year period, a renewed abstract of judgment in the same manner as the original abstract of judgment is filed. The renewed judgment lien relates back to the date the original abstract of judgment was filed.

A judgment in favor of the state or a state agency does not become dormant cont.

- ***Changes/actions required: search periods for judgments in favor of the State of Texas or its agencies must now be for a minimum of 20 years and abstractors and examiners should also be on the look out for renewals of such judgments.***

Title Insurance Related Bills

- The next section will deal with bills directly related to title insurance and title insurance companies and agents

Examination of Title Insurers

- **SB 1253 relating to the frequency and expenses of certain examinations conducted by the Texas Department of Insurance.** This bill allows the TDI to adopt rules to extend the frequency of examination of domestic title insurers from three to five years. It has no effect on title insurance agents. Effective September 1, 2007.
- **Changes/actions required: none**

Title Hearings

- **HB 3271 relating to the biennial hearing concerning title insurance and related information.** This bill allows any licensee of the TDI to sue the Commissioner for unduly burdensome data calls and demands for material which is not relevant to the ratemaking process. It also allows us to stop anyone from being a party to the rate hearing that does not have a substantial interest in the business of title insurance. Effective September 1, 2007.
- **Changes/actions required: none.**

UCC (personal property) title insurance

- **SB 1153 relating to title insurance for certain personal property interests.** This bill allows title insurance companies to issue title insurance on personal property fixtures on UCC financing transactions. TDI will be putting new rules into place in the near future. We will inform you of those new regulations when they are enacted. Effective September 1, 2007.
- **Changes/actions required: The law requires that the policies be issued by the title insurance company but that the title insurance agent referring the transaction receive 30% of the premium.**

Premium Tax Fairness

- **HB 3315 relating to certain insurance taxes.** This bill allows the State to enter into reciprocal agreements with other states that have similar authority to assist foreign insurers that may encounter a retaliatory tax in Texas. The bill has no effect on title insurance agents.
- **Changes/actions required: none**

AJs on Homestead

- **SB 512 relating to the attachment of a judgment lien to homestead property.** This bill amends Section 52.001, Property Code, to specify that a judgment lien does not attach and does not constitute a lien against a debtor's exempt real property, such as a homestead residence. This bill also specifies that a judgment lien would only become a lien against the homestead when the property no longer constitutes the debtor's homestead. A judgment debtor may, at any time, file an affidavit in the real property records of the county in which the judgment debtor's homestead is located that substantially complies with Subsection (f). A copy of the affidavit is attached to this bulletin.
- The AJ lien will not have retroactive effect since the property was homestead and exempt at the time the AJ was recorded. Effective September 1, 2007.

AJs on Homestead cont.

- **Changes/actions required: When you have satisfactory proof that the property in question is homestead, it is no longer necessary to obtain releases of the Abstract of Judgment for sale or loan transactions. Satisfactory proof would be a homestead affidavit claiming the subject property and disclaiming other property when you have no reason to believe that the affidavit is false. Satisfactory proof would also be the affidavit filed in compliance with this statute. An inspection of the property to determine the homestead status is also allowed**

Keeping MHUs from becoming MFUs

- HB 1460 dealing with the issuance of statements of ownership and location for manufactured homes to certain lien holder's without the consent of the owner's of those homes. This bill was made necessary by the failure of some owners, retail sellers, lenders and title companies of to getting the required Statement of Ownership in a timely manner. If the lender foreclosures, the TDHCA is unable to issue an SOL to the lender, who then cannot provide an SOL to their buyer. **This bill allows the lender or the loan servicer to file an affidavit and the foreclosed loan instrument with the TDHCA and obtain an SOL.**
- Effective date January 1, 2008.

Keeping MHUs from becoming MFUs cont.

- *Changes/actions required: This provision does not dispense with the duty to promptly handle all SOL requests in a timely fashion. On the other hand, when a property has been foreclosed and the lender or servicer provides you with an SOL on the manufactured home involved in your transaction, you may consider the home to be real property and handle it in accordance with normal practices.*

Estates running a business

- **HB 1352 relating to the operation of a farm, ranch, factory or other business by a personal representative of a decedent's estate..** Clarifies and expands the ability of an estate to carry on a business with limited or significant court oversight. Further, it allows the court to approve in advance the ability of the estate to sell real property. The Probate section of the State bar of Texas assisted in reworking this bill. . Effective September 1, 2007.
- **Changes/actions required: While Texas law has for some time allowed an estate to remain open and run a farm, ranch, factory or other business, the personal representative has not had the authority to sell real property belonging to the estate. This bill amends Section 238 of the Probate Code to allow the representative to obtain consent from the court to sell certain properties in the ordinary course of business without following Section 333 of the Probate Code. All sales of all other property should follow Probate Code section 333 and have express court order.**

