



2021-22 Texas Statutes Summarized and Explained

Rusty Adams
Research Attorney



TEXAS A&M UNIVERSITY
Texas Real Estate Research Center

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The 87th Texas Legislature made 2021 an eventful year. Here are the statutes likely to affect the real estate world. This summary is not exhaustive and does not include every detail of every law. For full information, consult the actual statutes. Nothing in this report should be considered legal advice. For advice on a specific situation, consult an attorney.

Encouraging Broadband Development

HB 5. This act establishes a Broadband Development Office and takes steps to encourage the expansion of broadband services, especially to areas where they are unavailable. Provisions are found in Chapters 490H and 490I of the Texas Government Code.

HB 1505. This bill creates the broadband pole replacement fund to receive a one-time contribution of \$75 million in federal Coronavirus Capital Projects Funds. The funds are to be used to replace poles in an effort to speed the deployment of broadband to individuals in rural areas that currently do not have access to broadband service. Providers of qualified broadband service are eligible to apply for reimbursement of a portion of the cost of replacing the poles and must not pass the reimbursed costs along to their customers. The law provides a mechanism for broadband providers to obtain access to electric cooperative poles.

HB 3853. This bill authorizes electric utilities to own, construct, maintain, and operate fiber optic cables and other facilities for providing middle mile broadband service in unserved and underserved areas. This includes the provision of excess fiber capacity to Internet service providers, who then provide Internet service to end users. The new law provides for an approval process with the Public Utility Commission (PUC) and authorizes the use of existing infrastructure and easements. Owners of property burdened by the easements must be given notice, and the owners have 60 days in which to protest. The changes are found in Chapter 43 of the Texas Utilities Code.

SB 507. Utilities, including telecommunications companies, have access to state highway rights-of-way. However, because broadband-only companies are not considered utilities, they would have to obtain leases or easements to bring broadband service to customers. This is a barrier to bringing high-speed Internet to Texans, particularly in rural areas. Under the new law, the Texas Transportation Commission must adopt rules to establish an “accommodation process” authorizing broadband-only providers to use state highway rights-

of-way, subject to highway purposes, for broadband purposes. The rules must establish minimum requirements and be made “on a competitively and technologically neutral and nondiscriminatory basis with respect to other providers of broadband service.”

Utilities

HB 17. Adds Tex. Util. Code § 181.903, which prohibits a regulatory authority, planning authority, or political subdivision from taking any action that has the purpose, intent, or effect of directly or indirectly banning, limiting, restricting, discriminating against, or prohibiting the connection or reconnection of a utility service or the construction, maintenance, or installation of residential, commercial, or other public or private infrastructure for a utility service based on the type or source of energy.

HB 3476. Under Tex. Water Code § 13.245, a municipality with a population of 500,000 or more must consent to the granting of a certificate of public convenience and necessity (CCN) for a water service area within the city limits or extraterritorial jurisdiction (ETJ), and the municipality may require, as a condition of consent, that all water and sewer facilities be designed and constructed in accordance with the municipality's standards. The new law amends that section so a municipality with a population of 500,000 or more may no longer impose such a condition. The PUC must, as a condition of granting a CCN, require all such facilities meet the municipality's standards if the service area is within the municipality's boundaries. If the service area is within the municipality's ETJ, the PUC must require compliance with the standards imposed by either the municipality or the Texas Commission on Environmental Quality (TCEQ).

SB 398. The bill requires sellers or lessors who enter into purchase, lease, or power purchase agreements with residential or small commercial customers for the operation of “distributed renewable generation” resources to provide specific written disclosures found in the new Chapter 113 of the Texas Business and

Commerce Code. It adds Subchapter C to Chapter 229 of the Local Government Code, limiting the ability of municipalities to prohibit or restrict installation of solar energy devices. It adds Section 35.057 to the Utilities Code. Under certain circumstances, municipally owned utilities and electric cooperatives are required to allow interconnection with distributed renewable generation facilities and to purchase and sell power. The provision is intended to allow grocers to deploy back-up generation in the ERCOT power region in areas that have not implemented retail customer choice. This bill is primarily geared toward solar, but it affects other renewable energy sources as well, such as wind, geothermal, etc. "Distributed renewable generation" means electric generation with a capacity of not more than 2,000 kilowatts provided by a renewable energy technology, as defined by Section Tex. Util. Code § 39.904, that is installed on a retail electric customer's side of the meter.

Roads

SB 160. Repeals certain reporting requirements regarding county roads.

SB 941. Adds Tex. Transp. Code § 391.256, establishing a state scenic byways program.

SB 1727. Prohibits Harris County from creating a local government corporation (LGC) to develop, construct, operate, manage, or finance a toll project or system located in that county. It prohibits any existing LGC created by the county for such a purpose from undertaking or extending any bonds, notes, or other obligations, and from entering into or extending any contracts, and provides that such LGCs must be dissolved on satisfaction of existing contracts and obligations. Income earned and revenues received by such an LGC may be used only to pay the costs of a turnpike project or a road, street, or highway project. Tex. Transp. Code § 431.1015.

HJR 99, Proposition 2. The passage of Proposition 2 on the Nov. 2, 2021, ballot amends the Texas Constitution to authorize a county to issue bonds or notes to finance development of transportation and infrastructure in unproductive, underdeveloped, or blighted areas within the county. A county that issues bonds or notes for transportation improvements may not pledge more than 65 percent of the increases in ad valorem tax revenues each year for the repayment of the bonds or notes, and may not use proceeds from the bonds or notes to finance the construction, operation, maintenance, or acquisition of rights-of-way of a toll road.

Prescribed Burn Liability Protection

HB 222. Chapter 153 of the Texas Natural Resources Code provides certain protections from liability regarding certain prescribed burns. This new law provides liability protection to the "burn boss," as that term is defined in Section 153.083. To receive the protection, the burn boss must meet certain requirements with respect to training, experience, and insurance. A burn boss may still be held liable for gross negligence or intentionally causing property damage, personal injury, or death.

HB 2004 adds Section 153.084 of the Natural Resources Code, limiting the liability of a burn boss who is a certified and insured prescribed burn manager under Section 153.048. Such a burn boss is not liable for property damage, personal injury, or death caused by or resulting from smoke that occurs more than 300 feet from the burn. A burn boss may still be held liable for gross negligence or intentionally causing property damage, personal injury, or death. The new act adds Section 153.1025, which prohibits state agencies from taking disciplinary action against a certified and insured prescribed burn manager in relation to a prescribed burn conducted in accordance with Chapter 153 on the basis that the burn resulted in emissions or is a nuisance.

Tax Exemptions

HB 115. The new law amends Texas Tax Code § 11.18(p), expanding the properties owned by charitable organizations that are entitled to a tax exemption.

HB 1427. Texas Tax Code § 11.35 provides a tax exemption for a portion of the appraised value of qualified property damaged by a disaster. The new law amends that section to clarify that "damage" means physical damage.

HB 1197. Under Tex. Tax Code § 11.20(j), land owned by a religious organization and contiguous to a tract where that religious organization's place of worship is located is exempt from taxation if it is owned for the purpose of building a new place of worship or for expanding the organization's place of worship. The new bill extends the maximum time of the exemption from six to ten years.

HB 794. Texas Tax Code § 11.131(b) establishes an exemption of the total appraised value of the homestead of a disabled veteran who receives from the U.S. Department of Veterans Affairs 100 percent disability compensation due to a service-connected disability and a rating of 100 percent disabled or of individual unemployability. Some qualifying veterans have been awarded

such disability compensation, but due to deductions did not receive it, and, therefore, were arguably not eligible for the tax exemption. HB 794 clarifies the language so a veteran who has been awarded disability compensation but has not received it will qualify for the exemption.

SB 611, SJR 35, Proposition 8. Section 11.131 of the Tax Code requires an exemption of the total appraised value of homesteads in certain cases. This new law adds to the list of persons entitled to exemptions the surviving spouse of a member of the armed services killed or fatally injured in the line of duty. Previously the exemption only applied if the service member was killed in action. The law changes the rules regarding late applications for exemptions. These changes are found in Sections 11.431 and 11.439. The changes to the late application rules took effect Jan. 1, 2022, and apply only to applications filed for tax year 2022 or later.

