

## Underwriting Bulletin: UNTX-2021-007

Date: September 8, 2021  
To: Texas Agents  
From: FNTI Underwriting Department  
RE: **2021 Legislative Summary**

---

### **HOMESTEAD** Effective September 1, 2021

Section 52.0012 of the Property Code was amended to revise the procedure for clearing the cloud on title on a property being claimed as homestead arising from an Abstract of Judgment.

The existing statutory procedure was revised to provide that a judgment debtor who files a Homestead Affidavit as Release of Judgment Lien, as set out in the statute, must send a copy of the filed Affidavit to the judgment creditor, by registered or certified mail, to the addresses of the creditor and creditor's attorney as delineated in the statute. A separate Certificate of Mailing must also be filed, with the evidence of mailing. The form for the Certificate of Mailing is found within the revised statutes.

If the judgment debtor has filed the Certificate of Mailing and no contradictory affidavit is filed by the creditor in the 30 day period following the filing of the Certificate, then a bona fide purchaser and/or mortgagee or their successor/assign may conclusively rely on the filed Affidavit for the 90 day period that begins on the 31<sup>st</sup> day after the Certificate of Mailing was filed.

*Underwriting Note: The change eliminates the Mailing of the unexecuted Affidavit to the judgment creditor 30 days prior to the filing of the executed Affidavit. Note that the new procedure requires two filings – the executed Affidavit and the Certificate of Mailing – and only allows reliance on the filed Affidavit and Certificate of Mailing for a temporary 90 day period.*

### **QUITCLAIMS** Effective September 1, 2021, applies only to Quitclaims recorded on or after the effective date

Section 13.006 has been added to the Property Code to provide that on the fourth anniversary from the date of recording of a Quitclaim, it will no longer affect the good faith/bona fide purchaser status of a subsequent purchaser or transferee or creditor who has no actual notice of unrecorded matters.

*Underwriting Note: (for quitclaim deeds filed after September 1, 2021) After 4 years from the date of recording, the Quitclaim no longer has to be replaced with a warranty deed for insuring purposes.*

### **FEE CAP FOR RESALE CERTIFICATES** Effective September 1, 2021

Sections 207.003(c) and 207.004(b) of the Property Code were amended to impose a \$375 maximum cap on the fee a property owner's association may charge to assemble, copy and deliver a resale certificate and a \$75 maximum cap on the fee that can be charged to prepare and deliver an update for the resale certificate. The turnaround time allowed the property owner's association was shortened and the maximum liability for failure to respond was increased. If the property owner's association fails to deliver the resale certificate before the fifth business day after a second request for the information was mailed, by certified mail RRR, or

hand delivered, evidenced by receipt, the owner can seek a judgment against the association for not more than \$5000 as well as attorney's fees and court costs.

## **WRAPAROUND LOANS** Effective January 1, 2022

Chapter 159 is added to the Finance Code. The new Chapter is lengthy, complicated and imposes registration and licensing requirements. It also has quite a few exemptions, including a wrap mortgage loan for a sale of residential real estate that is the wrap lender's homestead and excludes an owner of residential real estate if the owner does not in any 12-consecutive-month period make, or contract with another person to make, more than three wrap mortgage loans to purchasers of the property. Federally insured banks, credit unions, savings banks etc. are also not subject to the Chapter.

If the wrap lender is subject to the new Chapter, the wrap lender must, on or before the 7<sup>th</sup> day before the wrap mortgage loan is entered into, provide to the wrap borrower a separate written disclosure statement as mandated by the new statute. The wrap borrower is required to date and sign the disclosure statement when received.

If the disclosure statement is received by the wrap borrower on or before the closing date of the wrap mortgage loan, the wrap borrower may rescind the wrap mortgage loan agreement and any related purchase agreement not later than the 7<sup>th</sup> day after the date of receipt of the disclosure statement, regardless of whether the disclosure is timely made. On rescission, the wrap borrower is entitled to a return of any earnest money, escrow amounts, down payment, or other fees or charges paid in connection with the wrap mortgage loan and the related purchase transaction.

If a wrap lender fails to provide the disclosure statement before closing, the wrap borrower may rescind the wrap mortgage loan agreement and the related purchase agreement at any time by providing the wrap lender notice of rescission in writing. If the wrap borrower receives the required disclosure statement after closing, but before the wrap borrower gives notice of rescission, the wrap borrower may rescind the wrap mortgage loan agreement and the related purchase agreement in writing on or before the 21<sup>st</sup> day after the date of receipt of the disclosure statement.

A lien securing a wrap mortgage loan will be void unless the wrap mortgage loan and the conveyance of the residential real estate securing the loan are closed by an attorney or a title company

*Underwriting Note: call an Underwriting Attorney for assistance on Wraps. The primary concerns will be to determine if the wrap lender is subject to the new law and whether the wrap borrower will have any right to rescind the transaction following the closing.*

## **PUBLIC IMPROVEMENT DISTRICTS** Effective September 1, 2021

Multiple revisions were made to the Local Government Code and Property Code to impose the same requirements with respect to public improvement districts as exist for municipal utility districts.

The governing body of a city or county may adopt a resolution authorizing the PID and not later than the 7<sup>th</sup> day after such adoption, file the resolution with the county clerk in the county(ies) in which the PID is located. The service plan and any amendments thereto must also be filed with the county clerk within 7 days of adoption.

