

By: Wray

H.B. No. 1833

A BILL TO BE ENTITLED

AN ACT

relating to the authority to transfer real property in the name of an entity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 12, Property Code, is amended by adding Section 12.019 to read as follows:

Sec. 12.019. AFFIDAVIT OF AUTHORITY TO TRANSFER. (a) In this section, "domestic entity," "foreign entity," "jurisdiction of formation," and "nonprofit entity" have the meanings assigned by Section 1.002, Business Organizations Code.

(b) This section does not apply to a domestic nonprofit entity or a foreign entity that is:

(1) exempt from federal taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c)(3) of that code; or

(2) described by Section 170(c)(1) or (2), Internal Revenue Code of 1986.

(c) A domestic entity or foreign entity to which this section applies and that is active or in good standing under the laws of the entity's jurisdiction of formation may execute and record an affidavit identifying one or more individuals with authority to transfer on behalf of the entity an estate or interest in real property in the name of the entity.

(d) An estate or interest in real property in the name of a

1 domestic entity or foreign entity may be transferred by one or more
2 individuals identified as authorized to do so in an affidavit
3 described by Subsection (c).

4 (e) Subject to Subsection (f), an affidavit described by
5 Subsection (c) must:

6 (1) be executed under penalty of perjury by an
7 individual who swears that the individual:

8 (A) is at least 18 years of age;

9 (B) is authorized to act on behalf of the entity;

10 (C) is fully competent to execute the affidavit;

11 and

12 (D) understands that:

13 (i) third parties will rely on the
14 truthfulness of the statements made in the affidavit; and

15 (ii) the affidavit is made under penalty of
16 perjury; and

17 (2) state:

18 (A) the name of the domestic entity or foreign
19 entity that holds title to the real property and that the entity is
20 active or in good standing under the laws of the entity's
21 jurisdiction of formation;

22 (B) the address, including street address, of the
23 domestic entity's or foreign entity's principal place of business
24 in this state or, if the entity does not have a principal place of
25 business in this state, the address of the entity's principal place
26 of business in the state or country that is the entity's
27 jurisdiction of formation;

1 (C) the legal description of the real property an
2 estate or interest in which is to be transferred and specify the
3 nature of the transfer authorized; and

4 (D) the name and title of one or more individuals
5 authorized to transfer on the entity's behalf an estate or interest
6 in the real property described in the affidavit.

7 (f) An individual is authorized to execute an affidavit
8 described by Subsection (c) on behalf of a domestic entity that
9 files a franchise tax public information report under Section
10 171.203, Tax Code, if, on the date the affidavit is executed, the
11 individual:

12 (1) in the case of a corporation, is a director or
13 officer of the corporation;

14 (2) in the case of a limited liability company, is a
15 manager or member of the limited liability company;

16 (3) in the case of a limited partnership, is a general
17 partner of the limited partnership; or

18 (4) in the case of a professional corporation or
19 association, is a director or officer of the professional
20 corporation or association.

21 (g) Except as provided by Subsection (h), the individual
22 executing an affidavit described by Subsection (c) may not be the
23 individual authorized to transfer an estate or interest in the real
24 property described in the affidavit.

25 (h) The individual executing the affidavit described by
26 Subsection (c) may be the individual identified as authorized in
27 the affidavit if:

1 (1) the entity is a for-profit corporation and the
2 affidavit includes a representation by the affiant that the affiant
3 is the sole shareholder, director, and officer of the corporation;

4 (2) the entity is a limited liability company and the
5 affidavit includes a representation by the affiant that the affiant
6 is the sole member and manager of the limited liability company;

7 (3) the entity is a limited partnership and the
8 affidavit includes a representation by the affiant that the affiant
9 is the sole general partner of the limited partnership;

10 (4) the entity is a professional corporation or
11 association and the affidavit includes a representation by the
12 affiant that the affiant is the sole director and officer of the
13 professional corporation or association; or

14 (5) the most recent franchise tax public information
15 report of the entity under Section 171.203, Tax Code, available on
16 the date the affidavit is executed identifies only the affiant and
17 no other person as a shareholder, officer, director, member,
18 manager, or general partner of the entity.

19 (i) The affidavit may be recorded in the county clerk's
20 office in the county in which the real property is located. The
21 county clerk may collect a fee for recording an affidavit under this
22 section in the amount authorized for recording a transfer of real
23 property.

24 (j) An affidavit that complies with this section and is
25 filed as authorized by Subsection (i) is conclusive proof of the
26 factual matters stated in the affidavit. The following persons may
27 rely conclusively on the affidavit:

1 (1) a bona fide purchaser or mortgagee for value;

2 (2) a successor or assign of a bona fide purchaser or
3 mortgagee for value; or

4 (3) a third party without actual knowledge that the
5 representations contained in the affidavit are incorrect.

6 (k) A person who in good faith acts in reliance on an
7 affidavit that complies with this section and is filed as
8 authorized by Subsection (i), without actual knowledge that the
9 representations contained in the affidavit are incorrect, is not
10 liable to any person for that act and may assume without inquiry the
11 existence of the facts contained in the affidavit.

12 (l) Nothing in this section requires a person to rely on an
13 affidavit described by Subsection (c).

14 SECTION 2. This Act takes effect September 1, 2019.