TEXAS REAL ESTATE LEGISLATION 2005

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The 79th Texas Legislature changed Texas real estate law more than any other session in recent years. For the most part, the changes were positive. Real estate licensees need to be aware of how the changes affect real estate law and possibly their practices.

This report summarizes the more important changes by subject matter. New legislation became effective upon passage if it was an emergency bill; otherwise, changes took effect either Sept. 1, 2005, or Jan.1, 2006.

The Center's publication library includes numerous articles and reports addressing these subjects. Each has been revised to reflect the changes and may provide a more in-depth analysis of the topic.

Landlords and Tenants

Legislators made several changes to residential landlord and tenant rules. Residential landlords may wish to revise their lease forms to avoid the adverse financial effects occurring when tenants exercise their rights to terminate leases for family violence or for military service.

A tenant may terminate a residential lease, vacate the property and avoid liability for future rent and other sums otherwise incurred by the landlord when family violence occurs on the premises to a tenant or occupant and is committed by a cotenant or occupant.

According to Texas Law, *family violence* occurs when a member of a family or household threatens, physically harms or sexually assaults another member of the family or household. The term also includes abuse of a child by a member of the family or household and dating violence.

An *occupant* is defined as a person who has the landlord's consent to occupy the dwelling but has no obligation to pay rent.

To terminate the lease, the tenant must have a judge sign either a temporary injunction or a protective order under the Family Code, deliver a copy of the injunction or order to the landlord and vacate the premises.

By terminating the lease in this manner, the tenant not only avoids future rent but also unpaid rent and other delinquent payments if the rental agreement does not contain the following language: "Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or a military deployments or transfer."

The tenant's right to terminate the lease for family violence cannot be waived. If the landlord violates the statute, he or she is liable for actual damages, civil penalties equal to one month's rent plus $500 and the tenant's attorney fees.

Similar rules apply to military personnel. A tenant who is in the military or about to enter the military may terminate a residential lease, vacate the premises and avoid liability for future rent and other sums otherwise incurred by the landlord for premature termination if one of the following events occurs:

- A person or someone on his or her behalf executes a lease and the person subsequently enters the military service before the lease terminates or
- A member of the military, while in the military service, executes a lease and later receives orders for a permanent change of station or for deployment with a military unit for a period of at least 90 days.

To terminate the lease, the tenant must deliver to the landlord a written notice to terminate along with a copy of the appropriate government document evidencing either his or her entry into military service, permanent change of station or deployment for at least 90 days.

The tenant not only avoids future rent but also unpaid rent and other delinquencies if the lease agreement does not contain the following language: "Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or a military deployments or transfer."

The landlord can require that the original terms of the lease be met, and cannot be waived, if the tenant or a dependent living with the tenant moves into base housing or other housing located within 30 miles of the current dwelling and the new dwelling is not owned or occupied by family or relatives of either the tenant or the tenant's dependent. Even so, the landlord cannot waive the tenant's right to terminate the lease when the move is prompted by a loss of household income of at least 10 percent because of the tenant's military service.

The legislators also passed a new law granting private citizens the right to abate common nuisances occurring at a multiunit residential property. The term *multiunit residential property* means improved property with at least three dwelling units. It does not include single-family homes or duplexes. This law supplements a statute passed by the 78th Legislature that allows for the abatement of a public nuisance at multiunit residential property when the courts determine a common or public nuisance exists. Under that statute, the court on its own initiative or on the motion of any party then appoints a receiver to manage the property to abate the nuisance.

Landlords and managers of multiunit complexes likewise face stiffer requirements related to giving notice of parking rules and towing of tenants' vehicles. The statute may require a revision of some lease forms because landlords and managers must now provide tenants with copies of applicable vehicle towing or parking rules and any subsequent changes to those rules or policies.

