

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1833
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Business & Commerce
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Committee Report (Substituted)

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. (Original Author's/Sponsor's Statement of Intent)

C.S.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

(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) Authorizes a domestic entity or foreign entity 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 if the entity is:

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

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

(d) Authorizes an estate or interest in real property in the name of a domestic entity or foreign entity to 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) 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 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;

(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 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) Prohibits the individual executing an affidavit described by Subsection (c), except as provided by Subsection (h), from being the individual identified in the

affidavit as 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 in the affidavit as authorized to transfer an estate or interest in the real property described in the affidavit if:

(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 a shareholder, officer, director, member, manager, or general partner of the entity.

(i) Requires the affidavit to be recorded with the county clerk 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 a person who in good faith acts in reliance on an affidavit that complies with this section and that contains transfer 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 is authorized to assume without inquiry the existence of the facts contained in the affidavit if the person does not have actual knowledge that any material representation contained in the affidavit are incorrect.

(k) Authorizes 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, to 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 the affidavit complies with this section and the transfer authority specified in the affidavit has not been terminated under Subsection (n) or has not expired under Subsection (o).

(l) Provides that, 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) Provides that nothing in this section requires an individual to rely on an affidavit described by Subsection (c), 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, or prohibits an entity from authorizing an individual to transfer an estate or interest in real property on behalf of the entity by means other than an affidavit described by Subsection (c).

(n) Authorizes an entity that executes and records an affidavit described by Subsection (c) to 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. Requires the written termination to 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) Provides that 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) Provides that 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. Effective date: September 1, 2019.