

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

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.

ADOPTED

MAY 22 2019

*Leta Spaul*  
Secretary of the Senate

H.B. No. 1833

By: Hughes

Substitute the following for \_\_\_B. No. \_\_\_\_\_:

By: Robert Lee Nichols

C.S. 14 B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

AN ACT

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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:

(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

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

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

(c) A domestic entity or foreign entity 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 if the entity is:

1           (1) a limited liability company, a limited  
2 partnership, or a professional entity as defined by Section  
3 301.003, Business Organizations Code; and

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

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

10          (e) Subject to Subsection (f), an affidavit described by  
11 Subsection (c) must:

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

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

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

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

18 and

19                   (D) understands that:

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

22                           (ii) the affidavit is made under penalty of  
23 perjury; and

24           (2) state:

25                   (A) the name of the domestic entity or foreign  
26 entity that holds title to the real property and that the entity is  
27 active or in good standing under the laws of the entity's

1 jurisdiction of formation;

2                   (B) the address, including street address, of the  
3 domestic entity's or foreign entity's principal place of business  
4 in this state or, if the entity does not have a principal place of  
5 business in this state, the address of the entity's principal place  
6 of business in the state or country that is the entity's  
7 jurisdiction of formation;

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

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

14                   (f) An individual is authorized to execute an affidavit  
15 described by Subsection (c) on behalf of a domestic entity that  
16 files a franchise tax public information report under Section  
17 171.203, Tax Code, if, on the date the affidavit is executed, the  
18 individual:

19                   (1) in the case of a limited liability company, is a  
20 manager or member of the limited liability company;

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

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

25                   (g) Except as provided by Subsection (h), the individual  
26 executing an affidavit described by Subsection (c) may not be the  
27 individual identified in the affidavit as authorized to transfer an

1 estate or interest in the real property described in the affidavit.

2 (h) The individual executing the affidavit described by  
3 Subsection (c) may be the individual identified in the affidavit as  
4 authorized to transfer an estate or interest in the real property  
5 described in the affidavit if:

6 (1) the entity is a limited liability company and the  
7 affidavit includes a representation by the affiant that the affiant  
8 is the sole member and manager of the limited liability company;

9 (2) the entity is a limited partnership and the  
10 affidavit includes a representation by the affiant that the affiant  
11 is the sole general partner of the limited partnership;

12 (3) the entity is a professional entity and the  
13 affidavit includes a representation by the affiant that the affiant  
14 is the sole director and officer of the applicable professional  
15 entity; or

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

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

25 (j) A person who in good faith acts in reliance on an  
26 affidavit that complies with this section and that contains  
27 transfer authority that has not been terminated under Subsection

1 (n) or has not expired under Subsection (o) is not liable to any  
2 person for that act and may assume without inquiry the existence of  
3 the facts contained in the affidavit if the person does not have  
4 actual knowledge that any material representations contained in the  
5 affidavit are incorrect.

6 (k) A person who in good faith enters into a transaction  
7 involving the transfer of an estate or interest in real property  
8 described in an affidavit that is described by Subsection (c) and  
9 who relies on the affidavit, without actual knowledge that any  
10 material representations contained in the affidavit are incorrect,  
11 may enforce the transaction against the entity and the real  
12 property described in the affidavit as if the representations  
13 contained in the affidavit are correct if:

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

15 (2) the transfer authority specified in the affidavit  
16 has not been terminated under Subsection (n) or has not expired  
17 under Subsection (o).

18 (1) With respect to an affidavit described by Subsection  
19 (c), this section does not limit the rights of an owner of an  
20 interest in the entity against the affiant, the entity, or any  
21 individual identified in the affidavit with authority to transfer  
22 on behalf of the entity an estate or interest in real property in  
23 the name of the entity.

24 (m) Nothing in this section:

25 (1) requires an individual to rely on an affidavit  
26 described by Subsection (c);

27 (2) requires an entity to deliver an affidavit that

1 complies with this section in order for a transfer of an estate or  
2 interest in real property on behalf of the entity to take effect; or

3 (3) prohibits an entity from authorizing an individual  
4 to transfer an estate or interest in real property on behalf of the  
5 entity by a means other than an affidavit described by Subsection  
6 (c).

