Bulletin No. - 2017-102

2017 Legislation Becoming Effective September 1

85th Regular Session of the Texas Legislature

The following laws were passed in the 85th Regular Session of the Texas Legislature. Most become effective September 1, 2017. National Investors has prepared this summary to make sure you have all the information you need to take advantage of and comply with the new laws. Please contact us with any questions.

BILL #	**HB 1974 – Powers of Attorney**
EFFECTIVE DATE	September 1, 2017
TOPIC DESCRIPTION	*"Relating to durable powers of attorney."*
HIGHLIGHTS OF NEW LAW	• House bill 1974 loosens guidelines for what is considered a "durable power of attorney", including that it does not have to be in writing. • A third party may sign the DPOA rather than the principal, as long as the third party's signature is directed by and in the "conscious presence" of the principal. • A principal may not just name successor or agents, but he may give authority to his agent to designate successor agents. • Agents are now limited in performing certain acts for the principal unless the form specifically gives those powers. Examples are amending or revoking an intervivos trust or changing rights of survivorship. • With regard to property, the rights given to the agent extend to later-acquired property. • The execution of a new DPOA does not automatically revoke prior powers of attorney. The new POA must specifically state which prior powers remain active. • DPOAs must be recorded if they're relied on for reverse mortgages and home equity liens. If the agent is to have the power to sign home equity loan documents, the DPOA must be signed at a title company, attorney's office, or the office of the lender. • There is a presumption that a signature on a DPOA is valid.

	• If a person wants to reject the instrument, they must do so in writing and cite the reason for the rejection. • To obtain additional factual information or a legal interpretation of a DPOA, the person to whom a DPOA is presented must request an Opinion of Counsel or a Certification from the agent. Requirements and deadlines are set out in the new laws. • Exceptions exist to the requirement that one must accept every DPOA and Certification/Opinion of Counsel. • If a person refuses to accept a DPOA other than as the law provides, the principal or agent may have a cause of action against the person refusing to accept it.
PRACTICAL TITLE AND ESCROW APPLICATION	This bill made extensive revisions to those parts of the Estates Code that address durable powers of attorney. Note that the changes do not apply to powers of attorney for other uses, such as medical powers of attorney or those promulgated by government agencies. When the new statute says the POA may be in writing or some "other record", examples are video or voice recordings or other tangible medium stored electronically. One change to note is the provision that allows someone other than the principal to sign the power of attorney on behalf of the principal. This situation may lead to more fraud associated with the documents. For questions on whether out-of-state durable powers of attorney are acceptable, contact Underwriting. The new laws include forms, including a modified DPOA form. The law now creates a presumption that a signature on a power of attorney is valid. It also has a new procedure for when a person presented with a DPOA is concerned about it factually or legally. A person may request factual information related to a DPOA in the form of a "Certification of Durable Power of Attorney by Agent." If a person presented with a DPOA does not want to accept the DPOA, they must refuse it in writing. The law allows provides 11 different reasons that allow you to validly reject a DPOA. A separate bulletin will be available with details of this portion of the final durable power of attorney statute. **National Investors will require a "Certification of Durable Power of Attorney by Agent" on every DPOA accepted on or after September 1, 2017 until further notice. An additional bulletin will be issued with details as to the required procedures and deadlines.** Please note that Senate Bill 39 and Senate Bill 1193 also passed and included changes to the durable power of attorney statutes. The final reconciled version of Chapters 751 – 753, Texas Estates Code, will be determined by the State.
BILL #	**HB 2271 – Decedents' Estates**
EFFECTIVE DATE	September 1, 2017