At the time the lease is entered or renewed, the landlord must provide the tenant copies of existing vehicle towing or parking lot rules or policies before the lease is signed. To verify compliance, the rules must be:

- signed by the tenant if separate and apart from the lease,
- included in the lease agreement that is also signed by the tenant or

- included in an attachment to the lease agreement that is signed by the tenant, but only if the attachment is specifically referenced in the lease agreement.

The title to the rules or policies contained in the lease or in an attachment to the lease must read "**PARKING**" or "**PARKING RULES**" and be capitalized, underlined or printed in bold print.

If the rules or policies change during the lease term, the landlord must provide written copies of the changes to the tenant by:

- delivering them to the tenant or any occupant of the tenant's dwelling over the age of 16,
- faxing them to a number the tenant provided to the landlord for purposes of receiving notices or
- taping the notice to the inside of the main entry door of the tenant's dwelling.

During the lease term, rule or policy changes are not effective until 14 days after the notices are delivered unless the changes result from a construction or utility emergency. The landlord bears the burden of proving the tenant received these notices.

For violating the statute, the landlord is liable for $100 in civic penalties, the tenant's towing and/or storage costs and the tenant's reasonable attorney fees. If the towing service damages the tenant's vehicle and does not have liability insurance, the landlord is liable.

For more information on these and other topics relating to landlords and tenants, both residential and commercial, see publication 866 entitled *Landlords and Tenants Guide*, recenter.tamu.edu/pdf/866.pdf.

Property Owners Associations

Property owners associations (POAs) and residential subdivisions garnered legislators' attention during the last session. Several noteworthy statutes were passed including one addressing a POA's right to regulate the display of political signs. Unfortunately, nothing passed regarding the display of the American flag.

The new law, found in Section 202.009 of the Property Code, divides the regulations of political signs into two categories: those items that cannot be prohibited by POAs and those items that are discretionary.

In the first category, POAs cannot adopt or enforce restrictive covenants that prohibit owners from displaying signs on their property that advertise a political candidate or ballot item for an election. The signs may appear on the property anytime 90 days before the election and ten days thereafter.

In the second category, POAs may require signs to be ground-mounted with no more than one sign per candidate or per ballot item. POAs may prohibit signs that:

- contain roofing material, siding, paving material, flora, balloons or lights or any other similar building, landscaping or nonstandard decorative component;
- attach to plant material, traffic control devices, lights, trailers, vehicles or other existing structures or objects;
- include the painting of architectural surfaces;
- threaten public health and safety;
- exceed four feet by six feet;
- violate the law;
- incorporate language, graphics or any display that offends an ordinary person; or
- distract motorists with music, sounds, streamers or by other means.

The statute does not penalize POAs breaching the rules, but it does allow POAs to remove signs that violate their discretionary requirements.

For more information on this subject, see publication 1434, "Enforcing Deed Restriction," recenter.tamu.edu/pdf/1434.pdf.

The legislature addressed another question that has vexed POAs for years. If a POA holds a lien against property for unpaid assessments, dues, fines, etc., is the POA's lien superior or inferior to a property tax lien? Does it make any difference that the POA's lien arose prior to the property tax lien?

Effective Sept. 1, 2005, Section 32.05 of the Texas Tax Code answers the question. A tax lien takes priority over a lien held by a POA for unpaid assessments, fees, dues, fines, costs, attorney's fees or other monetary charges against the property within the subdivision.

Furthermore, the statute provides that the priority given a tax lien prevails regardless of whether the debt, lien or other encumbrance held by the POA arose before the attachment of the tax lien. However, some distinction is made between liens filed in the deed records and those that are not.

In an action to collect (foreclose) on the tax lien, taxing authorities must join the POA in the process if the POA has recorded its lien with the clerk of the county where the property is located. To do so, the POA must record the liquidated amount of the lien evidenced by a sworn instrument duly executed by an authorized person on behalf of the POA. Merely recording a restriction that provides, in general, for a lien for unpaid assessments, dues, fines, etc. does not suffice.