HJR 125, Proposition 7. The passage of Proposition 7 on the November 2, 2021 ballot amends the Texas Constitution to allow the surviving spouse of a disabled person to receive a limitation on the property taxes on the spouse's residence homestead if the surviving spouse is 55 years of age or older at the time of the other spouse's death.

SJR 2, Second special session, SB 12, and Proposition 1. The passage of Proposition 1 on the May 7, 2022, ballot amends the Texas Constitution to reduce the amount of the limitation on the total amount of property taxes that may be imposed by a school district on the residence homestead of elderly or disabled individuals to reflect any reduction in the school district's maximum compressed tax rate (under HB 3, 86th Texas Legislature, 2019) for the preceding tax year. In other words, as school tax rates go down, these individuals' tax bills will go down. In addition to the constitutional amendment, the changes are to the Tax Code, Education Code, and Government Code.

SJR 2, Third special session, SB 1, and Proposition 2. The passage of Proposition 2 on the May 7, 2022, ballot amends the Texas Constitution and amends Tex. Tax Code § 11.13(b) to increase the mandatory homestead exemption on school district property taxes to \$40,000 (previously \$25,000).

Farm Animal Liability

HB 365. In 2020, the Texas Supreme Court issued its opinion in *Waak v. Rodriguez*, 603 S.W.3d 103 (Tex. 2020), holding that the Farm Animal Liability Act did not apply to injuries sustained by ranch workers. HB

365 is apparently a reaction to this holding. Effective Sept. 1, 2021, this bill changes definitions in the bill to protect farmers and ranchers from liability for such injuries. Importantly for landowners, the bill changes the language of the required Chapter 87 warning signs. It's a good idea to update signs.

Landlord-Tenant

HB 531. For all residential leases entered into or renewed on or after Jan. 1, 2022, the landlord must give the tenant a specific statutory notice stating whether or not the landlord is aware that the dwelling is in a 100-year floodplain. The landlord also must provide notice of whether or not the dwelling has flooded at least once in the last five years. The notices must be included in a separate written document given to the tenant at or before execution of the lease. If a landlord violates this section and the tenant suffers substantial loss or damage to the tenant's personal property as a result of flooding, it is grounds for termination of the lease.

HB 900. In eviction suits filed on or after Sept. 1, 2021, a landlord is not liable for damages to the tenant resulting from the execution of a writ of possession by an officer under Section 24.0061, Texas Property Code.

SB 1783. Adds Tex. Prop. Code § 92.111, which authorizes a residential landlord whose lease requires a security deposit to allow a tenant the option to instead pay a recurring fee that may be used to purchase insurance coverage for damages and charges for which the tenant is legally liable under the lease or as a result of breaching the lease. There are other requirements. The new law applies to leases entered into or renewed on or after Sept. 1, 2021.

Rule Against Perpetuities

HB 654. In recent years, many states have taken steps to abolish or change the ancient common law "rule against perpetuities." Texas joins them this year. The rule against perpetuities dates from the 1600s and essentially prevents owners from imposing long-lasting limitations or contingencies on their property. The rule typically operates in the context of wills, trusts, and options to purchase property. Traditionally, to be valid, an interest must vest, if at all, no later than 21 years after some life in being at the creation of the interest (i.e., within the next generation plus 21 years). In other words, if there is a possibility that the interest might vest too late, the interest is void. The origin of the rule is in common law, but for decades, Texas has codified the rule against perpetuities in the Texas Trust Code,

which is part of the Property Code. Under the amended law, the interest must vest, if at all, no later than 300 years after the effective date of the trust. With respect to *real estate*, the settlor of a trust may not direct that a real property asset be retained or refuse that a real property asset may be sold for a period longer than 100 years. The effective date of a trust is the date the trust becomes irrevocable, and the new law applies to trusts with an effective date on or after Sept. 1, 2021. For trusts with an effective date prior to that date, the old rule applies, unless the trust provides that the interest vests under the provisions of Tex. Prop. Code § 112.036 applicable to trusts on the date the interest vests. Other issues that may eventually arise include possible interplay between the new rule and some “perpetuity saving clauses,” as well as the possible interplay between the new rule and the Texas Constitution.

Building Codes

HB 738. Municipal building codes are updated to the 2012 versions of the International Residential Code (residential) and the International Building Code (commercial). Cities with more stringent commercial codes may keep them. Cities may adopt amendments provided they follow the provisions of the act. Additionally, the new law adds a section to the Local Government Code providing, with some exceptions, that local governments may not require the installation of fire sprinklers in new or existing one- or two-family dwellings. The changes are found in Tex. Loc. Gov’t Code §§ 214.212, 214.216, 214.217(e), and 250.011.

Tax Appraisal

HB 988. Adds or amends numerous sections of the Texas Tax Code dealing with appraisal districts and appraisal review boards (ARBs). Allows appraisal review boards to adopt procedures that supplement the model hearing procedures, provided the supplemental procedures do not contradict or circumvent the model hearing procedures. Subjects each board’s procedures to annual review by the comptroller. Changes procedures for choosing appraisal review board members in certain counties. Prohibits a member of a governing body, officer, or employee of a taxing unit from communicating with a chief appraiser, employee, or agent of the appraisal district for the purpose of influencing the appraised value of a property unless that person owns or leases the property. Such communication is a Class A misdemeanor. Property owners, with some exceptions, may request the appraisal records of contiguous parcels be combined or separated. Provides that the

appraisal district shall hold an informal conference with each property owner who files a notice of protest and requests an informal conference. Makes some changes to the protest process and notices, including providing for limited binding arbitration to compel the appraisal review board or chief appraiser to comply with certain procedural requirements.

HB 1090. Amends Section 25.21 of the Tax Code to require a chief appraiser who discovers that real property was omitted from an appraisal roll in any one of the three preceding years to appraise the property as of Jan. 1 of each tax year that it was omitted and enter the property and its appraised value in the appraisal records. Previously the requirement was five years.

HB 2535. Effective Jan. 1, 2022, chicken coops or rabbit pens used for the noncommercial production of food for personal consumption are excluded from a property’s tax appraisal.

HB 2941. This new law applies to the law governing appraisal districts, including their board members, appraisal review boards, chief appraisers, and employees. Prior to the passage of this bill, certain provisions applied for counties with populations less than 120,000, while others applied to more populous counties. This law does away with those differences. Under previous law, members of the appraisal review board (ARB) in some less populated counties could be appointed by a majority of the appraisal district board. Under the new law, all ARB members are appointed by, and may be removed by, the administrative district judge. Other provisions are now applicable to all counties, including certain restrictions on inappropriate communications and eligibility restrictions for ARB members. The new provisions are found in Chapter 6 of the Texas Tax Code.

HB 3833. This bill changes the appraisal procedures for certain nonexempt property used for low-income or moderate-income housing. Under the new law, the appraised value of property that is under construction or has not reached stabilized occupancy on Jan. 1 of the tax year is adjusted to reflect the percentage of construction completed or the actual occupancy of the property on Jan. 1, as appropriate. Tex. Tax Code § 23.215. The bill removes interest from the “rollback” tax imposed when there is a change of use of agricultural, timber, or wildlife land (Tex. Tax Code § 23.55, 23.76) and makes conforming changes to Tex. Tax Code § 23.58. The bill reduces the rollback period from five to three years for recreational, park, or scenic land, or public access airport property, in addition to eliminating the interest portion. Tex. Tax Code § 23.86, 23.96.



HB 3971. Adds Tex. Tax Code § 23.013(e). The new subsection defines “designated historic district,” and requires the chief appraiser to consider the effect on the property’s value of any restriction placed by the historic district on the owner’s ability to alter, improve, or repair the property.

