THIS ARTICLE IS DRAWN FROM THE FINAL REPORT OF THE REAL ESTATE LEGISLATIVE AFFAIRS COMMITTEE OF THE REAL ESTATE, PROBATE & TRUST LAW SECTION OF THE STATE BAR OF TEXAS (RELAC) and summarizes significant bills passed during the regular session of the 83rd Texas Legislature affecting real estate, mortgage lending, and other business and commercial issues of interest to Texas real estate law practitioners. During the 2013 session, Texas’s elected representatives introduced 5,885 bills. Among those bills, RELAC identified more than 2,000 to track throughout the session. From among the bills that were being tracked and passed, RELAC chose for inclusion in its report 159 bills that it believed would be of general interest to practitioners of Texas real estate law, some of which are discussed below.

You will be happy to know that the Legislature was interested in keeping Austin’s skyline clear. House Bill 2256 was passed, effective June 14, 2013, which restricts construction on the east side of Congress Street to be no higher than 90 feet and no closer than 40 feet to the street. On the west side of Congress, buildings can be no closer than 60 feet to the street and are again limited to 90 feet in height.

FORECLOSURES AND ASSIGNMENT OF RENTS

Section 51.002 of the Texas Property Code concerning postings of notices of foreclosure was amended effective Sept. 1, 2013. When H.B. 584 takes effect, if a county maintains a website, then the county must post a foreclosure notice to be publicly available without charge or registration. Senate Bill 848 changed Chapter 64 of the Property Code. This bill (1) expands the definition of “assignor” from an owner of real property to any person who makes a security interest affecting real property, (2) specifically excludes consideration paid under a lease and oil and gas royalties from the definition of “rent,” and (3) clarifies the rules for determining an address for purposes of giving notice and procedural requirements relating to the turning over of collected rents by an assignor to the assignee (creditor).

CORRECTIVE INSTRUMENTS

S.B. 887 amends Texas Property Code Section 5.028
(which was originally enacted in 2011) to expand the circumstances under which a party with knowledge, as opposed to only a party in interest, may prepare and file correction instruments by clarifying that the statute allows for, among other things, the addition of an entirely omitted legal description or omitted calls in a metes and bounds description.

**PROPERTY OWNERS ASSOCIATIONS**

Property owner association (POA) reform was again a focus of the Legislature. One highly controversial bill, which would have provided for POA oversight by the Texas Attorney General's Office, ultimately failed to pass. The failed bill may have received the notoriety, but a pair of relatively significant, albeit lesser-known, POA-related bills were passed. H.B. 1824 clarifies that Texas Property Code Chapter 209, (i.e., the Texas Residential Property Owners Protection Act), does not apply to master, mixed-use POAs, which are regulated under Texas Property Code Chapter 215. The new law also amends Chapter 215 by adding various responsibilities similar to those required of residential POAs under Chapter 209 but that are applicable in a mixed-use setting, such as recordkeeping requirements, the right by a member to be heard by the association’s board, and the right to an alternative payment schedule. H.B. 35 adds Texas Property Code 209.015, which permits homeowners to use an adjacent lot owned by such homeowner for “residential purposes,” defined as the location of improvements “customarily appurtenant to a residence” such as a garage, septic system, or swimming pool and, if permitted by the applicable declaration, parking or storing of a recreational vehicle. The new law clarifies that a homeowner must still obtain prior approval from the POA to make improvements on an adjacent lot to the extent such approval is required by the applicable dedicatory instruments. For example, a POA may not prevent a homeowner from putting a pool or a garage on an adjacent lot (assuming the dedicatory instruments do not entirely prohibit garages or pools), but such improvements remain subject to applicable restrictive covenants. In connection with a sale of lot(s), a homeowner will be required to convey together both the adjacent lot containing the “residential purposes improvements” and the main lot or, alternatively, restore the adjacent lot to its original condition before the addition of the improvements.

**CONDOMINIUM OWNERS ASSOCIATIONS**

H.B. 2075 is an important piece of legislation if you represent condominium associations or condominium owners, as it makes significant amendments to Chapter 82 of the Texas Property Code (i.e., Texas Uniform Condominium Act). For instance, condominium associations are expressly permitted to obtain loans and assign as collateral for such loans the association’s right to future income and assessments, which should make it easier to obtain financing for capital improvements of common areas. Perhaps the most significant change relates to Texas Property Code Section 82.113, which governs foreclosure of assessment liens. Prior to the amendment, if a condominium association foreclosed its assessment lien against a unit, the former owner could only redeem the property if the unit had been purchased at the foreclosure sale by the association. As a result of the amendments, an owner will have a right of redemption irrespective of whether the unit was purchased by the condominium association or any other party.

**RESIDENTIAL LANDLORDS AND TENANTS**

Two bills were passed that address the rights and responsibilities of residential landlords in connection with the interruption of electrical utility service. H.B. 1086 amends Section 92.008 of the Texas Property Code to allow a residential landlord who sub-meters or allocates non-sub-metered electricity among the tenants (i.e., where the landlord is paying directly but recouping the cost directly from the tenant) to interrupt electrical service for non-payment of electrical service charges (but not for the non-payment of rent, per se), provided certain strict requirements are first met, such as providing notice in the lease agreement of the landlord’s right to interrupt electrical service for nonpayment of service charges. H.B. 1772 adds Texas Property Code Section 92.302, which will require a landlord of multifamily improvement with 10 or more units (or other party responsible for paying the utility bill, not paid by landlord) to notify tenants in writing within five days after receipt of a notice of disconnection from an electric or gas utility provider, which notice must also include a list of the tenant’s remedies under Texas Property Code 92.301 for utility cutoff, e.g., the right to terminate the lease and recover damages.