99 year restrictions bill

- **HB 2403 relating to prohibiting fees for future transfers of real property. (Sometimes called the 99-year restriction scam bill.).** This bill was passed as an amendment to another bill, HB 2207. It amends Chapter 5 of the Property Code to prohibit certain fees or assessments on future transfers of property payable for 99 years back to an original landowner. Exceptions are property owner's associations and 501c(3) non profits. Effective September 1, 2007.
- **Changes/actions required: If your search and examination of title shows any restrictive covenants filed after January 1, 2008 that purport to require payment of a portion of the sales proceeds to the owner or the owner and a 3rd party business entity for a period in excess of the owner's ownership of the property, you may disregard such restrictions. The exceptions apply to transfer fees charged by home owner association and to fees charged by non-profit corporation set up to provide funds to schools in the area of the subdivision. These must be collected and properly paid**

Technical Defects

- **SB 1781 relating to technical defects in instruments conveying real property.** This bill lowers the amount of time from four years to two years that a technical defect in an instrument of conveyance may cause a right of action. It also clarifies what constitutes a defective acknowledgment. This will help us clear up some liabilities and problems with technically defective instruments in title examinations. Effective September 1, 2007.

Technical Defects

- *The following is the list of technical defects corrected by the passage of time:*
- ***1) lack of the signature of a proper corporate officer, partner, or company officer, manager, or member (missing signature of entity officials)***
- ***(2) lack of a corporate seal;***
- ***(3) failure of the record to show the corporate seal used;***
- ***(4) failure of the record to show authority of the board of directors or stockholders of a corporation, partners of a partnership, or officers, managers, or members of a company (example: lack of recorded corporate or other resolutions);***

Technical Defects

- ***(5) execution and delivery of the instrument by a corporation, partnership, or other company that had been dissolved, whose charter had expired, or whose franchise had been canceled, withdrawn, or forfeited (example: deed from entity no longer authorized);***
- ***(6) acknowledgment of the instrument in an individual, rather than a representative or official, capacity (example: use acknowledgement form for individual not entity)***

Technical Defects

- ***(7) execution of the instrument by a trustee without record of the authority of the trustee or proof of the facts recited in the instrument (example dry trust) ;***
- ***(8) failure of the record or instrument to show an acknowledgment or jurat that complies with applicable law (Example: wrong or improper acknowledgement form used) ; or***
- ***(9) wording of the stated consideration that may or might create an implied lien in favor of the grantor.***

Technical Defects

- *Changes/actions required: If your search and examination of the title discovers a technical defect set out above in a document that has been recorded longer than 2 years (from the date of recording), you need not require a correction document be executed or recorded.*

Mortgage Fraud

- **HB 716** amends Subchapter B, Chapter 343, Finance Code by adding Section 343.105 to read as follows:
- Sec. 343.105. NOTICE OF PENALTIES FOR MAKING FALSE OR MISLEADING WRITTEN STATEMENT. (a) A lender, mortgage banker, or licensed mortgage broker shall provide to each applicant for a home loan a written notice at closing. The warning must be essentially in following form: “Warning: **Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit**, including a mortgage loan, is a violation of Section 32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is **punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000.**” The parties to the transaction also must swear that they have told the truth in the applications and disclosures that are part of the loan process. The failure of a lender, mortgage banker, or licensed mortgage broker to provide a notice complying with this section to each applicant for a home loan does not affect the validity or enforceability of the home loan by any holder of the loan.

Mortgage Fraud cont.

- ***Changes/actions required: Any person who suspects that there is mortgage fraud about to be committed or that has been committed is required to report such suspicions to a law enforcement agency Title insurance professionals should report to the Fraud Section of the Texas Insurance Department as per commissioner's bulletin #B-0010-07 /Title Bulletin 165.***

Child support

- **SB 228**
- **Sec. 157.324. LIABILITY FOR FAILURE TO COMPLY WITH ORDER OR LIEN.** A person who knowingly disposes of property subject to a child support lien or who, after a foreclosure hearing, fails to surrender on demand nonexempt personal property as directed by a court under this is liable to the claimant in an amount equal to the value of the property disposed of or not surrendered, not to exceed the amount of the child support arrearages for which the lien or foreclosure judgment was issued.