SB 63. Adds or amends numerous sections of the Texas Tax Code relating to appraisal districts and property tax appraisal. Modifies training and education requirements for Appraisal Review Board members. Modifies some eligibility requirements for appraisal district board members to prevent conflicts of interest. Revises qualifications for solar and wind power exemptions. Adds a requirement that an ARB member be removed within 90 days of learning of a potential ground for removal. Modifies timelines for approval of exemptions and designation of agricultural use, timber land, restricted land, and airport property. Modifies deadlines for hearings on motions to correct the appraisal roll or for protest hearings. Requires certain content for a protest notice and notice of the protest hearing. Limits what evidence or argument may be presented by a chief appraiser. Requires the chief appraiser to provide written notice to the property owner 14 days prior to the hearing.

SB 334. Information relating to real property sales prices, descriptions, characteristics, and other related information received from a private entity by the comptroller or the chief appraiser of an appraisal district is not public information that must be made available to the public. Tex. Gov’t Code § 552.149. Nevertheless, certain information, including comparable sales data, is discoverable by a property owner or his agent in preparation for a hearing on a property tax appraisal protest before the appraisal review board. The new law extends the availability of this information to arbitration under Chapter 41A of the Tax Code.

SB 725. This law deals with the so-called “rollback” taxes for changes in land use. If a parcel of land otherwise qualifies for agricultural appraisal, and a portion of that parcel is condemned for a right-of-way that is less than 200 feet wide, the land does not lose its agricultural designation as long as the remainder of the land qualifies. If additional taxes become due because the land has been diverted to a nonagricultural use as a result of the condemnation, then the additional taxes and interest are the obligation of the condemning entity and not the property owner from whom the property was taken. The statute applies only to appraisal for tax years 2022 and later.

SB 916. Tex. Tax Code § 5.102 provides for a biennial review by the state comptroller of appraisal district performance, and for compliance efforts to be taken

in accordance with the comptroller’s recommendations. This bill adds Tex. Occ. Code § 1151.109, which requires that an electronic link to the comptroller’s report for the review and each property value study used in the review be included in the record of the registered professional appraiser who serves as chief appraiser for an appraisal district. Additionally, an appraisal district may request information on a registered professional appraiser whom the district is considering for appointment as chief appraiser, and the Texas Department of Licensing and Registration must inform the district of any compliance efforts with respect to previous biennial reviews.

SB 1088. Adds Section 11.50 to the Tax Code, providing that a chief appraiser of one appraisal district may request the chief appraiser of another appraisal district to provide a list of the names of all individuals who currently receive a residence homestead exemption in that appraisal district. The chief appraiser of whom the request is made must provide the list as soon as practicable.

SB 1245. As part of the state comptroller’s study of school district property values, the comptroller is now required to conduct an annual farm and ranch survey for purposes of estimating the productivity value of qualified open-space land (commonly referred to as “ag-exempt”). The new law is found at Tex. Gov’t Code § 403.3022.

SB 1854. An appeal of an order of an appraisal review board through binding arbitration does not affect the delinquency date for taxes on the property subject to the appeal. When an appeal is pending, the property owner must pay taxes on the property in an amount equal to the amount of taxes due on the portion of the taxable value that is not in dispute. This bill amends Tex. Tax Code § 41A.10, so that a property owner who has elected to defer the collection of taxes on a residence homestead is exempt from this requirement and the taxes are not considered delinquent.

SB 1919. The new law deals with property appraisal protests and amends Tex. Tax Code § 41.45 to allow a property owner offering evidence or argument by affidavit without appearing in person to appear by a videoconference. Appraisal review boards are required to conduct protest hearings by videoconference if the property owner requests it. However, the requirement does not apply in a county with a population of less than 100,000 if the county lacks the technological capability to conduct a videoconference.

Appraisal

HB 1939. This bill establishes a statute of limitations for bringing a suit arising from an appraisal or appraisal review conducted by a real estate appraiser or appraisal firm. The suit must be brought no later than the earlier of (1) two years after the day the plaintiff knew or should have known the facts on which the action is based, or (2) five years after the day the appraisal or appraisal review was completed. This statute of limitations does not apply to actions for fraud or breach of contract. The new statute of limitations applies only to causes of action that accrue on or after Sept. 1, 2021. Tex. Civ. Prac. & Rem. Code § 16.013.

HB 2533. Effective June 15, 2021, appraisers are not required to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) when performing (1) evaluations for a federally regulated financial institution for use by the institution in which the institution is not required to use a licensed or certified appraisal under federal regulations, or (2) analyses, assessments, opinions, conclusions, notations, or compilations of data concerning the value of an interest in real property for use by a non-bank financial institution. In these instances, the first page of the document must contain a notice that it is not an appraisal performed in accordance with USPAP. The changes are found in Tex. Occ. Code §§ 1103.003, 1103.004, and 113.405.

Entry Into Property

HB 1012. If a person is unable to enter his residence or former residence to retrieve his personal property (or that of their dependent) because the current occupant is denying entry or poses a clear and present danger of family violence, Chapter 24A of the Texas Property Code provides a procedure by which the person may apply for a writ authorizing him to enter and retrieve property, accompanied by a peace officer. On or after Sept. 1, 2021, if the parties are parties to a suit for divorce or annulment, or subject to a decree of divorce or annulment, the application for the writ must be sought in the court with jurisdiction over that suit. Otherwise, the application must be made to a justice court.

Government Regulation

SB 1090. Texas Government Code § 3000.002 prohibits governmental entities from adopting or enforcing certain rules, charter provisions, ordinances, orders, building codes, or other regulations regarding residential and commercial construction. The new law makes an exception for governmental entities that have adopted a

resolution stating the entity's intent to become certified as a Dark Sky Community as part of the International Dark Sky Places Program.

HB 1475. This bill adds Section 211.009(b-1), Local Government Code, which specifies the grounds that a board of adjustment may consider in a variance case to determine whether compliance with the ordinance as applied would result in unnecessary hardship. Most notably, the financial cost of compliance may be considered if greater than 50 percent of the appraised value of the structure. This alone, previously, was insufficient to establish hardship. Other grounds which may be considered are whether compliance would result in a loss of at least 25 percent of the area on which development may physically occur; compliance would result in non-compliance with another requirement, such as that of a municipal ordinance or building code; compliance would result in unreasonable encroachment on an adjacent property or easement; or the municipality considers the structure to be a nonconforming structure. The statute is intended to offer consistency across cities.

HB 1681. Adds Texas Health & Safety Code § 247.0251, prohibiting the construction of new assisted-living facilities licensed under Chapter 247 within a 100-year floodplain in a county with population of 3.3 million or more (Harris County). Existing facilities may be expended or renovated.

SB 1210. Effective Jan. 1, 2023, a building code or other requirement applicable to commercial or residential buildings or construction may not prohibit the use of a substitute refrigerant authorized pursuant to 42 U.S.C. § 7671k. Tex. Health & Safety Code § 382.551.

HB 3215. Makes some changes to energy efficiency building standards. The changes are found in Texas Health & Safety Code § 388.003.

HB 1925. This bill prohibits camping in public places without the effective consent of the officer or agency having the legal duty or authority to manage the public place. The bill allows authorized camping by homeless individuals on property designated for that purpose, provided that the designation is made according to a plan approved by the Texas Department of Housing and Community Affairs (TDHCA). TDHCA is prohibited from allowing camping in a public park. The bill prohibits a local entity from prohibiting or discouraging the enforcement of any public camping ban. In the event a local entity attempts to do so, the attorney general is authorized to seek an injunction and the entity must be denied state grant funds. The provisions are found in Penal Code Chapter 48, Government Code Chapter 2306, and Local Government Code Chapter 364.

SB 968. This new law amends state statutes to address issues regarding public health disasters and emergency preparedness in response to the COVID-19 pandemic. Among other things, the new law adds Tex. Gov't Code § 418.1085, which prohibits political subdivisions from limiting or prohibiting (1) housing and commercial construction activities, including related activities involving the sale, transportation, and installation of manufactured homes; (2) governmental services for title searches, notary services, and recording services in support of mortgages and real estate services and transactions; (3) residential and commercial real estate services, including settlement services; or (4) essential maintenance, manufacturing, design, operation, inspection, security, and construction services for essential products, services, and supply chain relief efforts.

