

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:

(1) "Domestic entity," "foreign entity," "jurisdiction of formation," and "nonprofit entity" have the meanings assigned by Section 1.002, Business Organizations Code.

(2) "Transfer" means a transaction to sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease or sublet, or otherwise dispose of an estate or interest in real property or a right incident to real property.

(b) This section does not apply to:

(1) a domestic nonprofit entity or a foreign entity that is:

(A) 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

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

3           (2) a transaction involving the transfer of an estate  
4 or interest in real property in an amount that exceeds \$1 million.

5           (c) A domestic entity or foreign entity may execute and  
6 record an affidavit identifying one or more individuals with  
7 authority to transfer on behalf of the entity an estate or interest  
8 in real property in the name of the entity if the entity is:

9           (1) a limited liability company, a limited  
10 partnership, or a professional entity as defined by Section  
11 301.003, Business Organizations Code; and

12           (2) active or in good standing under the laws of the  
13 entity's jurisdiction of formation.

14           (d) An estate or interest in real property in the name of a  
15 domestic entity or foreign entity may be transferred on behalf of  
16 the entity by one or more individuals identified as authorized to do  
17 so in an affidavit described by Subsection (c).

18           (e) Subject to Subsection (f), an affidavit described by  
19 Subsection (c) must:

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

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

23                   (B) is authorized to execute and deliver the  
24 affidavit on behalf of the entity;

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

26 and

27                   (D) understands that:

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

3                   (ii) the affidavit is made under penalty of  
4 perjury; and

5                   (2) state:

6                   (A) the name of the domestic entity or foreign  
7 entity that holds title to the real property and that the entity is  
8 active or in good standing under the laws of the entity's  
9 jurisdiction of formation;

10                  (B) the address, including street address, of the  
11 domestic entity's or foreign entity's principal place of business  
12 in this state or, if the entity does not have a principal place of  
13 business in this state, the address of the entity's principal place  
14 of business in the state or country that is the entity's  
15 jurisdiction of formation;

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

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

22                  (f) An individual is authorized to execute an affidavit  
23 described by Subsection (c) on behalf of a domestic entity that  
24 files a franchise tax public information report under Section  
25 171.203, Tax Code, if, on the date the affidavit is executed, the  
26 individual:

27                  (1) in the case of a limited liability company, is a

1 manager or member of the limited liability company;

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

4 (3) in the case of a professional entity, is a director  
5 or officer of the applicable professional entity.

6 (g) Except as provided by Subsection (h), the individual  
7 executing an affidavit described by Subsection (c) may not be the  
8 individual identified in the affidavit as authorized to transfer an  
9 estate or interest in the real property described in the affidavit.

10 (h) The individual executing the affidavit described by  
11 Subsection (c) may be the individual identified in the affidavit as  
12 authorized to transfer an estate or interest in the real property  
13 described in the affidavit if:

14 (1) the entity is a limited liability company and the  
15 affidavit includes a representation by the affiant that the affiant  
16 is the sole member and manager of the limited liability company;

17 (2) the entity is a limited partnership and the  
18 affidavit includes a representation by the affiant that the affiant  
19 is the sole general partner of the limited partnership;

20 (3) the entity is a professional entity and the  
21 affidavit includes a representation by the affiant that the affiant  
22 is the sole director and officer of the applicable professional  
23 entity; or

24 (4) the most recent franchise tax public information  
25 report of the entity under Section 171.203, Tax Code, available on  
26 the date the affidavit is executed identifies only the affiant and  
27 no other person as an officer, director, member, manager, or

1 general partner of the entity.

2 (i) The affidavit must be recorded with the county clerk in  
3 the county in which the real property is located. The county clerk  
4 may collect a fee for recording an affidavit under this section in  
5 the amount authorized for recording a transfer of real property.

6 (j) A person who in good faith acts in reliance on an  
7 affidavit that complies with this section and that contains  
8 transfer authority that has not been terminated under Subsection  
9 (n) or has not expired under Subsection (o) is not liable to any  
10 person for that act and may assume without inquiry the existence of  
11 the facts contained in the affidavit if the person does not have  
12 actual knowledge that any material representations contained in the  
13 affidavit are incorrect.

14 (k) A person who in good faith enters into a transaction  
15 involving the transfer of an estate or interest in real property  
16 described in an affidavit that is described by Subsection (c) and  
17 who relies on the affidavit, without actual knowledge that any  
18 material representations contained in the affidavit are incorrect,  
19 may enforce the transaction against the entity and the real  
20 property described in the affidavit as if the representations  
21 contained in the affidavit are correct if:

22 (1) the affidavit complies with this section; and

23 (2) the transfer authority specified in the affidavit  
24 has not been terminated under Subsection (n) or has not expired  
25 under Subsection (o).

26 (l) With respect to an affidavit described by Subsection  
27 (c), this section does not limit the rights of an owner of an

1 interest in the entity against the affiant, the entity, or any  
2 individual identified in the affidavit with authority to transfer  
3 on behalf of the entity an estate or interest in real property in  
4 the name of the entity.

5 (m) Nothing in this section:

6 (1) requires an individual to rely on an affidavit  
7 described by Subsection (c);

8 (2) requires an entity to deliver an affidavit that  
9 complies with this section in order for a transfer of an estate or  
10 interest in real property on behalf of the entity to take effect;

11 (3) prohibits an entity from authorizing an individual  
12 to transfer an estate or interest in real property on behalf of the  
13 entity by a means other than an affidavit described by Subsection  
14 (c); or

15 (4) shall be construed to validate a transfer of an  
16 estate or interest in real property that is void by other law.

17 (n) An entity that executes and records an affidavit  
18 described by Subsection (c) may terminate the transfer authority  
19 specified in the affidavit at any time by recording a written  
20 termination of the authority specified in the affidavit with the  
21 county clerk in the county in which the real property is located.  
22 The written termination must be in the form of an affidavit that:

23 (1) satisfies the requirements of Subsection (e) other  
24 than Subsection (e)(2)(D);

25 (2) provides the recording information for the  
26 affidavit that specifies the transfer authority being terminated;

27 and

1           (3) states that the authority to transfer an estate or  
2 interest in real property as contained in the previously recorded  
3 affidavit is terminated.

4           (o) The transfer authority contained in an affidavit that  
5 complies with this section and that has not been terminated as  
6 provided by Subsection (n) expires on the first anniversary of the  
7 date on which the affidavit was recorded under Subsection (i).

8           (p) The transfer authority or the termination of the  
9 transfer authority specified in an affidavit that is recorded under  
10 Subsection (i) or (n) is effective on the date the county clerk  
11 indexes the affidavit.

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

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 1833 was passed by the House on May 3, 2019, by the following vote: Yeas 141, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1833 on May 24, 2019, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

---

Chief Clerk of the House

I certify that H.B. No. 1833 was passed by the Senate, with amendments, on May 22, 2019, by the following vote: Yeas 31, Nays 0.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor