

POLUNSKY BEITEL GREEN

ATTORNEYS AT LAW

To: Clients and Friends of the Firm
From: Polunsky Beitel Green, LLP
Date: May 30, 2017
Subject: Bills from the 85th Legislature Which May Impact Mortgage Lending and the Financial Services Industry

Monday May 29th, marked the end of the 85th Texas Legislature, concluding the 140 day regular session. Despite the filing of over 6,000 bills only a small fraction will reach the Governor's desk. Below are several bills we have chosen to highlight as impacting the mortgage lending and financial services industry. With the exception of SJR 60 all of the discussed bills are still subject to the Governor's approval.

SJR 60 Texas Home Equity

We reported earlier this most significant mortgage related legislation. The passage of SJR 60 brings home equity reform to a popular vote by amending the Texas Constitution this coming November. We recommend encouraging all your staff to turn out and vote for these beneficial changes. Here is a link to our earlier summary: <http://www.mortgagelaw.com/memos/>

The bill can be read in its entirety here.

<http://www.capitol.state.tx.us/flodocs/85R/billtext/pdf/SJ00060F.pdf#navpanes=0>

HB 3342 Pre-licensing education requirements

H.B. 3342 removes the "at least five consecutive years" time period of failing to maintain a Residential Mortgage Loan Originator license for having to retake the pre-licensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act. A new timeframe is to be defined through rulemaking by the Finance Commission of Texas.

<http://www.capitol.state.tx.us/flodocs/85R/billtext/pdf/HB03342F.pdf#navpanes=0>

HB 2823 Texas Savings and Mortgage Lending (SML) Subpoena Authority

H.B. 2823 amends Chapter 158, Finance Code, by providing SML with the authority to issue and enforce a subpoena during an investigation into a residential mortgage loan servicer.

<http://www.capitol.state.tx.us/flodocs/85R/billtext/pdf/HB02823F.pdf#navpanes=0>

HB 1217 Online Notaries.

H.B. 1217 amends the Government Code by establishing qualifications for appointment as an online notary public as authorized by the secretary of state. Online notarization is defined by the bill as a notarial act performed by means of two-way video and audio conference technology that meets the standards for online notarization adopted under the bill's provisions.

H.B. 1217 authorizes the secretary of state to adopt rules necessary to implement the bill's provisions governing online notaries public, including rules to facilitate online notarizations, and requires the secretary of state by rule to develop and maintain standards for online notarization in accordance with the bill's provisions, including standards for credential analysis and identity proofing. This process is not expected to be completed until mid-2018.

H.B. 1217 limits the types of online notarizations that an online notary public may perform to those relating to a document involving real estate located in Texas, a document or agreement relating to a transaction in which at least one of the parties is a Texas resident or authorized to conduct business in Texas, an agreement or instrument securing a debt that is payable at a location in Texas, a document that is intended to be filed in state public records, an acknowledgement or affirmation made by a person while the person is physically located in Texas, or a document signed by a person who is a Texas resident at the time of signing as evidenced by a valid government-issued identification credential that includes a photograph and current Texas address.

The bill requires an online notary public to attach the online notary public's electronic signature and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident. The bill also requires an online notary public, in performing an online notarization, to verify the identity of a person creating an electronic signature at the time that the signature is taken by using two-way video and audio conference technology that meets such requirements and sets out the manner in which an entity may be verified. The bill requires any acknowledgment form to include a space for an online notarization to indicate by which method the acknowledging person appeared before the officer.

<http://www.capitol.state.tx.us/tlodocs/85R/billtext/pdf/HB01217F.pdf#navpanes=0> (Enrolled Bill)

HB 1974 Relating to durable powers of attorney.

The bill amends the Estates Code as it applies to certain durable powers of attorney. It would prescribe the form and effect of powers of attorney and would clarify the authority of the agent. The bill would allow the principal to designate multiple agents or successor agents. The bill would create several causes of action related to durable powers of attorney. The bill would repeal several sections inconsistent with the terms established in the bill.

H.B. 1974 makes important changes to the statute by: providing for reasonable acceptance of DPOAs in a timely fashion so that guardianship can be avoided; eliminating risk to persons who accept DPOAs by allowing them to rely on an agent's certification that the DPOA is valid for the purpose it is being presented or an opinion of the agent's counsel who is hired at the principal's expense; giving the person who is asked to accept the DPOA numerous valid reasons to reject, some of which cannot be challenged by the principal or agent; and providing a mechanism to have a court decide any disputes. Similar provisions have been enacted in 30 other states without issue.

<http://www.capitol.state.tx.us/tlodocs/85R/senateamend/pdf/HB01974A.pdf#navpanes=0>

(Enrolled Bill not yet available)

HB 3921 Relating to the financial exploitation of certain vulnerable adults.

This bill attempts to stem the tide of the growing problem of financial exploitation of certain vulnerable adults by: defining financial exploitation, and provides the financial institution or securities firm with the option to contact local law enforcement when no ongoing relationship exists; allowing a bank or securities firm to place a 10-day hold on an account to allow the bank or securities firm to research whether the transaction the elderly person is trying to make is a result of financial exploitation; providing that any person acting in good faith under this new law and reporting or holding a transaction shall have immunity from any civil, administrative, or criminal liability; and giving a bank or securities firm suspecting its elderly customer is the victim of financial exploitation the ability to notify a third party on that customer's behalf so long as that third party isn't the one doing the exploiting.

As background and a reminder before the bill is discussed, Texas is a "mandatory reporting" state for exploitation. This includes the financial exploitation of elderly and vulnerable adults, though "financial exploitation" is not defined in the Human Resources Code (the statute governing this area of the law.) This means that anyone who believes an elderly person or vulnerable adult is being exploited must report to Adult Protective Services (APS). Under existing statute, APS can only get involved in cases of suspected exploitation when there is an existing relationship between the victim and the alleged exploiter. As a result, many banks find they have no resource to call when they have customers who they believe are the victims of financial exploitation from strangers, which is a growing problem because of criminals' new and creative uses of social media.

HB 3921 seeks to address this growing problem by adding new Chapter 280 to the Finance Code, Protection of Vulnerable Adults from Financial Exploitation, and: defining "financial exploitation"; giving a bank the option of placing a 10 day hold on an account after reporting suspected exploitation to APS; providing immunity to a financial institution (and its employees) who reports suspected exploitation so long as the report was not made in bad faith or with malicious purpose; and authorizing a bank submitting a report to APS to notify a third party reasonably associated with the elderly person/vulnerable adult of the suspected financial exploitation, unless the bank suspects the third party of financial exploitation of that vulnerable adult. The bill also covers the securities industry and duplicates the language of Chapter 280 in Section 45 of the Texas Securities Act.

<http://www.capitol.state.tx.us/tlodocs/85R/billtext/pdf/HB03921F.pdf#navpanes=0> (Enrolled Bill)