SB 1168. In an area that is within a municipality's extraterritorial jurisdiction (ETJ) and that has been disannexed from the municipality, or which the municipality has attempted and failed to obtain consent for annexation, that municipality may not impose under municipal ordinance a fine or fee on a person on the basis of an activity that occurs wholly in that area, or on the basis of the management or ownership of property located wholly in that area. The new law, found in Tex. Loc. Gov't Code § 42.9025, does not limit a municipality, including a municipally owned retail water, wastewater, or drainage utility, from imposing a fine or fee, including rates for water, sewer, drainage, or other related utility services. An exception applies in an area near a military base in which an election was held under Tex. Loc. Gov't Code § 43.0117.

Fair Housing Act

HB 1153. Makes some changes in the applicability of the Texas Fair Housing Act to make it more consistent with federal law.

Consumer Protection

HB 1156. Adds Tex. Penal Code § 32.55, which creates a new criminal offense for "Financial Abuse of Elderly Individual." A person commits an offense if the person knowingly engages in the financial abuse of an elderly individual. Financial abuse includes the wrongful taking, appropriation, obtaining, retention, or use of, or assisting in the same, of money or other property by any means, including undue influence, and includes financial exploitation of a fiduciary relationship or other relationship of confidence or trust. Offenses range from Class B Misdemeanor to First Degree Felony.

SB 109. The Texas Penal Code makes "Securing Execution of Document by Deception" a crime. The new law renames the crime "Fraudulent Securing of Document Execution" and adds the element of "without effective consent." The law gives a detailed definition of effective consent. The changes are found at Tex. Penal Code § 32.46; Tex. Civ. Prac. & Rem. Code §§ 33.013, 41.008; Tex. Code of Crim. P. Art. 12.01; Tex. Health & Safety Code § 25.006(b).

Residential Subdivisions and Property Owners' Associations (POAs)

HB 1281. This bill was passed to deal with an unintended consequence of H.B. 1548 from the 86th Legislature (2019). That bill required golf carts and other off-road vehicles to obtain license plates to legally operate on public roads, and was in response to increasing accidents, mainly on highways in coastal towns. Although H.B. 1548 remains in effect, the new law removes an unintentional burden by allowing the operation of golf carts without license plates in master-planned communities that are residential subdivisions as defined by Tex. Prop. Code § 209.002(9). The rationale for the new rule, which is effective immediately, is that many master-planned communities were planned and built to accommodate golf cart drivers and, therefore, the use of golf carts does not involve the same risks.

HB 1659. The Texas Residential Property Owners Protection Act (Chapter 209, Texas Property Code) provides a way for property owners in a residential subdivision to amend the subdivision's declaration by a vote of the property owners. HB 1659 adds Section 209.0041(d-1), which makes that provision inapplicable if the amendment would affect a portion of a subdivision that is zoned for or that contains, or previously contained as specifically allowed under the declaration, a commercial structure, an industrial structure, an apartment complex, or a condominium. For purposes of subsection (d-1), "apartment complex" means two or more dwellings in one or more buildings that are owned by the same owner, located on the same lot or tract, and managed by the same owner, agent, or management company.

HB 3571. Under HB 3571, a POA may not prohibit the building or installation of security measures such as security cameras, motion detectors, or perimeter fences. This change does not apply to condominium regimes or master mixed-use POAs subject to Chapter 215 of the Property Code. The POA may still prohibit the installation of a security camera in a place other than the property owner's private property (such as a common

area) and may still regulate the type of fencing that may be installed. Tex. Prop. Code § 202.023.

SB 581. In 2011, the Texas Legislature prohibited a POA from adopting or enforcing a restrictive covenant prohibiting a property owner or resident from displaying or affixing small religious items on the entry to the dwelling. The law, codified at Tex. Prop. Code § 202.0018, came about as a response to a case in which a Jewish couple was asked to remove a *mezuzah* from their door. The new law, effective May 31, 2021, extends the prohibition to the entire property and does away with the size restriction. As before, religious displays still must not violate other law, threaten public health or safety, or contain material that is patently offensive. Additionally, it clarifies the POA's right to prohibit religious displays on association property or property owned in common by members of the association, as well as on traffic control devices, street lamps, fire hydrants, utility signs, poles, or fixtures. There appears to be no guidance for the meaning of "poles" or "fixtures" in the context of the statute. Religious displays are still subject to any applicable building lines, rights-of-way, setbacks, or easements.

SB 1588. Makes a number of changes involving POAs. A POA may not collect a regular assessment unless the dedicatory instrument authorizing the collection of the regular assessment is filed for record.

A POA may not regulate the display of religious items anywhere on an owner's or resident's property of dwelling, except that a POA may regulate such a display if it (1) threatens public health or safety; (2) violates a law other than a law prohibiting the display of religious speech; (3) contains content that is patently offensive to a passerby for reasons other than its religious content; (4) is installed on property that the POA owns or maintains, or in common areas; (5) violates any applicable building line, right-of-way, setback, or easement; or (6) is attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture.

A POA may not regulate swimming pool enclosures, as defined by the new statute, as long as they conform to applicable state or local safety requirements. Some restrictions regarding appearance are allowed, but the POA may not prohibit a swimming pool enclosure that is black and consists of transparent mesh set in metal frames.

A POA may not prohibit the building or installation of security measures such as security cameras, motion detectors, or perimeter fences.

Resale certificate fees are capped at \$375 (\$75 for updated certificate). There is a new deadline to deliver

a resale certificate after a second request by an owner (five days instead of seven). If that deadline is missed, the cap on the monetary penalty has been raised to \$5,000, plus court costs and reasonable attorney fees (previously \$500).

A POA that has at least 60 lots, or that has contracted with a management company, must make current versions of its dedicatory instruments available online.

Revised requirements relating to management certificates. A recorded management certificate must include the recording data for the declaration and any amendments to the declaration, the phone number and email address of the person managing the POA or the POA's designated representative, the website where the dedicatory instruments are available, and the amount and description of fees charged by the POA relating to a property transfer in the subdivision. Management certificates must also be filed electronically with TREC. If a management certificate is not properly recorded or electronically filed with TREC, an owner is not liable for attorney fees relating to the collection of a delinquent assessment.

Certain individuals are disqualified from serving on an architectural review authority for a POA with more than 40 lots. These are current board members, their spouses, or members of their household.

Sets out procedures for appeal in the event of an architectural review authority's decision denying an application or request by an owner for the construction of improvements.

Revised notice requirements for open POA board meetings. If mailed, notice must be given at least ten but not more than 60 days prior. If posted or electronic, notice must be given at least 144 hours before regular board meeting and at least 72 hours before special board meeting.

All budget changes must be voted on in an open meeting, even if the budget does not increase.

A POA proposing to contract for services that will cost more than \$50,000 must solicit bids or proposals using a bid process.

A POA must give written notice to an owner before reporting any delinquency to a credit reporting service. A POA may not report delinquent fines, fees, or assessments that are the subject of a pending dispute. A POA reporting an owner's delinquent payment history to a credit reporting service first must provide to the owner a report of all delinquent charges owed and an opportunity to enter into a payment plan. A POA may not charge an owner a fee for reporting delinquent

charges. Increases the number of days a POA must give an owner to cure a delinquency. A hearing to resolve an owner's violation must be held in front of the board itself, and not a board-appointed committee. The POA must provide the owner with the information the POA intends to introduce at the hearing. The owner is entitled to an automatic postponement of the hearing if the information is not timely provided. During the hearing, the POA presents its case first and then the owner may present his case.

POAs may not require access to lease agreements and are only allowed to request tenant's contact info and lease beginning and end dates.

A property owner is authorized to bring an action for a violation of the Texas Residential Property Owners Protection Act against a POA in an applicable justice court.

The changes are to Property Code Chapters 202, 207, and 209.