Child Support cont.

- Sec. 232.0135. DENIAL OF LICENSE RENEWAL. (a) A child support agency, as defined by Section 101.004, may provide notice to a licensing authority concerning an obligor who has failed to pay child support for six months or more that requests the authority to refuse to accept an application for renewal of the license of the obligor.
-
- (b) A licensing authority that receives the information described by Subsection (a) shall refuse to accept an application for renewal of the license of the obligor until the authority is notified by the child support agency that the obligor has:
 -
 - (1) paid all child support arrearages;
 -
 - (2) established with the agency a satisfactory repayment schedule or is in compliance with a court order for payment of the arrearages;
 - (3) been granted an exemption from this subsection as part of a court-supervised plan to improve the obligor's earnings and child support payments; or
 - (4) successfully contested the denial of renewal of license under Subsection (d).

Child Support cont.

- SECTION 28. Subsection (a-1), Section 157.317, Family Code,

-

- is amended to read as follows:

-

- (a-1) A lien attaches to all property owned or acquired on or after the date the lien notice or abstract of judgment is filed with the county clerk of the county in which the property is located, with the court clerk as to property or claims in litigation, or, as to property of the obligor in the possession or control of a third party, from the date the lien notice is delivered to that party.

-

- SECTION 29. Subsection (a), Section 157.318, Family Code,

-

- is amended to read as follows:

-

- (a) A lien is effective until all current support and child support arrearages, including interest any costs and reasonable attorney's fees, and any Title IV-D service fees authorized under Section 231.103 for which the obligor is responsible, have been paid or the lien is otherwise released as provided by this subchapter

Child Support cont.

- Changes/actions required: This bill has 4 sections of interest for title companies:
- a person who knowingly fails to comply with a child support order to turn over property or disposes of property in the face of a child support lien, becomes liable for the lien to the extent of the property.
- An employee of the title company holding an escrow officers license can have renewal of that license withheld if the person has a unpaid child support due.
- The child support lien applies to all property owned or acquired by the person owing child support as of the date the lien is recorded in the county records.
- A court retains continuing jurisdiction over child support orders until all amounts required under the order are paid.

HEL

- This resolution will amend Article 16 Section 50(a)(6) of the Texas Constitution dealing with home equity liens in 4 ways that apply to title companies:
- 1. Subsection (l) will be amended to read: “is not secured by homestead property that on the date of closing is designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk”;
- 2. The provision that a new home equity loan cannot close within 12 months of an existing home equity loan is amended to provide: unless the owner on oath requests an earlier closing due to a state of emergency that:
 -
 - (a) has been declared by the president of the United States or the governor as provided by law; and
 -
 - (b) applies to the area where the homestead is located; (*Example: a Hurricane, tornado or flooding type disaster*)

HEL cont.

- 3. The provision prohibiting an owner of the homestead from signing any instrument in which blanks is amended to read “relating to substantive terms of agreement are left to be filled in”. *This means that non-substantive blanks would be permitted. Example: lines for co-borrowers when there are none would be non-substantive.*
-
- 4. Finally, the constitution will be amended to provide that at the time the extension of credit is made, [the owner of the homestead shall receive a copy of the final loan application and all executed documents signed by the owner at closing related to the extension of credit;
-
- The notice provided by the lender to the borrower will be amended to provide the changes set out above. Of particular importance to the title company is subparagraph I), which will read as follows: **THE LOAN MAY NOT BE SECURED BY HOMESTEAD PROPERTY THAT IS DESIGNATED FOR AGRICULTURAL USE AS OF THE DATE OF CLOSING, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE PRODUCTION OF MILK.**

HEL cont.

- **Changes/actions required: The major change to existing practices if this amendment is approved by Texas voters on November 6, 2007 is that we will be allowed to insure a home equity loan when the property is not subject to agricultural tax exemption on the closing date. If the borrower re-imposes the ag exemption after closing, the Home Equity Loan remains valid.**

Thank you

- Please email password and attendees name to Ken Wrider at Ken.Wrider@stewart.com
(Please do this as soon as possible. Certificates will not be produced after the start of our next webinar.)
- CLE Course No. 900028081

Next Texas TIPS Online

9-20-07 “Economic Update” by Ted Jones

- See www.StewartTexas.com for calendar and materials