

House Bill 1833
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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.

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

(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.

[FA1(1)]

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

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

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

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

(A) is at least 18 years of age;

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

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

(D) understands that:

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

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

(2) state:

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

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

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

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

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

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

(A) is at least 18 years of age;

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

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

(D) understands that:

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

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

(2) state:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) A person who in good faith acts in reliance on an affidavit that complies with this section and is filed as

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

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

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

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

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

(j) A person who in good faith acts in reliance on an affidavit that complies with this section and that contains transfer

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authorized by Subsection (i), without actual knowledge that the representations contained in the affidavit are incorrect, is not liable to any person for that act and may assume without inquiry the existence of the facts contained in the affidavit.

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

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

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

(1) the affidavit complies with this section; and

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

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

(m) Nothing in this section:

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

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

[FA1(2)]

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

(4) shall be construed to validate a transfer of an estate or interest in real property that is void by other law. [FA1(3)]

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

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

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

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

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

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

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

SECTION 2. Same as House version.