Environmental Protection and Conservation

HB 1284. This bill consolidates the jurisdiction over regulation of onshore and offshore Class VI underground injection control (UIC) wells in the Railroad Commission. Previously, jurisdiction was split between the Railroad Commission and the Texas Commission on Environmental Quality (TCEQ). These wells are used to inject carbon dioxide into underground subsurface rock formations for long-term storage and geologic sequestration. The bill prohibits the Railroad Commission from issuing a permit for the conversion of a previously plugged and abandoned Class I injection well, including any associated waste plume, to a Class VI injection well, and makes other related changes.

HB 2201. This bill requires the Railroad Commission to establish standards governing permissible locations for pits used by commercial oil and gas disposal facilities. The rules must include a history of flooding in the ten years preceding the construction of the pit as a factor in determining whether a proposed location is permissible. Tex. Nat. Res. Code § 91.1017.

HB 4436. This new law adds Tex. Parks & Wild. Code § 90.0035, authorizing the operation of aircraft in or on a protected freshwater area, so long as the person does so in a manner that avoids, to the extent reasonably possible, harming or disturbing vegetation, wildlife, or wildlife habitat within the protected freshwater area.

SB 211. A person affected by a ruling, order, decision, or other act of the TCEQ has certain rights of appeal. The new law provides for a uniform deadline of thirty days. Tex. Water Code § 5.351; Tex. Health & Safety Code §§ 361.321, 361.322, 382.032

SB 634. Adds Section 201.007 to the Agriculture Code. Under the new law, information that would identify landowners who participate in invasive species eradication programs is confidential and not subject to disclosure under Chapter 552 of the Texas Government Code, unless the person receives a direct payment of state money under a contract with the State Soil and Water Conservation Board.

SB 905. This bill adds Tex. Health & Safety Code § 341.0391, which defines "Direct Potable Reuse" as the introduction of treated municipal wastewater directly into a public water system or into a raw water supply immediately before the water enters a drinking water treatment plant. The bill requires the TCEQ to develop and make available to the public a regulatory guidance manual to explain the rules that apply to direct potable reuse.

SB 1118. Adds Subchapter J to Chapter 201 of the Texas Agriculture Code. The new subchapter creates the "On-The-Ground Conservation Program," which is designed to help improve soil health, conserve and manage water, prevent and manage flooding, improve resilience to weather extremes and natural disasters, protect and enhance native habitats, mitigate soil erosion, restore damaged lands, and sequester carbon. Authority over the development and administration of the program is granted to the State Soil and Water Conservation Board.

SB 1258. Texas law previously provided that when a mineral lessee produced oil or gas from a well within 1,000 feet of a state mineral property, it must drill an offset well to prevent undue drainage, or else pay a compensatory royalty. Because horizontal drainhole wells in unconventional fracture treated fields have different drainage patterns, an offset well is no longer required for such a well, unless the well is within a perpendicular distance of 330 feet, or within the minimum distance established by the applicable lease-line spacing requirement of the Railroad Commission of Texas, whichever is greater. The new law is found at Tex. Nat. Res. Code § 52.034

Historic Preservation

SB 1269. This bill expands the Main Street Program to include communities other than municipalities and to include assistance with development, restoration, and preservation of historic neighborhood commercial

districts. The changes are found in Tex. Gov't Code § 442.014.

SB 1585. Designation of a property by a municipality as a local historic landmark is governed by Tex. Loc. Gov't Code § 211.0165. The new law amends that section to make the requirements applicable also to the inclusion of a property in a local historic district. Such a designation or inclusion may be made by consent of the owner *or* by (1) the three-fourths vote of the governing body of the municipality, *and* (2) the zoning, planning, or historical commission of the municipality. If a municipality has more than one of the commissions listed in (2), the municipality must designate one of them as the entity with exclusive authority to approve such designations or inclusions.

Housing Programs

HB 1558. This bill requires the point system for scoring low-income housing to provide a preference for veterans with respect to developments near a veterans hospital, Veterans Affairs medical center, or Veterans Affairs health care center. The law amends Section 2306.6710(b), Texas Government Code, and applies in counties with populations of one million or more but less than four million.

SB 113. Amends the Tex. Local Gov't Code § 373B.003 and Tex. Tax Code §§ 23.21 and 26.10, which related to community land trusts. Under the new law, a trust may now be a limited partnership in which a nonprofit corporation controls 100 percent of the general partner interest, or a limited liability company in which a nonprofit corporation is the sole member. Sets forth provisions for tax appraisal of land and housing units leased by a community land trust to families meeting the income-eligibility standards.

Residential Service Contracts

HB 1560. Repeals the Residential Service Company Act and places regulation of residential service contracts under the Service Contract Regulatory Act (SCRA). Defines "residential service contract" and "service contract." Exempts from the SCRA residential builder's warranties and performance guarantees, warranties and guarantees on appliances or other components, and residential service contracts executed prior to Aug. 28, 1979. Requires the provider to agree to initiate performance within 48 hours of request under normal circumstances. Requires that a person selling, offering to sell, arranging or soliciting the sale of, or receiving an application for a residential service contract be

employed by a licensed provider or administrator of a residential service contract, unless that person is a licensed Texas real estate sales agent, real estate broker, mobile home dealer, or insurance agent. There is an exception to this rule in certain circumstances with a required statutory notice in at least ten-point boldface type. Changes the financial security requirements. The changes are primarily found in Chapter 1304, Texas Occupations Code.

Redevelopment of Unproductive Property

HB 1564. This law was crafted to address an issue that has existed for years in El Paso County. According to the bill, the legislature made findings that numerous purchasers were lured by misrepresentations into buying lots based on promises of future development. The lots were never developed. In short, the lots became virtually undevelopable due to highly fractionalized undivided interests and issues with title and infrastructure. To address this issue, this law establishes procedures, set forth in Texas Local Gov't Code § 232.151, et seq., by which the properties may be aggregated and re-platted.

Attorney Fees in Construction Contract Suit

HB 2416 adds Tex. Civ. Prac. & Rem. Code § 38.0015, which authorizes recovery of attorney fees as compensatory damages for breach of a construction contract.

Business Organizations and Attorney Fees

HB 1578. Section 38.001, Civil Practice and Remedies Code is a statute commonly used to allow recovery of attorney fees when prevailing on certain claims. Previously, that section allowed recovery from individuals or corporations. This bill expands the language to include any organization, as defined by Section 1.002, Business Organizations Code. This means that recovery of attorney fees is now authorized against corporations, limited or general partnerships, limited liability companies, business trusts, real estate investment trusts, joint ventures, joint stock companies, cooperatives, associations, banks, insurance companies, credit unions, savings and loan associations, and other organizations, regardless of whether the organization is for-profit, nonprofit, domestic, or foreign. The new law explicitly excludes quasi-governmental entities authorized to perform a function by state law, religious organizations, charitable organizations, and charitable trusts.

SB 1942. Corporations created under the Public Facility Corporation Act (Tex. Loc. Gov't Code, Chapter 303) are required to remain a public facility corporation. Tex. Loc. Gov't Code § 303.021(c). Nonprofit corporations created by a housing authority under the Texas Non-Profit Corporation Act are subject to Chapter 303. Tex. Loc. Gov't Code § 303.022.

Tax Collection

HB 1658. This bill applies only to state taxes collected by the comptroller, and amends Chapter 111 of the Texas Tax Code to allow the comptroller to give electronic notice of a deficiency determination or a jeopardy determination.

HB 3629. This law amends Tex. Tax Code § 33.06, changing the date when a deferral or abatement of collection of property taxes expires on the residence homestead of an elderly or disabled person or disabled veteran (or his spouse) expires. The deferral or abatement previously expired after the individual or surviving spouse no longer owned and occupied the property as a residence homestead. After the change, it expires the 181st day after the date the collector for the taxing unit delivers a notice of delinquency of the taxes following the date the individual or surviving spouse no longer owns and occupies the property as a residence homestead.