Several other bills impacting residential landlord and tenant law were also passed. S.B. 630 adds Texas Property Code 92.024, which requires residential landlords to provide tenants with a fully executed copy of the lease within three business days after being fully executed. Failure to comply with this requirement does not invalidate a lease or excuse the payment of rent, but it will result in the abatement of any legal action to enforce a non-monetary lease default until the landlord provides a fully executed copy of the lease to the tenant. S.B. 946 amends Texas Property Code 92.0161 to add “stalking,” “indecency with a child,” and “sexual performance by child” to the categories of offenses that may allow a tenant to terminate a lease if such offenses occur in or near the leased premises. The amended language also clarifies that “attempted” offenses may also allow a tenant to terminate a lease. S.B. 1120 adds Texas Property Code 92.062 to prohibit a landlord, who permits a tenant displaced by a natural disaster to relocate to another unit owned by the landlord, to require the tenant to extend the lease term as a condition of being allowed to relocate.
TIMESHARES

S.B. 1372 adds Texas Property Code Sections 221.081 through 221.090 and amends various sections of Texas Property Code Section 221. This new law provides specific laws governing timeshare owners' associations. It permits these associations to be governed by a board of directors and specifies their powers. A period of developer control for the board of directors is provided. Items such as removal of a board member, quorum, votes, open meetings, meeting notice, and annual meeting of all members of the association are also addressed. An association must now maintain a current list of timeshare owners and is limited in how this list may be used. An action under the Deceptive Trade Practices Act is created for a person who knowingly participates in a scheme to transfer a timeshare interest to a transferee who does not have the ability, means, or intent to pay all assessments and taxes for the timeshare interest. Many provisions of the bill apply to timeshare plans regardless of the date on which the timeshare plan was created. This bill was effective Sept. 1, 2013.

AD VALOREM TAXATION

The Legislature proposed constitutional amendments for a vote in November 2013 that would provide ad valorem tax relief for certain veterans and their families. The Texas Property Tax Code was amended by numerous bills with similar purposes. Appraisal districts must now send certain notices to property owners via certified mail under H.B. 242. Tax Code Sections 6.412(d) and (e) were added and Tax Code Section 6.412(f) was repealed to restrict eligibility for service on an appraisal review board in counties with a population of more than 100,000 if a person has served for all or part of three consecutive terms as a board member on an appraisal review board and if a person has served as a former officer or former employee of the appraisal district. H.B. 585 added Texas Tax Code Sections 5.103, 6.035(a-1), 6.0501, 21.09, 22.01, 23.23(g), and 41.45(n); amends Texas Tax Code Sections 5.041, 6.05(c) and (d), 6.052, 6.41, 6.411(c-1), 22.24(e), 23.02, 23.129, 31.11, 33.48(a), 41A.03(a), 41.43, 41.66, 42.21, 42.23, and 42.29(a); and repeals Texas Tax Code Section 41A.031, which provides that the comptroller shall prepare model hearing procedures for appraisal review boards to include: (1) duties of an appraisal review board; (2) process, scheduling, and notices for hearings; (3) parties' rights during hearings; (4) prohibited communications; (5) conflicts of interest; and (6) other matters related to fair and efficient hearings. This bill provides requirements to serve on an appraisal district board and to serve as chief appraiser of a district. The chief appraiser of a district can be appointed by the comptroller. Additional grounds for removal from an appraisal review board are listed, including prohibited communications, which shall be a Class A misdemeanor.

The appraisal district now has the burden of proof to establish the value of the property in a protest hearing brought under Texas Tax Code Section 41.41 if: (1) the appraised value was lowered, (2) the appraised value was not established as a result of a written agreement, or (3) if the property owner provides required information at least 14 days before the hearing. A property owner now has no duty to provide information in a protest hearing authorized under Texas Tax Code Section 41.41 and does not waive the right to appear at a protest hearing by submitting an affidavit to the appraisal review board. This new law provides that an application for refund is presumed denied if there is no response from the tax collector on or before 90 days after the refund application is filed and a taxpayer now must file suit to collect the refund.

H.B. 699 amended Civil Practice and Remedies Code Section 34.041, Texas Property Code Section 51.002(h), and Texas Tax Code Section 34.01(r) to provide that the commissioner's court of a county may designate an area other than an area at the county courthouse where public sales of real property will take place. The location must be in a public place within a reasonable proximity of the county courthouse and as accessible to the public as the courthouse door. The commissioner's court shall record the designated area in the real property records of the county. Except for the public sale of real property required by court order or other law to be made at a place other than the courthouse door, a sale must be held in the designated area if the sale is held on or after the 90th day after the designation is recorded. A designation by a commissioner's court of an area for public sales of real property is not grounds for challenging or invalidating any sale.

The general impression of the 83rd Legislature is that it was relatively uneventful, as lawmakers seemed focused on cleaning up and tweaking previously enacted real estate–related laws as opposed to enacting significant new laws. For most of us this is probably good news, but even small changes may impact your practice, and this article addresses only a small portion of the laws enacted. Additional information regarding other laws that may impact your practice can be found in RELAC's final report for the 83rd session, which is available on the website of the Real Estate, Probate & Trust Law Section of the State Bar of Texas (repl.org).

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