Recording the lien impacts the extinguishment of the lien by a subsequent tax sale. If the POA records its lien before the taxing authorities foreclose on the property, the POA must be joined in the lawsuit and the sale extinguishes the POA's lien. If the POA fails to record the lien before the tax sale, the taxing authorities need not join the POA in the lawsuit. The subsequent sale extinguishes the POA's lien. However, if the POA records its lien and the taxing authorities fail to join them in the lawsuit, then the POA's lien survives the tax sale.

POAs may wish to examine their policies regarding filing of liens in the county records in light of this statute.

For more information on the priority of liens on real property, see publication 1110, "Priority of Mortgage and Tax Liens," recenter.tamu.edu/pdf/1110.pdf.

In 2003, the 78th Legislature introduced several ways for subdivisions to create, change and extend their deed restrictions when the present ones were about to expire and lacked provisions for extending or amending them. To keep restrictions from expiring, the legislators instituted three ways to make changes in the mid-1990s based on the population of the county and the location of the subdivision.

The 79th Legislature introduced two more ways in 2005 for creating, changing and extending deed restrictions. The first applies to subdivisions lying entirely or partially in unincorporated areas of counties having a population of less than 65,000. The subdivision must lack any procedure for amending the

restrictions or the procedure requires a unanimous vote. The new law, found in Chapter 11 of the Texas Property Code, allows the governing body of the POA to submit a new amendment method to the property owners. To pass, two-thirds of the property owners must vote in favor of the change.

The statute does not outline the new amendment method. This is left to the discretion of the POA and property owners.

The second change applies to residential subdivisions in counties with populations between 170,000 and 175,000 and adjacent counties with populations between 45,000 and 75,000. The procedure, found in Chapter 210 of the Texas Property Code, allows for the extension or modification of the existing restrictions through a petition process initiated by either the POA or a committee of at least three property owners. Following the specified procedure outlined in the statute, the measure must be approved by 66 percent of the property owners.

For more information on POAs and how property owners may extend or amend deed restrictions, see publication 1417, "Creating, Changing, Extending Deed Restrictions," recenter.tamu.edu/pdf/1417.pdf.

Legislators introduced a new rule for gated communities and multiunit housing projects in unincorporated areas of the county. To ensure reasonable access for law enforcement officers, emergency medical services and firefighting vehicles and equipment, counties may now require the owner or POA of a gated community or multiunit housing project to comply with the following rules.

Each vehicular and pedestrian gated entry must have a lockbox outside but within sight of and in proximity to that gate. The lockbox must at all times contain a key, card or code, key switch or cable mechanism to open the gate.

For those communities with one or more vehicular gates, at least one must be wide enough for firefighting vehicles and equipment, emergency medical services vehicles and law enforcement vehicles to enter. Also, at least one driveway apron or entrance from the public right-of-way must be free of permanent obstacles that may impede the vehicles from entering. Likewise, each pedestrian gate must be located so as to provide firefighters, law enforcement officers and other emergency personnel reasonable access to buildings.

The county may not impose standards for entry widths or obstacle-free driveways that exceed those required for new gated communities or multiunit projects in the extraterritorial jurisdiction (ETJ) where the community is located. If the communities are not within an ETJ, then the standards cannot exceed those in the nearest ETJ.

Counties may require the owner or POA to obtain a permit from the fire marshal or other authority with firefighting jurisdiction to ensure compliance.

For more information on this topic, see Senate Bill 200, passed during the Regular Session of the 79th Legislature.

In a related matter, county commissioners may regulate the location of communication towers in the unincorporated areas of counties with populations of at least 1.4 million. In particular, county commissioners may prohibit the construction of cell towers within 300 feet of a residential subdivision or a distance equal to the height of the tower, whichever is greater.

For more information on this topic, see House Bill 843, passed during the Regular Session of the 79th Legislature.

