

Friends and Clients,

The 80th Regular Session of the Texas Legislature produced several laws that will have an effect on Texas real estate lending practices. The following 3 laws will cause significant changes in some of the final real estate documents you will see produced by this firm (my emphasis is in **red and bold**):

House Bill 2061

The notice of confidentiality rights created and required by the previous 79th Texas Legislative Session was amended as follows:

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY [THIS] INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Like the previous notice, this notice must appear on the top of the first page of any instrument transferring an interest in real property to or from an individual and be in 12-point boldfaced type or 12-point uppercase letters

Effective March 28, 2007

Link: <http://www.capitol.state.tx.us/tlodocs/80R/billtext/pdf/HB02061F.pdf>

House Bill 716

A new Texas Notice of Penalties for Making False or Misleading Written Statement will appear in many of our loan document packages. In pertinent part HB 716 provides:

Sec. 343.105. NOTICE OF PENALTIES FOR MAKING FALSE OR MISLEADING WRITTEN STATEMENT. (a) A lender, mortgage banker, or licensed mortgage broker shall provide to each applicant for a home loan a written notice at closing.

(b) The notice must:

(1) be provided on a separate document;

(2) be in at least 14-point type; and

(3) have the following or substantially similar language:

"Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a

mortgage loan, is a violation of Section 32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000.

"I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan.

"I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing."

Effective September 1, 2007

Link: <http://www.capitol.state.tx.us/tlodocs/80R/billtext/pdf/HB00716F.pdf>

House Bill 1038

HB 1038 amends the Texas Residential Construction Commission ("TRCC") Act, the Texas Local Government Code and parts of the Texas Property Code. The following are some of the more noteworthy provisions of the bill:

The TRCC requirements may now cover a project if the cost of the work exceeds \$10,000 and otherwise meets the definition of a covered transaction. **Prior to the amendment the trigger was \$20,000.**

In addition to the regular 41.007 Notice:

(a) A contract for improvements to an existing residence described by Section 41.001(b)(3) **must contain:**

(1) the contractor's certificate of registration number from the Texas Residential Construction Commission if the contractor is required to register as a builder with the commission;

(2) the address and telephone number at which the owner may file a complaint with the Texas Residential Construction Commission about the conduct of the contractor if the contractor is required to register as a builder with the commission;

and

(c) A provision of a contract for improvements to an existing residence described by Section 41.001(b)(3) that requires the parties to submit a dispute arising under the contract to binding arbitration must be conspicuously printed or typed in a size equal to at least 10-point bold type or the computer equivalent.

(d) A provision described by Subsection (c) is not enforceable against the owner unless the requirements of Subsection (c) are met.

also

CHAPTER 420. BUILDING CONTRACT PROVISIONS

Sec. 420.001. REQUIRED WRITTEN DISCLOSURE. In a contract for the construction of a new home or an improvement to an existing home required to be registered under Section 426.003, the contract **must contain** a notice to the consumer in at least 10-point bold type or the computer equivalent that gives the telephone number of the commission and states:

STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR AND MATERIALS).

YOU MAY CONTACT THE COMMISSION AT [insert commission's telephone number] TO FIND OUT WHETHER THE BUILDER HAS A VALID CERTIFICATE OF REGISTRATION. THE COMMISSION HAS INFORMATION AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.

THIS CONTRACT IS SUBJECT TO CHAPTER 426, PROPERTY CODE. THE PROVISIONS OF THAT CHAPTER GOVERN THE PROCESS THAT MUST BE FOLLOWED IN THE EVENT A DISPUTE ARISES OUT OF AN ALLEGED CONSTRUCTION DEFECT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT YOU MAY CONTACT THE COMMISSION AT THE TOLL-FREE TELEPHONE NUMBER TO LEARN HOW TO PROCEED UNDER THE STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS.

Sec. 420.002. REQUIRED CONTRACT PROVISIONS. In a contract for the construction of a new home or an improvement to an existing home required to be registered under Section 426.003, **the contract is not enforceable against a homeowner unless the contract:**

(1) contains the builder's name and certificate of registration number; and

(2) contains the notice required by Section 420.001.

and

Sec. 214.906. VERIFICATION OF BUILDER REGISTRATION. A municipality may not issue a building permit to a builder, as defined by Section 401.003, Property Code, for construction described by Section 401.003(a), Property Code, unless the municipality has verified that the builder is registered with the Texas Residential Construction Commission under Chapter 416, Property Code, or is exempt from registration under Section 401.005, Property Code.

Unlike the first 2 new laws mentioned, noncompliance with this requirement will cause a mechanic lien **not to be enforceable!!!!** A valid mechanic lien between the home owner and the builder must first be created before a lender can renew and extend it into the lender's home improvement/construction loan. That affects home improvement loans, builder and mechanic lien loans and One Time Close loans in Texas. For loans scheduled to close on or after September 1, 2007 we will timely make the changes to our loan documentation and require you (the lender) to provide us with the contractor's certificate of registration number from the Texas Residential Construction Commission or your affirmative answer that you know for certain that the contractor or transaction is exempt because the contractor **"has been issued a license by this state or an agency of this state to practice a trade or profession related to or affiliated with residential construction if the work being done by the entity or individual to the home is solely for the purpose for which the license was issued."** This allows licensed plumbers to do plumbing work, licensed electricians to do electrical work, etc without being registered by the TRCC.

The entity or individual will also be exempt if the loan only involves modification to an existing home that neither increases or decreases the homes total square footage of living space by modifying either the home's foundation, perimeter walls or roof. This would exempt loans that only covered funds advanced for outdoor swimming pools, landscaping, fences and other similar type outdoor improvements that do not affect the home's foundation, perimeter walls or roof. Otherwise it will be a required field to complete your request for loan documents. Gone are the days in Texas when a good friend, a brother-in-law or other accommodating party can serve as a straw contractor in order to create a valid lien to transfer to a lender to accommodate an individual borrower wanting to do a "do-it-himself/herself" remodel or his/her own home construction. Not only must there now be a separate individual or entity to create and assign the lien to the lender, that party might very well now be required to be registered by the TRCC!

I don't think there has been a lot of focus on this statute by those of us responsible for real estate loan documentation. If some of your loans are generated internally by "in house" systems you should make certain those vendors have made the necessary updates to their forms or those liens may not (probably not) be valid!

Effective September 1, 2007

Link: <http://www.capitol.state.tx.us/tlodocs/80R/billtext/pdf/HB01038F.pdf>

We appreciate your business and hope you find this helpful.

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