

- SUBJECT:** Allowing an affidavit authorizing a person to transfer real estate
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 9 ayes — Martinez Fischer, Darby, Beckley, Collier, Landgraf, Moody, Parker, Patterson, Shine
- 0 nays
- WITNESSES:** For — Steve Streiff, Texas Land Title Association; (*Registered, but did not testify*: Randy Lee, First American Title Insurance Company; Stephen Scurlock, Independent Bankers Association of Texas; J.D. Hale, Texas Association of Builders)
- Against — (*Registered, but did not testify*: Bill Kelberlau)
- BACKGROUND:** Property Code ch. 12 provides for the recording of instruments concerning real and personal property in the public records of a county. An original signature is required on paper documents concerning the conveyance of real property.
- Interested parties have suggested that given the complexity of certain business structures and the ease with which business entities may be created through online legal services, it is sometimes difficult to determine whether a given individual has authority to sell real property in the name of a business. In these circumstances, a means for providing certainty regarding real property transactions could be beneficial.
- DIGEST:** CSHB 1833 would allow a business entity to execute an affidavit identifying one or more individuals with authority to engage in a real estate transaction on the entity's behalf.
- The bill would apply to any domestic entity governed by statute, except for domestic nonprofits exempt from federal taxation. Foreign entities could execute an affidavit under the bill provided that they were active or in good standing under the laws of their jurisdiction of formation and were

not nonprofits exempt from federal taxation.

Affidavit. Affidavits authorized under the bill would have to state:

- the name of the domestic or foreign business entity that held title to the real property;
- the address, including the street address, of the business entity's principal place of business in the state or, if the entity did not have a place of business in the state, the address of the entity's principal place of business outside the state;
- the legal description of the real property to be transferred and the nature of the authorized transfer; and
- the name and title of one or more individuals authorized to transfer an estate or real estate interest on the entity's behalf.

Such affidavits would be executed under penalty of perjury by an individual who swore that the individual was at least 18 years old, authorized to act on behalf of the entity, and fully competent to execute the affidavit. The individual also would have to swear that the individual understood that third parties would rely on the truthfulness of the affidavit's statements and that the affidavit was made under penalty of perjury.

The affidavit could be recorded in the county clerk's office in the county in which the real property was located. The county clerk could collect a fee for recording the affidavit in the amount authorized for recording a transfer of real property.

Persons authorized to execute affidavit. Under the bill, an individual would be authorized to execute an affidavit on behalf of certain business entities if the individual held a certain position in the business, as specified in the bill, on the date the affidavit was executed.

The person executing the affidavit could not be the person authorized by the affidavit to transfer real property, unless the person was the sole partner in a limited partnership, sole member and manager in a limited

liability company, or the sole shareholder, director, and officer of a corporation, as confirmed by the business entity's most recent franchise tax public information filing.

Safe harbor for third parties. An affidavit that complied with the bill's requirements and was filed with a county clerk's office would be conclusive proof of the factual matter stated in the affidavit. A bona fide purchaser or mortgagee for value, a successor or assign of purchaser or mortgagee for value, or a third party without actual knowledge that the representations contained in the affidavit were incorrect could conclusively rely on the affidavit. However, nothing in the bill would require a person to rely on such an affidavit.

A person who in good faith acted in reliance on an affidavit under the bill, without actual knowledge that the representations contained in the affidavit were incorrect, would not be liable to any person for that act and could assume without inquiry the existence of the facts contained in the affidavit.

The bill would take effect September 1, 2019.