TOPIC DESCRIPTION	*"Relating to decedents' estates and certain posthumous gifts."*
HIGHLIGHTS OF NEW LAW	• A child adopted by estoppel is now on equal footing with natural born and legally adopted children for purposes of inheritance under the laws of descent and distribution. • Letters testamentary may issue with respect to a foreign will after four years from the testator's death if an application for probate was filed on or before that date. • Adds Estates Code section 401.0015, giving an independent executor discretion in some situations relating to property not specifically devised and its distribution.
PRACTICAL TITLE AND ESCROW APPLICATION	HB 2271 is a comprehensive cleanup bill that makes many changes to the Estates Code. Many are simply changes in vernacular, whereas others codify case law into the statutes. "Adoption by estoppel" or "equitable adoption" refers to adoption that is not done through the courts, but where a court would nevertheless treat a person as though they were legally adopted. There has to be a clear and unequivocal agreement of adoption, even though there has been no court proceeding.
BILL #	**HB 3107 – Open Records**
EFFECTIVE DATE	September 1, 2017
TOPIC DESCRIPTION	*"Relating to the production of public information under the public information law."*
HIGHLIGHTS OF NEW LAW	• A request for public information is considered withdrawn if the requestor doesn't act pay charges for the information within sixty days after the requestor is told of the charges. • Similarly, a request is considered withdrawn if the government agrees to allow the inspection or copying of the public information and the requestor fails to do so in sixty days. • Multiple requests from one individual in one day are to be treated as a single request for purposes of calculating costs for the public information. However, multiple requests from separate people in the same organization are not consolidated the same way.
PRACTICAL TITLE AND ESCROW APPLICATION	House Bill 3107 amends existing laws regarding requests for public information in an effort to keep open access to records while lessening the burden on government, particularly small governments, that are faced with excessive or repetitive requests for information. Some sections of the bill make procedural changes that tighten or clarify response periods and definitions, including allowing governments to limit the amount of time they spend responding to requests for public information. Of significance to the title industry, the bill carves out an exception for people requesting public information if they are substantially in the business of creating or maintaining an abstract plant.
BILL #	**SB 42 – Public Officials' Confidentiality**
EFFECTIVE DATE	September 1, 2017
TOPIC DESCRIPTION	*"Relating to the security of courts and judges in the state; establishing a fee."*

HIGHLIGHTS OF NEW LAW	• Senate Bill 42 requires administrative directors of the courts to develop a process to notify state and county agencies (including county registrars) of the identities of all federal and state judges and their family members whose personal information must be kept confidential. • The residence address of the judge or family member is the primary focus of the information to be removed from the public records. • The following types of public records are affected: voter registration lists, financial statements, driver's licenses.
PRACTICAL TITLE AND ESCROW APPLICATION	Known as the "Judge Julie Kocurek Judicial and Courthouse Security Act of 2017", this bill was passed in response to an assassination attempt of a Travis County judge in 2015. The bill primarily focuses on courthouse safety and safety training. The second purpose of the bill is to make it easier for judges to have their personal information removed from public documents: Although the act takes effect September 1, 2017, it gives government officials additional time to become compliant.
BILL #	**SB 499 – Uniform Partition of Heirs' Property Act**
EFFECTIVE DATE	September 1, 2017
TOPIC DESCRIPTION	*"Relating to the adoption of the Uniform Partition of Heirs' Property Act."*
HIGHLIGHTS OF NEW LAW	• Adds Chapter 23A to the Property Code, the Uniform Partition of Heirs' Property Act ("UPHPA") • The new Chapter supplements existing law governing partition of real property held by cotenants, and it governs when there is a conflict. • Defines "heirs' property" as real property held in tenancy in common, where the following conditions are met: (1) There is no recorded agreement regarding partition that binds the cotenants; (2) At least one cotenant acquired their title from a relative; and (3) 20 percent or more of the cotenants are relatives or 20 percent or more of the interests are held by cotenant relatives or by a person who acquired title from a relative. • If a cotenant requests partition by sale, the property's valuation will be determined by appraisal or agreement and any cotenant (other than the one requesting partition) may buy out the interests of the cotenant(s) requesting partition. The new law provides procedures for the process, including partition, partition in kind, and public sale.
PRACTICAL TITLE AND ESCROW APPLICATION	A "tenant-in-common" holds an undivided interest in property with others, and each has the right to sell or convey their interest without the consent of the others. A tenant-in-common also is allowed to ask a court to partition the property. Prior to this bill's changes, existing laws allowed for inequitable divisions and inequitable sales of such properties. The adopted Act addresses these situations.
BILL #	**SB 617 – Agents of Trustees**
EFFECTIVE DATE	September 1, 2017
TOPIC DESCRIPTION	*"Relating to trusts."*
HIGHLIGHTS OF NEW LAW	• Amends Chapter 112 of the Property Code to allow a court to reform the terms of a trust upon the petition of a trustee or beneficiary if needed for