SB 742. Section 31.032 of the Texas Tax Code allows for installment payments of property taxes on property that is located in a disaster area and has been damaged as a direct result of the disaster. The new bill extends this program to emergencies proclaimed by the governor under Tex. Gov't Code § 433.001. The bill adds Section 31.033, which authorizes installment payments of taxes, at the discretion of the taxing unit, on property owned or leased by small businesses even when the property has not suffered actual damage as a direct result of the disaster or emergency. The bill was in response to taxing units that were unwilling to authorize installment plans for businesses adversely affected by COVID-19 because the pandemic did not cause actual damage to the businesses' property. The act is effective immediately and affects taxes imposed on property before the first anniversary of the disaster or emergency.

SB 1764. If a property is subject to an order of sale in a delinquent tax suit, or has been seized for payment of delinquent ad valorem taxes, penalties, and interest owed on the property, a tax collector may adopt a written policy that requires payment only with United States currency, a cashier's check, a certified check, or an electronic funds transfer. Tex. Tax Code § 31.06.

Property Tax

HB 1869. This bill modifies what debt may be considered for the purpose of calculating a taxing unit's tax rate. Under the new bill, "debt" for this purpose no longer must be solely payable from property taxes. To be considered, the debt must be approved at an election, include self-supporting debt (defined in the bill), evidence a loan under a state or federal financial assistance program, be issued for designated infrastructure (defined in the bill), or several other defined purposes. The changes apply only to bonds, warrants, certificates of obligation, or other evidence of indebtedness authorized by the appropriate governing body after Sept. 1, 2021. Debt for which the taxing unit has entered into a binding agreement before that date is excepted. Tex. Tax Code § 26.012.

HB 2429. This bill adds Section 26.063(d) to the Tax Code, revising the required contents of a notice of public hearing on a tax increase. The bill applies only to a taxing unit that is not required to hold an election to approve a property tax increase and for which qualified voters may not petition to hold an election to reduce an adopted tax rate.

HB 2723. Requires the development of a local property tax database website and notification of the website address on certain notices.

SB 1438. Amends the Texas Education Code and Texas Tax Code to revise certain property tax rate calculations in disaster areas. In some cases, the governing body of a taxing unit must hold an election to approve its adopted tax rate, and there are exemptions from that requirement in the event of certain disasters. This bill clarifies that droughts, epidemics, and pandemics are not disasters that trigger such exemptions. Under the new law, after a disaster, a taxing unit is not permitted temporarily to calculate the voter-approval tax rate in the manner provided for a special taxing unit unless qualified property within the taxing unit is damaged by the disaster. The changes are found in Tex. Educ. Code § 45.0032(d), 48.202(f); Tex. Spec. Dist. Local Laws Code § 3828.157, 8876.152(a); Tex. Tax Code § 11.43(s), 26.042, 26.07(b); Tex. Water Code § 49.107(g), 49.108(f).

Development Agreements

HB 1929. This bill deals with Chapter 212, Subchapter G development agreements in certain municipalities' extraterritorial jurisdiction. It amends Sections 212.172 and 212.174 of the Local Government Code to provide that annexation by a municipality of land subject to

such a contract does not invalidate the enforceability of the contract or infringe on the rights of a party to adjudicate a claim arising under the contract. The bill provides that a municipality that enters into such a contract waives immunity from suit for the purpose of adjudicating a claim for breach of the contract, and provides for remedies in such a case.

HB 2404. This bill requires the comptroller to create the Chapter 380/381 database and make available online certain information about all local economic development agreements in Texas, including Chapter 380 (Municipality) Agreements and Chapter 381 (County) Agreements. The comptroller must create and post the database by Sept. 1, 2022.

SB 1257. This bill adds Tex. Tax Code § 312.005(a)(3), requiring that the chief appraiser's report to the comptroller about a tax abatement agreement must include certain specific terms of the agreement, including the kind, number, and location of all proposed improvements, as set forth in Tex. Tax Code § 312.205(a)(1).

Chapter 313 of the Tax Code, known as the Texas Economic Development Act, is a program that limits the appraised value of certain qualified property improvements for school tax purposes. The program was designed to attract business to Texas. Although bills were filed that would have extended the program, none passed, and the program was not extended. Chapter 313 will expire on Dec. 31, 2022.

Viticulture

HB 1957. This bill governs wine labeled as originating from Texas or from a Texas vineyard. Wine may not be so labeled unless it is 100 percent by volume fermented juice of grapes or other fruit grown in Texas.

Warranties

HB 2110. This bill provides that if an air-conditioning system that is a fixture to a residential real property is covered by a manufacturer's warranty when the property is transferred, the warranty is transferred to the new owner and continues in effect as if the new owner was the original purchaser of the air-conditioning system or component. The warrantor may not charge a fee for transferring the warranty. The term of the warranty is not extended. The new law is found in Chapter 608, Texas Business and Commerce Code, and applies only to warranty agreements entered into or renewed on or after Sept. 1, 2021.

Construction and Construction Contracts

HB 2116. This bill amends Section 130.002, Civil Practice and Remedies Code to provide that in a construction contract for engineering or architectural services related to an improvement to real property, if there is a duty to defend clause that requires an engineer or architect to defend another party against a claim based on the negligence of, fault of, or breach of contract by the owner (or an entity over which the owner exercises control), that clause is void and unenforceable. Nevertheless, an owner who is a party to a construction contract for engineering or architectural services related to an improvement to real property may require the engineer or architect to name the owner as an additional insured to the extent additional insureds are allowed under the policy and provide any defense to the owner provided by the policy to a named insured. Exceptions exist in Sections 130.002 and 130.004. The bill adds Section 130.0021, which sets a standard of care for architects and engineers performing architectural or engineering services under a construction contract for such services or under a contract related to the construction or repair of an improvement to real property that contains such services as a component part. The required standard of care is that architectural or engineering services must be performed with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license. If such a contract sets forth a different standard of care, that provision is void and unenforceable.

HB 2581. This act deals with government contracts for construction projects. The changes, found in Chapter 2269 of the Texas Government Code, require all government entities, when using a method other than competitive bidding, to publish a detailed methodology for scoring the criteria on which the offers are evaluated. Documents related to the evaluations must be provided to offerors.

HB 3069. This bill applies to certain claims against architects, engineers, interior designers, or landscape architects furnishing design, planning, or inspection of construction of improvements, and to those furnishing construction or repair of improvements. In these lawsuits, there is a ten-year statute of limitations (eight years if the suit is brought by a governmental entity). If the claimant presents a written claim during the limitations period, the period is extended for two years from the date the claim is presented (one year if the claimant is a governmental entity). In a case against one furnishing construction or repair of improvements, if the damage occurs during the last year of the applicable limitations period, the claimant must bring suit not



later than two years after the day the cause of action accrues. Exceptions apply. The new law affects Sections 16.008 and 16.009 of the Texas Civil Practice and Remedies Code.

SB 219. This bill adds Chapter 59 to the Texas Business and Commerce Code. The new law provides that contractors are not responsible for design defects in, and may not warrant the accuracy, adequacy, sufficiency, or suitability of plans, specifications, or other design documents provided to the contractor by a person other than the contractor's agents, contractors, fabricators, or suppliers, or its consultants. The new law applies only to contracts for the construction or repair of an improvement to real property, but does not apply to design-build contracts, contracts for a "critical infrastructure facility," and certain other contracts. New Section 59.051 imposes on contractors a duty to disclose in writing any defects discovered, or that reasonably should have been discovered by the contractor using ordinary diligence, before or during construction. The bill adds Section 130.0021 to the Texas Civil Practice and Remedies Code, establishing a standard of care for architectural or engineering services, and Section 59.052, providing that design services in a design-build contract are held to the same standard. Any attempt in a contract to establish a different standard of care is void. The new law applies to contracts entered into on or after Sept. 1, 2021.

Water

HB 2225. Adds Tex. Parks & Wild. Code § 12.028, directing the Parks and Wildlife Department to encourage and facilitate the dedication of water rights in the Texas Water Trust through lease, donation, purchase, or other means of voluntary transfer. Also adds Tex. Water Code § 15.7031(e), allowing the department to manage water rights in the trust under a voluntary agreement with a rights holder and in accordance with existing law.