Foreclosures

The foreclosure process both for mortgage sales and property tax sales underwent several changes.

Mortgage foreclosure sales may now occur at locations other than the courthouse. Effective Sept. 1, 2005, county commissioners may designate a public place in reasonable proximity to the courthouse and accessible to the public. The commissioners court must record the location in the real property records.

Lenders may now authorize mortgage servicers to appoint a substitute trustee or trustees to conduct the sale. (A mortgage servicer is the last person or entity to whom the mortgagee instructs the mortgagor to send payments.) The trustee conducting the sale need not have a real estate license as of Sept. 1, 2005.

For more information on mortgage foreclosure sales, see publication 825, "A Homeowner's Rights under Foreclosure," recenter.tamu.edu/pdf/825.pdf.

Beginning October 1, 2003, bidders at tax sales had to obtain a written statement from the local county assessor-collector showing that they owed no delinquent property taxes. Effective Sept. 1, 2005, this requirement applies only to counties with populations of at least 250,000 and in counties with populations less than 250,000 where the commissioners court has adopted the requirement.

For more information on this topic and on forced sale of real property in Texas, see publication 652, "Forced Sale Remedies," recenter.tamu.edu/pdf/652.pdf.

Property Taxes

Effective January 1, 2006, the chief appraiser must state on tax notices the difference in the appraised value of the property for the current tax year compared with its value five years ago. The difference must be expressed as a percentage and not as a dollar amount.

The Texas Tax Code prohibits annual increases in property taxes exceeding 10 percent for residential property. Interestingly, the legislators required the percentage increase or decrease to be calculated over a five-year increment and not annually.

For more information on this topic, see House Bill 1984, passed during the Regular Session of the 79th Legislature.

Prior to 2005, Section 31.072 of the Texas Tax Code gave tax collectors the option of entering contracts with property owners to pay a portion of their taxes into a monthly escrow account maintained by the collector. The property owner initiated the process. The account, based on an estimate of the property taxes, could not be less than the amount imposed on the property the preceding year.

Now, the collector **must** establish an escrow account for the payment of taxes when requested to do so by a disabled veteran or a recipient of the Purple Heart, Congressional Medal of Honor, Bronze Star Medal, Silver Star, Legion of Merit or a service cross. However, the account must apply solely to the property owner's residence homestead.

For more information on this topic, see Senate Bill 580, passed during the Regular Session of the 79th Legislature.

Starting Sept.1, 2005, taxpayers have a new avenue to appeal disputes with the appraisal review board concerning the appraised market value when the property is worth $1 million or less. Binding arbitration is now an option if the taxpayer does the following within 45 days after the review board submits its order:

- submits a request to the appraisal district using a prescribed form and
- deposits an arbitration fee of $500 with the appraisal district, payable to the comptroller.

Thereafter, the appraisal district certifies and submits the requests with the deposit to the comptroller and requests appointment of a qualified arbitrator who:

- has completed a minimum of 30 hours of training in arbitration and alternative dispute resolution procedures from a university, college, or legal or real estate trade association,
- has a real estate license or is a licensed or certified real estate appraiser and
- agrees to conduct the arbitration for a fee of no more than $450.

No later than 20 days after the date of the hearing, the arbitrator must enter an award and deliver a copy to the property owner, appraisal district and comptroller. If the arbitrator finds the market value is closer to the property owner's opinion than that of the appraisal review board, the comptroller must refund the property owner's arbitration fee. However, if the arbitrator finds to the contrary, the fee is not refunded. The statute is silent when the determination of value falls equally between the two opinions.

For more information on this topic, see Senate Bill 1351, passed during the Regular Session of the 79th Legislature.

Finally, a new statute affords some relief for purchasers who receive faulty tax certificates from the appraisal district showing no delinquencies due on the property. Prior to 2005, if the certificate erroneously indicated no delinquent taxes, penalties or interest, the tax lien on the property and any personal liability for the purchaser to pay the taxes were extinguished. However, the prior owner (seller) remained personally liable. The same rule applies after Sept. 1, 2005, except the extinguishment now covers tax certificates that erroneously failed to include property because of its omission from the appraisal roll.