	certain reasons beneficial to the trust, to the settlor's intention, or in the interests of equity or other law. • Amends Chapter 113 of the Property Code to specifically allow a trustee to use an agent to handle transactions related to the real property of the trust, including all matters related to the sale and purchase of such property. Requires the delegation to be documented in an acknowledged written document. Imposes liability on the trustee for acts of an agent to whom the trustee delegated authority. • Except as otherwise expressly provided by a trust, a will creating a trust, or this section, the changes in law made by this Act only apply to a trust existing on or created on or after September 1, 2017. • For a trust existing on September 1, 2017 but that was created before that date, the changes in law made by this Act apply only to an act or omission relating to the trust that occurs on or after September 1, 2017.
PRACTICAL TITLE AND ESCROW APPLICATION	Like other documents that should be examined closely, such as powers of attorney, delegations of a trustee's duties should be reviewed closely to make sure that they are legally correct, still in effect, and not in conflict with other documents or laws (such as, in this situation, the trust document.) For example, the new law giving a trustee the ability to appoint an agent (unless expressly authorized in the trust) only applies to trusts created on or after September 1, 2017, and the delegation of authority to the agent is only valid for six months.
BILL #	**SB 1098 – Notary Records and Privacy**
EFFECTIVE DATE	September 1, 2017
TOPIC DESCRIPTION	*"Relating to recordings, acknowledgments, and proofs of certain written instruments."*
HIGHLIGHTS OF NEW LAW	• Notaries shall keep in their book of record the signer's mailing address, rather than residence address. • In an acknowledgement by a grantor or a witness, the statement of acknowledgement must contain the grantor or witness's mailing address, rather than residence.
PRACTICAL TITLE AND ESCROW APPLICATION	This bill was passed to address privacy concerns. The existing law required the home residence address, which then became part of the public record subject to open record laws. Senate Bill 1098 changed the requirement to disclose residence to "mailing address."
BILL #	**SB 1249 – Adverse Possession**
EFFECTIVE DATE	September 1, 2017
TOPIC DESCRIPTION	*"Relating to adverse possession of real property by a cotenant heir against other cotenant heirs."*
HIGHLIGHTS OF NEW LAW	• Senate Bill 1249 amends the existing adverse possession laws by adding a section for "Adverse Possession by Cotenant Heir: 15-Year Combined Limitations Period." • A "cotenant heir" is one or more persons who simultaneously acquire identical, undivided ownership interests and rights of possession in property by intestacy (or a successor in interest to such a person.) • The person(s) who wants to claim title by adverse possession must have had uninterrupted and exclusive possession of the property for ten years and have paid all property taxes during that time period. Adverse