Mechanic's Liens

HB 2237. This act is a major overhaul of the mechanic's contractor's and materialman's lien system. The new law modifies, clarifies, and consolidates definitions, including, but not limited to, the definitions of retainage, subcontractor, work, purported original contractor, improvement, labor, and residence. Licensed professional architects, engineers, surveyors, and persons installing landscaping may have liens even if they are not in direct contractual privity with the owner. Makes some changes to the notice requirements and filing deadlines.

Changes the statute of limitations to foreclose on a mechanic's lien to one year for both residential and non-residential projects. Provides a standard form for notices. The changes are primarily found in Chapter 53 of the Property Code. The changes only apply to **original contracts** entered into on or after the effective date of Jan. 1, 2022. If an original contract is entered into in 2021, and a subcontract is entered into in 2022, the old law applies.

Eminent Domain

HB 2730. This act adds a requirement to the Landowner's Bill of Rights Statement regarding the right of a property owner to file a written complaint with the Texas Real Estate Commission (TREC) regarding alleged misconduct by a registered easement or rightofway agent acting on behalf of an entity exercising eminent domain authority. Additionally, the statement must include an addendum of the terms required for an instrument of conveyance and the terms a property owner may negotiate regarding a right-of-way easement for an electric transmission line. The act amends the Texas Real Estate License Act (TRELA), Chapter 1101, Texas Occupations Code, to change certain requirements for Easement or Right-of-Way Agents (ERW). Specifically, TREC is required to set forth coursework for ERW agents' qualifying and continuing education; TREC is authorized to issue probationary certificates of registration for ERW agents, and TREC may suspend or revoke a certificate if the certificate holder directly or indirectly accepts a financial incentive to make an initial offer that the certificate holder knows or should know is lower than the adequate compensation required under the Texas Constitution. Additionally, HB 2730 revises eminent domain provisions in the Texas Property Code. The bill adds additional items to the requirement of an initial bona fide offer and sets forth required terms for an instrument of conveyance for a pipeline rightofway easement or an electric transmission line rightofway easement that is included with an offer by a private entity to acquire a property interest for a public use. The act changes Section 21.014 of the Property Code, which deals with the process of appointing special commissioners in a condemnation case.

SB 721. Adds Tex. Prop. Code § 21.0111(a-1). When an entity seeking to acquire real property through the use of eminent domain uses an appraisal report at a special commissioner's hearing, it is required to disclose to the property owner any and all current and existing appraisal reports produced or acquired by the entity relating specifically to the owner's property and used in determining the entity's opinion of value. The disclosure

shall be made no later than the third business day before the date of the hearing.

SB 726. Under Texas laws dealing with condemnation of private property for public use, property owners have a right to repurchase previously condemned property unless within ten years the condemning authority makes “actual progress” toward the public use for which the property was acquired. Tex. Prop. Code § 21.101. The new statute amends Section 21.101 to change the standard for determining whether “actual progress” has been made. Different standards are added to determine actual progress by a navigation district or port authority, or a water district implementing a project included in the state water plan. The new law applies to condemnations in which the petition is filed on or after Sept. 1, 2021.

Insurance

HB 2920 amends the Insurance Code to require a grace period of not more than ten days after the due date for a renewal of a Texas Windstorm Insurance Association (TWIA) policy. Other changes related to TWIA are made in HB 3564, HB 769, and SB 1448.

Recording and Conveyances

HB 3115. This bill has been referred to as the Homestead Certainty Bill. A judgment lien may not be foreclosed against a person’s homestead. Property Code Section 52.0012 established a process whereby a judgment debtor’s affidavit claiming the property as homestead, properly filed in the county real property records with proper notice to the judgment creditor, serves as a release of record of a judgment lien. The new law provides that such an affidavit, if not challenged by a judgment creditor’s contradicting affidavit within 30 days, may be conclusively relied upon by a bona fide purchaser or a mortgagee for value (and their successors or assigns) for a 90-day period that begins on day 31. Thus, the bill creates a window of certainty for purchasers and mortgagees. The affidavit may be challenged by creditors before and after the window, but if the affidavit is not challenged within 30 days, a purchaser or mortgagee may rely on it with certainty from day 31 to day 120.

HB 3415. County clerks in counties with a population of 800,000 or more may now require a photo ID to present a document in person for filing in the real property records. Previously, only Harris County could do so. Tex. Loc. Gov’t Code § 191.010.

SB 885. A quitclaim deed is an instrument in which a grantor releases whatever interest he may have in a property in favor of the grantee. A quitclaim in the chain of title is a problem that often does not go away. It is notice to a purchaser or creditor that another person may have a claim on the property, and as such prevents purchasers or creditors from having bona fide (good faith) purchaser status. This can put their property claims at risk against other persons claiming ownership. This new law makes some significant changes in the law pertaining to Texas quitclaims. It takes quitclaims out of the five-year adverse possession statute; i.e., the five-year statute can no longer be used if the claim of the property is under a quitclaim deed. Most importantly, it provides that once a quitclaim deed has been recorded for four years, it does not affect the question of the good faith of a subsequent purchaser or creditor, and is not notice to a subsequent purchaser or creditor of any unrecorded conveyance, transfer, or encumbrance. Significantly, the new law applies only to a quitclaim deed recorded on or after Sept. 1, 2021, so older quitclaims still remain as title problems. For more information, see, “Little Law, Big Deal,” in the Fall 2021 issue of *TC*. <https://www.recenter.tamu.edu/articles/tierra-grande/Little-Law-Big-Deal-2316>

Physical Office for Mortgage Companies

HB 3617. This bill removes the authority of the savings and mortgage lending commissioner to set fee amounts for deposit in the recovery fund established for the purposes of the Residential Mortgage Loan Company Licensing and Registration Act (Tex. Fin. Code Chapter 156) and the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act (Tex. Fin. Code Chapter 157). Tex. Fin. Code § 13.016. Applicants for mortgage company licenses or credit union subsidiary organization licenses are no longer required to maintain a physical office in Texas. Tex. Fin. Code § 156.2041-156.2042. The new law changes the standards for how amounts in the recovery fund may be invested and reinvested, and makes some changes in how the funds may be used. Tex. Fin. Code § 156.501-156.502. The bill establishes a mortgage grant fund and provides for disbursements from the fund for certain educational and training purposes, as well as to pay claims for fraudulent unlicensed activity. Tex. Fin. Code § 156.551, *et seq.*

Oil & Gas

HB 3794. This bill is in response to the bankruptcy case *In Re: First River Energy, L.L.C.*, in which there was a

dispute over the priority of security interests securing the obligations of a first purchaser of oil and gas to pay the sales price. The Texas oil and gas producers lost the dispute because of a Texas statute, which was a “nonuniform Uniform Commercial Code provision.” In affirming the decision, the Fifth Circuit observed, “The Texas legislature should take note.” *In Re: First River Energy, L.L.C.*, 986 F.3d 914 (5th Cir. 2021). Well, it did. This new law removed these oil and gas liens from the operation of Chapter 9, Business & Commerce Code (the Texas version of the UCC with respect to secured transactions) and added Chapter 67 of the Property Code. Under the new Chapter 67, these interest owners now have liens based on real property interests. The liens attach to oil and gas before severance and continue throughout the process of severance and sale, attaching to the proceeds from the sale of the oil and gas. This lien generally has first priority and is automatically perfected.

SB 1259. In certain circumstances, payment of proceeds derived from the sale of oil or gas production may be withheld without interest beyond the time limits set by law. These circumstances include times when there is a dispute concerning the title that would affect the distribution of payments. In such a situation, the new law, Tex. Nat. Res. Code § 91.402(b-1), establishes that a payee does not have a common law cause of action for breach of contract against the payor, unless the contract requiring payment specifies otherwise.

Easements

HB 4346. This bill adds Tex. Prop. Code § 5.020, which provides that an instrument granting an access easement may not restrict or prohibit an easement holder or the holder’s guest from possessing, carrying, or transporting firearms or alcoholic beverages over the servient estate while using the easement for the easement’s purpose. Any such restriction in an existing instrument may not be enforced by the owner of the servient estate. The new law does not apply to a right-of-way easement for a pipeline, electric transmission line, or other utility.

