

BILL ANALYSIS

Senate Research Center
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H.B. 1833
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

It has been noted that because of the relative ease with which complex business entities can be created through online legal services or otherwise, it may be difficult to determine whether a given individual has the authority to sell real property owned by such an entity. H.B. 1833 seeks to provide certainty regarding real property transactions through the execution and recording of an affidavit.

H.B. 1833 amends current law relating to the authority to transfer real property in the name of an entity.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 12, Property Code, by adding Section 12.019, as follows:

Sec. 12.019. AFFIDAVIT OF AUTHORITY TO TRANSFER. (a) Defines "domestic entity," "foreign entity," "jurisdiction of formation," and "nonprofit entity."

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

(e) Requires an affidavit described by Subsection (c), subject to Subsection (f), to:

(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;

(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) Provides that 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 (Public Information Report), 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) Prohibits the individual executing an affidavit described by Subsection (c), except as provided by Subsection (h), from being the individual authorized to transfer an estate or interest in the real property described in the affidavit.

(h) Authorizes the individual executing the affidavit described by Subsection (c) to 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;

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

(j) Provides that 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. Authorizes the following persons to 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) Provides that a person who in good faith acts in reliance on an affidavit that complies with this section and is filed as 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 is authorized to assume without inquiry the existence of the facts contained in the affidavit.

(l) Provides that nothing in this section requires a person to rely on an affidavit described by Subsection (c).

SECTION 2. Effective date: September 1, 2019.