	possession will not be granted if any other cotenant heir has made a claim against the possessing cotenant or to the property. • The person(s) who wants to claim title by adverse possession must go through several steps to successfully complete their claim, including filing affidavits in the deed records. There is then a five year waiting period after filing affidavits, for a combined total of fifteen years. • A lender or purchaser may rely on the affidavits and public records to make a loan or purchase, if adverse possession has been completed and obtain in accordance with this statute.
PRACTICAL TITLE AND ESCROW APPLICATION	Adverse Possession is usually thought of as a means for a third party to obtain title to property that they do not own. What is more common is that adverse possession is used when titled ownership is lost over a period of years. A common example is where someone dies intestate, then a later generation's descendant, who has been living on the property and paying taxes on it, claims adverse possession to get title into his name. Under the prior law, however, adverse possession did not work against other cotenants who also could claim an interest in the property. Senate Bill 1249 gives such an heir the ability to obtain title in fee simple to the whole property. Underwriting must approve any ownership claim of adverse possession.
BILL #	**SB 1955, HB 4086 – Lis Pendens**
EFFECTIVE DATE	September 1, 2017
TOPIC DESCRIPTION	*"Relating to expunction of a notice of lis pendens."*
HIGHLIGHTS OF NEW LAW	• A party to an action in connection with a notice of lis pendens has been filed may seek to have the notice removed from the deed records. • Once a certified copy of an order expunging a notice of lis pendens is filed in the deed records, the claim made in the lis pendens and any other information that is or could be derived from the notice (1) is of no use in the underlying claim and (2) does not affect a later bona fide purchaser or lender. • An expungement shall allow the property to be transferred or mortgaged free from all claims in the lis pendens or the underlying suit.
PRACTICAL TITLE AND ESCROW APPLICATION	A *lis pendens* is notice that a lawsuit challenging title to a property is pending. When a lis pendens is expunged, it has the effect of removing from the chain of title the notice of the claim. An expungement should allow purchasers, lenders, and title companies to rely on the instrument for evidence that the claimed interest is invalid. In 2009 the Texas Legislature passed a law that would permit the expungement (removal) of a lis pendens from the deed records. Litigation then ensued regarding the meaning of the 2009 law. The lawsuit was appealed all the way to the Texas Supreme Court. The result of the new law is that if a release or order of expungement is filed relating to a lis pendens, that lis pendens may be disregarded.

	Senate Bill 1955 and House Bill 4086 from the 85th (2017) Legislature were designed to clarify the statute so the expungement process is more simple for parties, and so purchasers, lenders, and title insurers can rely upon an expungement without having to look for more information outside of the property records.
BILL #	**HB 1217 - eNotary**
EFFECTIVE DATE	July 1, 2018
TOPIC DESCRIPTION	*"Relating to appointment of and performance of notarial acts by an online notary public and online acknowledgment and proof of written instruments; authorizing a fee and creating a criminal offense."*
HIGHLIGHTS OF NEW LAW	• A person may appear before a notary public either in person or two-way audio/video communication. • Defines terminology relating to electronic (online) notarizations. • Allows online notarizations for documents that any Texas notary can sign.
PRACTICAL TITLE AND ESCROW APPLICATION	House Bill 1217 will bring Texas more in line with other states that have already adopted the Uniform Electronic Transactions Act ("UETA"). About half the states so far have allowed electronic notarization. The bill does not go into a lot of procedural detail. Instead, it gives the Secretary of State additional time to develop rules that will implement the new statutory provisions. One of the most helpful provisions will allow someone out of state to get their signature notarized by a Texas notary public. One of the biggest risks, on the other hand, is fraud. It is expected that the SOS will design rules that address that concern. The House version limited the powers originally, but the final version of the bill did not restrict it. The Secretary of State rules might impose restrictions. National Investors will provide additional underwriting guidelines once the Secretary of State finalizes its regulations stemming from this bill.
BILL #	**SJR 60, HJR – Home Equity Loans**
EFFECTIVE DATE	January 1, 2018, if approved by voters.
TOPIC DESCRIPTION	*"Proposing a constitutional amendment establishing a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads."*
HIGHLIGHTS OF NEW LAW	• **The constitutional amendment will not become law unless it is approved by the State's voters.** • It will be voted on November 7, 2017. If it passes, it will become effective January 1, 2018. • Lowers permissible fees associated with home equity loans. • Expands ability to refinance home equity loans. • Allows home equity loans on homesteads designated as properties appraised for agricultural purposes.
PRACTICAL TITLE	At first blush, the joint resolution appears to lower the costs and fees that can be

AND ESCROW APPLICATION	charged in connection with a home equity loan from three to two percent. However, it also exempts several items from those fees, including some title examination reports, surveys, and appraisals. Those who opposed the resolution pointed this out and said that it could end up increasing fees permitted with such a loan. One significant change is that previously one could only refinance a home equity loan if the refinanced debt secured by the lien was for home equity or reverse mortgage purposes. The new law will allow a refinanced home equity loan to include other debt that is permitted against a homestead, such as purchase money, a materialman's lien, or property taxes. The new law comes with disclosures that if the home equity loan is refinanced as something other than a home equity loan (which is possible if it includes any other of this type of debt), the new loan may not have the same level of protection from foreclosure as the old HEL did.