

Date: October 3, 2019  
To: All Texas Agents  
From: FNTI Underwriting Department  
RE: Affidavit of Authority to Transfer for Entities

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A new Section 12.019 was added to the Property Code, effective on September 1, 2019, that authorizes an entity to execute and record an Affidavit that identifies one or more individuals that will have the power to transfer property on behalf of an entity and act as the signatory on the documents.

The definition of “transfer” is very broad and includes sales, exchanges, conveyances, partitions, releases, options, encumbrances, zoning, subdividing, platting, developing, leasing and subletting and other disposals of an interest in or right incident to real property.

The new Affidavit procedure does not apply if the transaction involves the transfer of an estate or interest in an amount that exceeds \$1 million. The procedure also does not apply for corporations, non-profits or an entity exempt from federal taxation under IRC §501(c)(3) or §170(c)(1) or (2) (usually a charitable organization). The Affidavit will expire one year after the date of recordation (unless an earlier termination has been recorded).

The type of domestic or foreign (out of state) entity that is eligible to use the Affidavit procedure:

- A LLC, a limited partnership or a professional entity (a professional association, professional corporation, or professional limited liability company).
- The entity must be in active and/or in good standing in their state of formation

The person that qualifies under the new statute to sign the Affidavit is a little tricky. The person signing the Affidavit must be a manager or member (if an LLC), a general partner (if a limited partnership) or a director or officer (if a professional entity). However, the person signing the Affidavit may not be the person named in the Affidavit as the authorized signatory unless the Affiant states in the Affidavit that they are the sole member and manager (if an LLC), or the sole general partner (if a limited partnership) or the sole director and officer (if a professional entity).

The most recent franchise tax public information report on the entity as of the date of the Affidavit must identify only the Affiant and no other person as an officer, director, member, manager or general partner of the entity.

The Affidavit requirements include the requirement for a legal description of the property which is to be transferred and it must specify the nature of the transfer being authorized.

It is not mandatory for an entity to use the Affidavit procedure, but it does offer protections for people who rely in good faith on the Affidavit. From a title company perspective, it does not really change work flow procedure that much since an

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entity's formation documents (a/k/a authority docs) and the most recent franchise public information report on the SOS website, or the equivalent State Agency/Corporations Division if the state of domicile is another state, will still have to be reviewed to determine the entity's members/managers or general partner or director/officer and good standing, to verify that the person executing the Affidavit is an authorized party under the statute, at which point it does allow escrow to rely on a recorded Affidavit.

It is not uncommon for a seller entity to have a resolution listing multiple authorized officers as signatories for real estate transactions, with no legal descriptions provided. We can still rely upon resolutions of this nature.

When a seller entity is itself composed of another entity(ies) serving as the manager/member of an LLC or the general partner of a limited partnership or director/officer of a professional entity and so on, as the case may be (where you will have a signatory line(s) that is basically numerous stacked entities), it is likely that each entity would need to execute a separate Affidavit.

The new statute also contains a procedure for the entity to record an Affidavit terminating the transfer authority set out in the Entity Affidavit.

A sample Entity Affidavit of Authority is attached for your convenience.

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ENTITY – AFFIDAVIT OF AUTHORITY TO TRANSFER  
(LLC, LIMITED PARTNERSHIP OR PROFESSIONAL ENTITY)

Entity:

Street Address of Entity's Principal Place of Business:

Legal Description of Property Owned by Entity:

Nature of Authorized Transfer of Estate or Interest:

Name and Title of Person(s) Authorized to Make the Transfer:

Affiant:

Affiant upon oath does swear and depose the following:

1. I am the \_\_\_\_\_ (title) \_\_\_\_\_ of the Entity. I am over eighteen (18) years of age and I am competent in all respects to make this Affidavit. Affiant is executing this Affidavit in his/her/their individual capacity and in their representative capacity on behalf of the Entity. Affiant is fully authorized to execute and deliver the Affidavit on behalf of the Entity.
2. The Entity is active or in good standing under the laws of the Entity's jurisdiction of formation.

Affiant should initial the applicable paragraph below if Affiant is named to serve as the Authorized Person to Make the Transfer of the Estate or Interest in the Property on behalf of the Entity:

\_\_\_\_\_ Affiant is the sole member and manager of the Limited Liability Company named as the Entity.

\_\_\_\_\_ Affiant is the sole general partner of the Limited Partnership named as the Entity.

\_\_\_\_\_ Affiant is the sole director and officer of the professional entity named as the Entity.

Affiant confirms and represents that only the Affiant, and no other person, is identified as an officer, director, member, manager or general partner of the Entity on the most recent franchise tax public information report for the Entity, required by Section 171.203 of the Texas Tax Code, that is available on the date of this Affidavit.

Affiant acknowledges and understands that third parties will rely on the truthfulness of the statements made by Affiant in this Affidavit and executes this Affidavit under full penalties of perjury.

AFFIANT:

\_\_\_\_\_  
Name and Title

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_