Sellers of property located within a PID must give the prospective purchaser the prescribed written notice prior to entering into the contract, notifying the purchaser that they will be obligated to pay assessments. The prescribed notice may be given separately or as an addendum to the contract (TREC Addendum No. 53-0, ADDENDUM CONTAINING NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT). The buyer and seller will sign the notice.

The purchaser is entitled to terminate the contract if they do not receive the notice pre-contract. However, if the seller gives the notice after the contract is entered into but prior to closing and the buyer elects to close, the purchaser will have waived the right to terminate the contract and any right to damages.

At the closing of the sale transaction, a separate copy of the notice must be executed by the seller and purchaser, acknowledged, and recorded in the deed records of the county in which the property is located.

No action may be maintained against any title company for failure to disclose the inclusion of the property in a public improvement district when the municipality or county has not filed the service plan for the PID with the clerk of each county in which the district is located or when the title company relied on the legal description in a filed service plan that is incorrect. The purchaser is entitled to sue for damages or rescission of the sale if they do not receive the notice and sign the separate notice for recordation at closing.

*Underwriting Note: Examination will have to locate existing PIDs that have filed the resolution and service plan in order for the notice to be completed. Sellers and Listing Agents may be uncertain if the property is situated in a PID and look to the title company to locate the recorded information.*

#### **GOVERNING AUTHORITY OF AN LLC** Effective September 1, 2021

Among the many changes made to the Business Organizations Code, Section 101.251 was amended to clarify that the governing authority of an LLC consists of managers of the company, if the company agreement so provides or the members of the company, if the company agreement so provides.

Only if the company agreement does not provide otherwise, the governing authority of a limited liability company consists of the managers of the company, if the company's certificate of formation states that the company has managers; or the members of the company, if the company's certificate of formation does not state that the company has managers.

*Underwriting Note: this change in wording clarifies that the LLC's operating agreement or company agreement controls over the certificate of formation as to the people with governing authority of the LLC*

#### **SERIES LLC** Effective June 1, 2022

Amendments to the Business Organization Code and the Business & Commerce Code were enacted to introduce "registered series" of Texas limited liability companies, while renaming the existing series concept as a "protected series". The existence of a registered series can be confirmed through the public records at the Secretary of State's office and a certificate of existence can issue.

To create a registered series, a certificate of registered series must be filed with the Secretary of State's office in compliance with the statutes. Conversions of registered series into a protected series and vice versa are authorized, as well as mergers between the two types of series LLCs.

## **MECHANIC'S, CONTRACTOR'S AND MATERIALMAN'S LIENS** Effective January 1, 2022

Revisions have been made to Chapter 53 of the Property Code. The definition of "labor" has been clarified to include a design, drawing, plan, plat, survey or specification provided by a licensed architect, engineer or surveyor and "material" clarified to include equipment rental. In addition, the definition of "residence" has been clarified to include multi-unit condominium projects.

The time deadlines for filing an Affidavit claiming a lien due to unpaid bills is revised. An original contractor claiming the lien must file an Affidavit with the county clerk not later than the 15<sup>th</sup> day of the 4<sup>th</sup> month after the month in which the contractor's work was completed, terminated or abandoned for projects other than residential construction and not later than the 15<sup>th</sup> day of the 3<sup>rd</sup> month after the month in which the work was completed, terminated or abandoned for residential construction projects.

A claimant other than an original contractor must file their Affidavit claiming the lien by the 15<sup>th</sup> day of the 4<sup>th</sup> month (or the 15<sup>th</sup> day of the 3<sup>rd</sup> month for residential construction projects) after the later of: (i) the month the claimant last provided labor or materials; or (ii) the month the claimant would normally have been required to deliver the last of specially fabricated materials that have not been actually delivered.

A claimant other than an original contractor claiming a lien for retainage must file an affidavit with the county clerk not later than the 15<sup>th</sup> day of the third month after the month in which the original contract under which the claimant performed was completed, terminated, or abandoned.

The time period for bringing suit to foreclose a lien is shortened to one year from the last day a claimant may file a lien affidavit, unless the claimant enters into a written agreement to extend limitations and the agreement is recorded (in which case the limitations period may be up to two years).

Many other changes were made to Chapter 53, including clarifications to the deadlines for sending notices of the claims, revision of the methods of notices, providing statutory forms for the notice of claim and notice of claim for retainage, extension of deadlines to the next day that is not a Saturday, Sunday or legal holiday and specification of when subcontractors must give a funds trapping notice (with a statutory form).

*Underwriting Note: Agents should consult with an Underwriter if they are requested to bar a Mechanic Lien Affidavit based on alleged late notice or late filing of the Affidavit. Always remember to add the P-8 exceptions on commitments for policies when there are immediately contemplated improvements to be made and/or a loan that includes funds for construction, remodeling and/or repair.*

## **AMENDMENT OF RESTRICTIVE COVENANTS** Effective June 15, 2021

Section 209.0041 of the Property Code, which applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association that is authorized to collect assessments, provides that where the declaration of restrictions is silent as to voting rights for an amendment, the declaration may be amended by a vote of owners of 67% of the lots subject to the declaration. If the declaration contains a lower percentage than 67%, the percentage in the declaration controls. The amendment of this statute provides that the statute will not apply to an amendment of a declaration if the amendment would affect a portion of a subdivision that is zoned for or that contains, or previously contained as specifically allowed under the declaration, a commercial structure, an industrial structure, an apartment complex, or a condominium.

*Underwriting Note: The reasoning behind this amendment to the statute is to stop a property owner's association from attempting to revise the restrictions applicable to "commercial reserves" to prevent the use of the tract's use as a multifamily or commercial use tract.*