Underwriting Bulletin: UNTX-2023-007

Date: August 24, 2023
To: All Texas Agents
From: Underwriting Department
RE: **Notable 2023 Legislative Summary**

Update 10-18-2023:

<u>Statute of Limitations on Child Support Liens Repealed (SB 869)</u>: Effective September 01, 2023

IMPORTANT CHANGE EFFECTIVE 09/01/2023: Lost in the review of the recent legislative updates and changes, was Senate Bill 869, which repealed a section of the Texas Family Code dealing with the duration and effect of child support liens.

The 2009 update, which limited the time frame of enforcing child support liens to ten (10) years from the date of filing for child support liens filed after September 01, 2009, was repealed effective September 01, 2023.

<u>As a result, there is no statute of limitations for child support liens.</u>

*Due to the 2009 update and this most recent repeal, the only child support liens subject to the ten (10) year statute of limitations—and therefore time barred—are those meeting both of the following:
a) were filed between September 01, 2009, and August 31, 2013; and
b) were <u>not</u> renewed by subsequent refiling pursuant to the now repealed subsection.

Please update any statute of limitations checklists you may have dealing with child support liens.

Repeals Subsection d of Section 157.318 of the Texas Family Code.

Also, like always, if you have any questions about any of this, please reach out to your favorite FNTI underwriter! =)

<u>Conveyance Instrument Naming Trust as Grantee (SB 801)</u>: Effective September 01, 2023*

The trustee of a trust is considered for all purposes to be the named party to an instrument that names the trust as a party to the instrument in any capacity—unless the trust is a legal entity under state law.
*Beginning September 01, 2023, this change is retroactive to the date of the original instrument.

The trustee of a trust that is the named party to a recorded instrument may be—but is not required to be—corrected with a 5.028 Nonmaterial Correction Instrument.

A certification of trust filed in the situs county where a trust owns real property is presumed to correctly identify the trustee and the trust, and it may be relied upon by a good faith purchaser or lender for value.

Section 114.087 was added to the Property Code to implement this change and Section 5.028 was also amended to allow use of a non-material correction affidavit to identify an omitted trustee.

<u>Sham/Pretend Sale Rural Refinance (HB 207)</u>: Effective September 01, 2023

IF a conveyance of a parcel that is not an urban homestead; or a conveyance by an individual to an entity partially or wholly owned, directly or indirectly, by said individual or the individual's spouse, meets the following criteria:

1) The deed conveying the parcel is recorded at least 30 days before the entity grants a lien on the parcel;
2) The individual does not reside on the parcel at the time of the conveyance;
3) The parcel is not contiguous to the parcel on which the individual resides;
4) The deed does not contain a condition voiding the conveyance if said condition occurs; and
5) An "Affidavit Regarding Conveyance To An Entity" is recorded with the deed;

THEN, the individual executing the conveyance *cannot* claim the conveyance is a sham or pretended sale of homestead under the Texas Constitution, or otherwise; and the individual *cannot* claim homestead rights, if any, were not abandoned in the parcel being conveyed.

An entity or a lender for value may conclusively rely on the *Affidavit Regarding Conveyances To An Entity*.

<u>Note:</u> The purpose of this is to prevent these types of transactions, or liens related to these types of transactions, from being declared void under certain provisions of the Texas Constitution. It creates a statutory fix to a constitutional law to prevent individuals from asserting a constitutional defense to void a lien.

The *Affidavit Regarding Conveyances To An Entity* must contain the statutory requirements listed in Section 41.0022(d) of the Texas Property Code. We will send you a form, as needed, once created.

Section 41.0022 is added to the Property Code to implement this change.

<u>Remote Ink Notarization (SB 1780)</u>: Effective January 01, 2024

Provides for the ability to use Remote Ink Notarization ("RIN") within existing Remote Online Notarization ("RON") statutory framework. The RIN must be performed by a licensed online notary. The online notary public must authenticate all online notarizations as required by the statutes.

Use of two-way audio and visual conference technology is required, with identity proofing and credential analysis.

The signor must sign the document and include or attach a declaration in substantially the following form:

"I declare under penalty of perjury that the document of which this declaration is a part or to which it is attached is the same document on which (name of online notary public), an online notary public, performed an online notarization and before whom I appeared by means of two-way video and audio conference technology on (date).

____
(Signature of principal)

____
(Printed name of principal)";

The new statutes set statutory rules on returning original documents to notary: signor shall have 3 days to send originals back to notary, and notary must receive originals within 10 days from signor to be a valid RIN transaction.

Chapter 406 of the Government Code is amended to implement this change.

Geothermal Energy (SB 785): Effective Immediately

Title insurance companies can take general exception to geothermal energy and associated resources below the surface of land in title policies.

Ownership of geothermal and associated below-surface resources belong to the landowner, or in the surface estate owner if the mineral and surfaces estates are severed.
The statutory definition of geothermal energy and associated resources:

> (A) products of geothermal processes, embracing indigenous steam, hot water and hot brines, and geopressured water;
> (B) steam and other gasses, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;
> (C) heat or other associated energy found in geothermal formations; and
> (D) any by-product derived from them (as by-product is further defined in the statutes).