For more information regarding liens on real property, see publication 1110, "Priority of Mortgage and Tax Liens," recenter.tamu.edu/pdf/1110.pdf.

New Disclosure Requirement

Not surprisingly, legislators added yet another notice requirement to the sale of certain residential property effective Jan. 1, 2006. Sellers of single-family residential real property located in public improvement districts must give the following written notice before the contract becomes binding on the purchaser or in wording the contract itself:

> NOTICE OF OBLIGATION TO PAY PUBLIC IMPROVEMENT DISTRICT ASSESSMENT TO (municipality or county levying assessment) CONCERNING THE PROPERTY AT (street address)
>
> As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment.
>
> The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
>
> Date: _____
>
> Signature of Purchaser

If the notice is placed in the contract, it need not include the title, the references to the street address and the date, or the purchaser's signature.

The seller's breach of this requirement gives the purchaser the sole remedy of terminating the contract on the date the title transfers or within seven days after the notice is delivered, whichever is first.

For more information on this topic, see House Bill 1919, passed during the Regular Session of the 79th Legislature.

Mold Remediation

In 2003, Texas legislators implemented rules for licensing both mold assessors and mold remediators. Starting in 2005, the candidates for licensing must score at least 70 percent on any required tests.

In 2003, a licensed remediator was required to issue a "Certificate of Mold Remediation" to the property owner within ten days after completing a project. In the certificate, the license holder was required to state that the mold contamination identified and outlined in the mold management plan or remediation protocol had been remediated. Furthermore, if the license holder knew with reasonable certainty that the mold would not return from the remediated cause, he or she was required to state this in the certificate.

Property owners were required to give this certificate to anyone who purchased the property. In 2005, the rule changed. Now, property owners must give the certificate to anyone who purchases the property within five years after the certificate was issued.

In 2003, legislation prohibited insurance companies from making an underwriting decision for residential property based on previous mold damage or claims. The prohibition applied when the property had been remediated as evidenced by a Certificate of Mold Remediation stating the underlying cause of the mold had been remediated.

Beginning in 2005, the prohibition against making underwriting decisions applies only when the certificate establishes *with reasonable certainty* that the underlying cause of the mold has been remediated.

For more information on this topic, see House Bills 2746 and 1328, passed during the Regular Session of the 79th Legislature.

Recreational Use of Property

Chapter 75 of the Texas Civil Practices and Remedies Code limits landowners' liability to recreational guests. The limitation applies when the property is used for agricultural purposes

and the charges to all guests who enter do not exceed 20 times the amount of the annual ad valorem taxes on the property. If charges exceed this level, landowners must acquire minimum amounts of liability insurance as specified in the statute to have continued protection.

Prior to 2005, Chapter 75 listed 11 activities as recreational. Effective Sept. 1, 2005, several more activities were added. These were pleasure driving, including off-road motorcycling, off-road automobile driving and all-terrain vehicle use; bicycling and mountain biking; disc golf; and dog walking.

For more information on landowner liability to recreational guests, see publication 893, "Landowner Liability for Hunters," recenter.tamu.edu/pdf/893.pdf.

Along the same lines, effective September 1, 2005, a new statute, Section 62.002 of the Texas Parks and Wildlife Code, imposes limits on hunting and fishing over privately owned submerged lands.

Basically, no person may hunt or take wild animals or wild birds over privately owned land that is submerged by public fresh water caused by seasonal or occasional inundation, or by public salt water located above the mean high tide line of the Gulf of Mexico, its bays and estuaries. However, the prohibition applies only where the land is conspicuously marked as privately owned by a sign or signs such as "Posted," "Private Property" or "No Hunting."