7 (n) An entity that executes and records an affidavit  
8 described by Subsection (c) may terminate the transfer authority  
9 specified in the affidavit at any time by recording a written  
10 termination of the authority specified in the affidavit with the  
11 county clerk in the county in which the real property is located.  
12 The written termination must be in the form of an affidavit that:

13 (1) satisfies the requirements of Subsection (e) other  
14 than Subsection (e)(2)(D);

15 (2) provides the recording information for the  
16 affidavit that specifies the transfer authority being terminated;  
17 and

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

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

25 (p) The transfer authority or the termination of the  
26 transfer authority specified in an affidavit that is recorded under  
27 Subsection (i) or (n) is effective on the date the county clerk

1 indexes the affidavit.

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

ADOPTED

VV  
MAY 22 2019

FLOOR AMENDMENT NO. 1

BY: Roger Hylton

Letay Spaw  
Secretary of the Senate

1 Amend C.S.H.B. No. 1833 (senate committee report) as follows:

2 (1) In SECTION 1 of the bill, strike added Section 12.019(a),  
3 Property Code (page 1, lines 26-29), and substitute the following:

4 (a) In this section:

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

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

15 (2) In SECTION 1 of the bill, in added Section 12.019(m) (2),  
16 Property Code (page 3, line 24), strike "; or" and substitute ";".

17 (3) In SECTION 1 of the bill, in added Section 12.019(m) (3),  
18 Property Code (page 3, line 28), between "(c)" and the underlined  
19 period, insert the following:

20 ; or

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

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 23, 2019**

**TO:** Honorable Dennis Bonnen, Speaker of the House, House of Representatives

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1833** by Wray (Relating to the authority to transfer real property in the name of an entity.), **As Passed 2nd House**

**No fiscal implication to the State is anticipated.**

The bill would amend the Property Code to allow transfers of real property on behalf of an entity in certain circumstances.

**Local Government Impact**

The bill would not have a significant fiscal impact on local jurisdictions.

**Source Agencies:**

**LBB Staff:** WP, CLo, SD, GP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 20, 2019**

**TO:** Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE:** **HB1833** by Wray (Relating to the authority to transfer real property in the name of an entity.), **Committee Report 2nd House, Substituted**

<b>No fiscal implication to the State is anticipated.</b>
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The bill would amend the Property Code to allow transfers of real property on behalf of an entity in certain circumstances.

**Local Government Impact**

The bill would not have a significant fiscal impact on local jurisdictions.

**Source Agencies:**

**LBB Staff:** WP, CLo, SD, GP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 7, 2019**

**TO:** Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1833** by Wray (Relating to the authority to transfer real property in the name of an entity.), **As Engrossed**

<b>No fiscal implication to the State is anticipated.</b>
---

The bill would amend the Property Code to allow transfers of real property on behalf of an entity in certain circumstances.

**Local Government Impact**

The bill would not have a significant fiscal impact on local jurisdictions.

**Source Agencies:**

**LBB Staff:** WP, CLo, SD, GP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**April 11, 2019**

**TO:** Honorable Trey Martinez Fischer, Chair, House Committee on Business & Industry

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1833** by Wray (Relating to the authority to transfer real property in the name of an entity.), **Committee Report 1st House, Substituted**

**No fiscal implication to the State is anticipated.**

The bill would amend the Property Code to allow transfers of real property on behalf of an entity in certain circumstances.

**Local Government Impact**

The bill would not have a significant fiscal impact on local jurisdictions.

**Source Agencies:**

**LBB Staff:** WP, CLo, SD, GP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**March 29, 2019**

**TO:** Honorable Trey Martinez Fischer, Chair, House Committee on Business & Industry

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1833** by Wray (Relating to the authority to transfer real property in the name of an entity.), **As Introduced**

**No fiscal implication to the State is anticipated.**

The bill would amend the Property Code to allow transfers of real property on behalf of an entity in certain circumstances.

**Local Government Impact**

The bill would not have a significant fiscal impact on local jurisdictions.

**Source Agencies:**

**LBB Staff:** WP, CLo, SD, GP