Contracts for Deed

HB 4374. Texas law allows for an executory contract for conveyance, commonly called a “contract for deed.” The simple version of this arrangement is as follows: A buyer and seller enter into a contract whereby the buyer buys the property by paying a series of payments, and the seller retains title to the property until

all payments are complete. When the buyer completes all of the payments, the seller executes and delivers a deed to the buyer. In the event of a default by the buyer, the seller may retain title, take the property back, and keep all of the money. This type of agreement has been allowed for many years because of the concept of freedom of contract, and also because it provides a path to home ownership for buyers who are unable to qualify for a loan. Because of the harsh consequences of a default, however, these contracts have come under increasing scrutiny and regulation. Subchapter D of Chapter 5 of the Texas Property Code contains the laws regulating such contracts. The subchapter is made applicable only to residential property, and a lot measuring one acre or less is *presumed* to be residential property. Tex. Prop. Code § 5.062. The new law was proposed to deal with executory contracts for conveyance on significantly larger tracts—often up to 20 acres—and allows certain counties (apparently Caldwell and Bastrop Counties) to adopt an order of the commissioners court that subjects such contracts to the provisions of Subchapter D. The commissioners court’s order must specify a method for determining whether the land is used or to be used as a residence. As an example, under the new law, a commissioners court may specify that a lot or tract of 20 or fewer acres is presumed to be used or intended to be used as a residence. Tex. Prop. Code § 5.0622.

Discriminatory Provisions

SB 30. Allows an owner of property with a discriminatory provision in the chain of title to request removal of the discriminatory provision from the instrument by completing and filing a motion verified by affidavit with the district clerk. A court is authorized to rule on the motion based only on a review of the conveyance instrument, without the necessity of any additional evidence. If the court does not rule within 15 days of the filing of the motion, the motion is deemed granted. The court’s order is then recorded in the county property records. The new statute is found in Tex. Prop. Code § 5.0261.

Lending

SB 43. This new law makes changes to the Texas Finance Code in an effort to reform the laws governing wrap mortgage loans. It establishes new regulations along with remedies, which can include rescission, for violations of the law. Lenders must be licensed and are subject to inspection and investigation. Wrap transactions must be closed by an attorney or a title company,

or they are void. A new statutory disclosure statement must be given to wrap borrowers at least seven days before entering into a wrap mortgage loan agreement. Exemptions exist, but the new provisions may not be circumvented or waived by contract. The changes are found in Tex. Fin. Code §§ 156.202(a-1) & (b), 157.0121(c) & (f), 180.003(a) & (d), and new chapter 159.

Disclaimer

SB 286. An individual disclaiming an interest in property must include in the disclaimer a statement under penalty of perjury regarding whether he is a child support obligor whose disclaimer is barred under Tex. Prop. Code § 240.151(g). However, if the person is not barred from disclaiming under that section, the failure to include the statement does not invalidate the disclaimer. The new law is found at Tex. Prop. Code § 240.009(e).

Condominium Owners' Associations

SB 318. The new law amends Section 82.114(b) of the Property Code and adds Section 82.1141, which governs the keeping and production of the records of condominium unit owners' associations. The provisions are similar to those governing POAs under Section 209.005 of the Property Code. (Note that Section 209.005 does not apply to a POA that is subject to Chapter 552 of the Government Code; see Tex. Prop. Code § 552.0036.)

Annexation

SB 374. This law allows a municipality annexing an area to also annex the right-of-way of a street, highway, alley, or other public way or of a railway line, spur, or roadbed contiguous and parallel to the municipality's boundaries and contiguous to the area being annexed. Certain conditions apply. The new section is Tex. Local Gov't Code § 43.1056.

SB 1338. Under the new law, at the time a municipality makes an offer to a landowner to enter into an agreement in which the landowner consents to annexation, or an offer to enter into a development agreement covered by Subchapter G, Chapter 212, Local Government Code, the municipality must provide the landowner with a written disclosure. The disclosure must include (1) a statement that the landowner is not required to enter into the agreement; (2) the authority under which the municipality may annex the land with references to

relevant law; (3) a plain-language description of the annexation procedures applicable to the land; (4) whether the procedures require the landowner's consent; and (5) a statement regarding the municipality's waiver of immunity to suit. If the disclosure is not provided, the agreement is void. The new statutes are found in Tex. Loc. Gov't Code §§ 43.004 and 212.172.

Guardianship and Probate

SB 626. Most of this bill affects procedures dealing with guardianships and probate matters. The bill makes changes to the required locations and procedures for public auction sales in these contexts. These changes are found in the Texas Estates Code and the Texas Government Code. The new law requires a guardian to file a sworn report with the court when there is a successful bid on real property or if the property is placed under private contract. The court then considers and approves (or disapproves) the sale. If approved, the deed conveying the property must identify the court order approving the sale. Tex. Estates Code § 1158.551 *et seq.*

SB 615. This bill makes a number of changes relating to probate and guardianship matters. The most notable change in the real estate context is the change made to Tex. Estates Code § 1101.001(b)(9), dealing with the requirements of an application for guardianship. The new provision requires the applicant to state the approximate value and a *detailed* description of the proposed ward's property, including both liquid and non-liquid assets, including real property. Previously, real estate and the level of detail were not specified.

Solar

SB 760. This new law adds Chapter 302 to the Texas Utilities Code, and applies to solar power facility agreements between landowners and grantees other than electric utilities. Such agreements must require the removal of equipment and restoration of the land on termination of the agreement or decommissioning of the facility. The grantee must obtain and deliver to the landowner evidence of financial assurance to secure the performance of the grantee's obligation to remove the solar power facilities. The requirements of the statute may not be waived by agreement, and the statute provides for injunctive relief.

Transportation

SB 763. Creates the Urban Air Mobility Advisory Committee to assess current state law and any potential changes to state law that are needed to facilitate

the development of urban air mobility operations and infrastructure.

Special Tax Zones

SB 804. This statute (Tex. Loc. Gov't Code § 372.0121) deals with “Common Characteristic or Use” property in public improvement districts described in Tex. Loc. Gov't Code § 372.0035. It authorizes certain municipalities to include hotel property in such a district and sets out the requirements for doing so.

SB 244. This bill adds subsection (M) to Section 551.001 of the Texas Government Code, making the board of directors of a Chapter 311 reinvestment zone (Tax Increment Finance Zones) subject to open meetings law.

HB 1543. This bill makes some changes in the contents and procedural requirements for resolutions regarding public improvement districts, as well as procedural and filing requirements for service plans, which may be approved, amended, or updated only by ordinance or order. Notably, the bill removes the requirement to publish notice in a newspaper of the authorization of a public improvement district. It revises requirements and provides for statutory notices to purchasers of property located in public improvement districts regarding assessments. The notice must be given before the execution of a binding contract of purchase and sale, either separately or as an addendum or paragraph. It must be signed by the purchaser and recorded in the county deed records at closing. The bill provides a suit for damages if the notice requirements are not met, and provides rules for such suits.

Surveying

SB 1072. The new law authorizes the Texas Spatial Reference Center at Texas A&M University—Corpus Christi to adopt a revised state coordinate system that may be used under the authority granted to the center as the state’s facilitator of the National Spatial Reference System. The changes are found in Tex. Nat. Res. Code §§ 21.041 and 21.0711.

Navigation Districts

SB 1642. Among other things, SB 1642 authorizes a navigation district to contract with a broker to lease a tract of land in the same manner as the commissioner’s court of a county. Previously, districts were authorized to contract with a broker to sell a tract of land but not to lease one. The change is found in Tex. Water Code § 60.101.

Urban Land Banks

SB 1679. Repeals Chapter 379D and adds Chapter 379H to the Local Government Code. The result is replacing provisions related to an urban land bank program in a municipality with a population of two million or more. This law specifically places the Houston Land Bank under this new chapter and establishes the land bank’s authority to acquire and manage vacant, abandoned, deteriorated, non-revenue generating, and non-tax-producing properties and convert them to productive uses.