For the most part, similar restrictions apply to fishing over the same submerged lands.

Landowners and hunters alike need to be aware of a new law that prohibits the discharge of a firearm across property lines without permission of the adjoining landowner. Offenders face fines from $25 to $500.

For more information on hunting and landowner liability, see publication 570, "The Texas Deer Lease," recenter.tamu.edu/pdf/570.pdf.

Filing Documents with County Clerk

Two new laws address filing documents in the county deed record (sometimes called the official records) and with the secretary of state. The first deals with filing fraudulent liens.

Effective Sept. 1, 2005, the county clerk may refuse to file any instrument he or she "believes in good faith" creates a fraudulent lien. The county clerk may request the assistance of the county or district attorney in determining the validity of the lien, or they may request more verification from the prospective filer.

The secretary of state may follow the same procedure whenever he or she "believes in good faith" that a document filed with the secretary's office creates a fraudulent lien.

For more information on this topic, see Senate Bill 1589, passed during the Regular Session of the 79th Legislature.

The other statute amends a law effective Jan. 1, 2004, requiring a 12-point, boldfaced-type notice to be printed across the top of the first page of each deed or deed of trust. The notice informs individuals that they do not have to disclose their social security or driver's license numbers in the document.

This notice is no longer required. The county clerk cannot refuse to record the document solely because the notation is missing. Instead the county clerk must post the notice in the county clerk's office informing individuals of their rights to withhold such information on any filed document.

For more information on this topic, see Senate Bill 461, passed during the Regular Session of the 79th Legislature.

On-Site Aerobic Treatment

Prior to 2005, owners of single-family residences in counties with a population of less than 40,000 had the option of entering a contract for the maintenance of their onsite sewage disposal system that used aerobic treatment or maintaining it themselves after obtaining training in the system's maintenance from the authorized agent or the installer. The requirements changed in 2005.

Now the option to maintain the system applies to all owners of single-family residences no matter the county's population. The on-site training cannot exceed six hours, and the Texas Water Commission dictates the course material.

The new statute grants the water commission or an authorized agent the right to periodically inspect anyone's system and impose sanctions if the system is not properly maintained.

For more information on this topic, see House Bill 2510, passed during the Regular Session of the 79th Legislature.

Certificates of Public Convenience and Necessity (CCNs)

The 79th Legislature extensively modified Section 13 of the Texas Water Code, which deals with CCNs. The law overhauls the process for obtaining or amending a CCN for public utilities or water supply or sewer service corporations before the Texas Commission on Environmental Quality (TCEQ). Landowners within existing or proposed CCNs have new vested powers.

An application for or an amendment to a CCN requires more details, including:

- a precise legal description of the proposed service area,
- a description of the service to be provided,
- the capital improvement plans,
- sources of funding,
- current and proposed use of the land in the service area, including population densities,
- a current financial statement of the applicant and
- a list of all landowners with 50 acres or more lying partially or wholly within the proposed service area.

Once the application for a new or amended CCN is filed, all the affected parties must be notified. The definition of *affected parties* includes any landowner within the proposed service area. Specific notices must be mailed to landowners who have at least 50 acres lying partially or wholly within the area.

Landowners with 25 acres or more lying partially or wholly within the proposed area may elect to exclude all or part of their land. Landowners with less than 25 acres may contest the inclusion of their land in the service area at a hearing conducted by TCEQ.

TCEQ may, at any time, on its own motion or on receipt of a petition, revoke or amend any CCN with written consent of the holder if it finds the certificate holder has never provided, is no longer providing, is incapable of providing or has failed to provide continuous and adequate service in the area. As

an alternative to decertification, the owner of at least 50 acres not in a platted subdivision and not receiving water or sewer services may petition the commission to be released from the service area.

The statute also details when and under what circumstances the commission may grant a service area for a CCN within the boundaries of the ETJ of a municipality with a population of at least 500,000. Likewise, the statute addresses when and under what circumstances the municipality may extend its ETJ into areas already covered by a CCN.