Chapter 141 of the Natural Resources Code and Section 2703.056 of the Insurance Code were amended to implement this change.

Insuring guideline: We will see a rule change in the future to Procedural Rule P-5.1 to incorporate geothermal energy interests. In the meantime, this specific exception should be utilized:

> All leases, grants, exceptions or reservations of the geothermal energy and associated resources below the surface of the land, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of the geothermal energy and associated resources below the surface of the land that are not listed.

MUD & Water District Notice Requirements (HB 2815/HB 2816):
Effective Immediately/September 01, 2023

A new prescribed Notice form was enacted in new Section 49.4521 of the Water Code as well as enhanced online notice requirements imposed on Districts.

This change amends, adds, repeals various local government, special district, and water codes. Notably, it requires seller of property to provide written notice to purchasers that the property is within the boundaries of a district governed by Chapter 375 of the Local Government Code and prescribes the notice to purchasers. Requires a district governed by Chapter 375 of the Government Code to post on its website the notice to purchasers.

As the municipalities adopt these changes, we expect MUD & Water District Notices to be more accessible for sellers, buyers, agents, and title companies.

Amends, adds, repeals various sections in Local Government Code, Chapter 375 and Water Code, Chapters 49, 51, 53, 54, and 57.

Inheritance Rights of Adoptive Parents (HB 4765): Effective September 01, 2023

For purposes of inheritance under the laws of descent and distribution, defines "adoptive parent" as a parent (i) who adopted a child through a statutory procedure or (ii) is "considered by a court to have equitably adopted a child or adopted a child by acts of estoppel."

Section 201.054, Estates Code, is amended.

Services Performed by a Landman (SB 604): Effective Immediately

"Land services" performed by a Landman are not the unauthorized practice of law, so long as the services are not performed by a landman holding himself out as a licensed attorney. "Land Services" does *not* include title-related services for land not associated with mineral rights.

Photo ID For Recordings (HB 1195): Effective Immediately

County Clerks and District Clerks in counties allowing electronic filing or recording ("e-filings") may require photo identification from individuals doing in-person filing of documents or instruments. The opposite of this is also true: County Clerks and District Clerks in counties *not* allowing e-filings may *not* require photo identification from persons presenting documents or instruments for filing or recording.

A county clerk or district clerk who requires an individual to present photo identification may not accept a document or other instrument for filing or recording if the individual presents the document or other instrument in person and does not have or refuses to provide a photo identification.

Amends Sections 191.010 and 191.011 of the Local Government Code.

County Online Real Property Auctions (HB 1382): Effective September 01, 2023

Allows counties to provide tax sale auctions for real property online. Limited to tax sales only.

Foreclosure Notices (SB6 2): Effective September 01, 2023

Enhances online notice requirements for county auctions and expands requirements to all county clerks—not a lender requirement.

Release of Lien (HB 219): Effective September 01, 2023

Requires a mortgage servicer or mortgagee to file a release of lien securing a home loan within 60 days of receiving the correct loan payoff amount, or earlier if requested by the mortgagor in writing on or before the 20th day after the payoff date. There’s no mention of penalties for a mortgage servicer or mortgagee who does not comply with this requirement.

Section 343.108 is added to the Finance Code.

TDI Annual Audit (HB 1901): Effective September 01, 2023

Allows Title Agents to file their annual audit with TDI electronically.

Insurer Electronic Business (HB 1040): Effective September 01, 2023

Expands the ability for insurers to conduct business electronically.

Subdivision Restriction Modification Process (HB 1558): Effective Immediately

Creates a procedure for older subdivisions to extend and amend restrictions in limited cases where the subdivision has no available process to make such changes, including the removal of discriminatory restrictions. Defines "older subdivision" as a subdivision described by a recorded map or plat filed before 1947. Applies to an older subdivision that (i) is located partially or fully in a municipality with a population greater than two million; (ii) does not have a written procedure to extend or amend restrictions; and (iii) has a single, non-mandatory property owners' association.

We expect this to only be applicable to subdivisions in Houston platted before 1947.

Notary Regulation (HB 255): Effective September 01, 2023

A notary may not provide their notary seal to another person or affix or attach the seal except to authenticate the notary's official act.

Sections 406.013, 406.014 and 406.024, Government Code are amended.

As always, please contact the FNTI underwriting team with questions and clarifications.

This Underwriting Bulletin becomes a part of the principles and practices with which you are to comply under the terms of your Underwriting Agreement with First National Title Insurance Company. Should the content of this bulletin address the closing and escrow function, this information should be considered a directive and part of the principles and practices if non-compliance would result in liability to FNTI under either the insured closing service letter or policy of title insurance notwithstanding that the Underwriting Agreement does not include the closing and escrow functions of your agency.