Changes in the law resulted in changes in the wording of required notices sellers must provide potential buyers in the CCN service area.

For more information on this topic, see House Bill 2876, passed during the Regular Session of the 79th Legislature.

Contracts for Deed

For about the third time in ten years, Texas legislators revised the requirements for contract for deeds. Each revision increases the requirement on sellers who wish to finance the sale of residential property using this financing method. Here is a brief summary of the changes.

First, penalties for failing to provide the annual accounting statement now depend on the number of transactions the seller enters during any 12-month period. Sellers who enter more than one transaction during any 12-month period face liquidated damages of $250 per day for each day the statement is not provided after January 31st of each year. The liability cannot exceed the fair market value of the property.

Second, effective Jan. 1, 2006, the contract-for-deed rules cover residential leases combined with options to purchase, regardless of the size of the tract. The rules vary depending on whether the option to purchase is for three years or less, and whether the purchaser and seller (or their agents, assigns or affiliates) have been parties to a contract for deed covering the same property for more than three years.

Perhaps the most sweeping change implemented by the new law gives purchasers the right to convert the contract for deed to a deed of trust at any time without penalties or charges. The right applies to all contracts in existence on September 1, 2005, and any entered thereafter. For up to 90 days, sellers face $250 per day in liquidated damages for each day they fail to comply.

Purchasers have the absolute right to cancel and rescind the contract for deed at any time after they learn the seller failed to properly subdivide or plat the property according to state and local law.

Beginning on September 1, 2005, sellers could not sell property using a contract for deed when they do not own the property in fee simple, free and clear of any liens or encumbrances. Furthermore, the seller and the seller's heirs and assigns must, throughout the duration of the contract, maintain the property in fee simple, free and clear of any liens or encumbrances.

There is an exception. The property may have an existing mortgage if the lien enabled the seller to purchase this property and no other (not a group of properties). Details of the loan terms must be given to the purchaser, and the indebtedness under the contract for deed may not exceed the amount of the existing mortgage lien. If the seller defaults on the mortgage lien, the purchaser (under the contract for deed) may cure the default, deduct 150 percent of the amount paid to cure the default from the debt owed the seller and cancel and rescind the contract.

For more information on existing and new rules regarding contracts for deed, see publication 1547, "2005 Update: Rules Govern Contracts for Deed," recenter.tamu.edu/pdf/1547.pdf.

New Rules for Real Estate Licensees

Legislators changed both the educational requirements for those applying for a real estate license and the rules governing the practice of real estate.

Effective Jan. 1, 2006, each applicant for a real estate license must complete a minimum of 14 semester hours, or the equivalent of 210 classroom hours, of postsecondary education. Previously, the requirement was 12 semester hours or the equivalent of 180 classroom hours. Ten of the semester hours (150 classroom hours) must be completed in specific core real estate courses and the remaining four semester hours (60 classroom hours) must be in either core courses or related courses. Four of the ten semester hours must be in the principles of real estate, two in agency law, two in contract law and the other two in any core course or courses. The remaining four semester hours may be in either core courses or related courses.

For more information on getting a real estate license, see publication 1149, "Obtaining a Texas Real Estate License," recenter.tamu.edu/pdf/1149.pdf.

Effective September 1, 2005, the Texas Real Estate Commission may issue a provisional moral character determination based on reasonable guidelines adopted by the commission.

A real estate broker who represents a party in a transaction or who lists property under an exclusive agreement is now deemed *that party's* agent and must abide by specific rules. First, the broker must inform that party of any material information relating to the transaction including the receipt of an offer.

Second, the broker, at a minimum, must answer any questions posed by that party and present any offers it receives to or from that party.

Third, the broker may not instruct another broker to violate *the disciplinary rule* that forbids licensees from negotiating or attempting to negotiate with a person represented by another broker under an exclusive agency agreement.

The rules elaborate on what constitutes a breach of the disciplinary rule mentioned earlier. The delivery of an offer to that person does not violate the disciplinary rule if that party's broker consents to the delivery and the licensee delivering the offer does not engage in other activity that violates the rule.

Other rules adopted by the legislature affect the practice of real estate. If a licensee has the authority to bind a party to a lease or sale under a power of attorney or property management agreement, then the licensee is a party to that transaction. Also, a broker must act as an intermediary if the broker agrees to represent a buyer, tenant, seller or landlord in a transaction.

For more information on this topic, see Senate Bill 810, passed during the Regular Session of the 79th Legislature.

Impact Fees

Impact fees were addressed by the Texas legislators for the first time in several years. The new law deals with apportioning

municipal infrastructure costs between the developer and the municipality. Basically, the developer must bear that portion approved by a professional engineer retained by the municipality for the proposed development.

Developers may appeal the decision to the governing body of the municipality and then to the county or district court. If successful, developers can recover applicable costs, reasonable attorneys fees and expert witness fees. The municipality cannot require the developer to waive the right to appeal as a condition to approve a development project.

For more information on this topic, see House Bill 1835, passed during the Regular Session of the 79th Legislature.

Qualifying Trusts for Homestead Exemption

Several years ago the legislature amended the Tax Code to enable certain trusts to qualify for the homestead property tax exemption. The statute limited this to trusts created by agreements or by wills. The trustor (the one granting or creating the trust) had to occupy the residential property rent free and without charge except for taxes and other expenses. The right to occupy had to last for life, for a term of years or until the date the trust was revoked or terminated by an instrument or court order.

Effective Jan. 1, 2006, trusts created by the court now qualify if the occupation requirements are met. Also, either the trustors or beneficiaries may occupy the property. Finally, residential property acquired by a trust via a court order qualifies for the exemption.

For more information on this topic, see House Bill 3240, passed during the Regular Session of the 79th Legislature.

Water Right Permits

Prior to 2005, a permit acquired for the use of surface water could be cancelled for nonuse. The statute was amended in 2005 stating that the permit could **not** be cancelled for nonuse resulting from the implementation of water conservation measures under a water conservation plan submitted by the holder of the permit.

For more information on this topic, see House Bill 1225, passed during the Regular Session of the 79th Legislature.

Condemnation

In 2005, following the U.S. Supreme Court's decision in *Kelo v. New London,* the Texas Legislature approved Senate Bill 7, which provides that "A governmental or private entity may not take private property through the use of eminent domain if the taking:

- Confers a private benefit on a particular private party through the use of the property,
- Is for a public use that is merely a pretext to confer a private benefit on a particular private party or
- Is for economic development purposes unless the economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate slum or blighted areas."

The new statute does not affect the authority of the following entities to take private property through eminent domain for:

- Transportation projects,
- Port authorities, navigational districts or conservation or reclamation districts,
- Water supply, wastewater, flood control and drainage projects,
- Public buildings, hospitals and parks,
- Utility services,
- Sports and community venue projects approved by voters after December 1, 2005,
- Common carriers or energy transporters,
- Underground storage operations,
- Waste disposal projects and
- Library, museum or related facilities and infrastructures.

The determination by the governmental or private entity that a taking does not violate this new statute does not create a presumption that the taking is valid.

For more information on this topic, see Senate Bill 7, passed during the Second Called Session of the 79th Legislature.

To access any of the House and Senate bills cited in this publication, go the Secretary of State's website at http://www.capitol.state.tx.us/ and click the "79th Regular Session 2005" in the drop-down box. Then enter the Senate bill or House bill in the appropriate box with no spaces. For example, for Senate Bill 710, enter "SB710." Then click on "Go," then on "text" on the next screen, and finally on "Enrolled Version " on the last screen. The full text of the bill will appear, including when the bill became effective.

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