

MARTIN & DROUGHT, P.C.

2017 Texas Legislative Summary of Issues Affecting Financial Institutions

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The following provides a summary of new laws enacted by the Texas Legislature during its 2017 legislative session that may affect a Texas financial institution's business practices. This Summary is not intended to be a comprehensive listing of all legislation that may have some effect on the banking industry, but rather those new laws which we believe to be the most significant. Please feel free to contact either Mr. Lowe or Mr. White with any questions or comments. This Summary is for informational purposes only and is not intended to constitute legal advice.

Home Equity Loans (SJR 60)

Summary: This legislation proposes amendments to the Texas Constitution which, if approved by the voters, will make the following changes to the home equity lending laws:

(1) Bona fide discount points used to buy down the interest rate, appraiser fees, survey fees, title insurance premiums, and the cost of a title exam report will be *excluded* from the constitution's fee cap of 3% of the original principal amount.

(2) The fee cap will be reduced from 3% to 2%.

(3) Borrowers may refinance a home equity loan either as a home equity loan or a non-home equity loan, provided the following conditions are met:

(i) the refinance may not take place earlier than one year following the original closing date;

(ii) the new loan may only include amounts necessary to refinance the original debt and actual costs and reserves required by the lender to refinance the debt;

(iii) the new principal amount, when added to the outstanding principal balances of all other loans secured by the homestead, does not exceed 80% of the fair market value of the homestead;

(iv) the lender provides a notice in the form set out in **Annex 1** hereto to the borrower not later than 3 days after the loan application is submitted and at least 12 days prior to the closing of the new loan;

(4) An affidavit signed by the borrower acknowledging that the requirements set out under Section 3 above have been met conclusively will establish the validity of the new lien against the homestead.

(5) The current prohibition on home equity loans secured by agricultural homestead properties will be repealed.

(6) The notice now required in connection with new home equity loans will be revised to be consistent with the constitutional changes. The revised notice is set out on **Annex 2**.

Effective Date: The proposed amendment will be submitted to the voters on November 7, 2017. If approved by the voters, the changes will be effective January 1, 2018.

Durable Powers of Attorney (HB 1974)

General Overview

This legislation makes sweeping and very important changes to the Texas Durable Power of Attorney Act (Chapters 751 and 752 of the Estates Code). Prior to this bill's enactment, a financial institution ("FI") was not required by law under any circumstances to accept a Durable Power of Attorney ("DPA")—acceptance was entirely optional. That is no longer the case. Now, a FI will be **required** to accept a DPA, subject to the conditions set out in the bill. Moreover, if a FI wrongly refuses to accept a DPA, the principal or agent may bring a court action to mandate that the DPA be accepted. If the principal or agent is successful, the court may award the agent attorney's fees and costs against the FI. The bill is a very complex piece of legislation. Set out below is a discussion of those provisions of the bill that we view to be the most significant. The discussion is somewhat lengthy, reflecting the length of the bill (which runs 45 pages), and is provided (i) for those readers who have an interest in the details of the legislation, and (ii) as a reference guide the reader may find helpful when dealing with DPAs in the future.

Discussion of Key Provisions

Changes to the Requirements of a DPA [Sec. 751.0021]

DPAs will no longer be required to be written in tangible form. They may also be stored in an electronic or other media that is "retrievable in perceivable form." A DPA will no longer need to be signed by the principal (as is required under existing law), so long as it is signed in the

“principal’s ominous presence by another adult directed by the principal to sign the principal’s name on the instrument,” and acknowledged. A DPA governed by the law of another jurisdiction will be recognized in Texas so long as that jurisdiction’s law provides that the agency survives the principal’s subsequent disability or incapacity.

Presumption of Genuine Signature [Sec. 751.0022]

A signature on the DPA will be presumed to be genuine so long as a notary complies with the statutory requirements for taking acknowledgments.

Validity of a DPA [Sec. 751.0023]

A DPA executed in Texas will be valid if it complies with the requirements of Sec. 751.0021. A DPA executed in another jurisdiction will be valid in Texas if the DPA complied at the time it was executed with (i) the law of the jurisdiction that governs the interpretation of the DPA (as determined under Sec. 751.0024), or (ii) federal law governing military powers of attorney. Notably, a photocopy or electronic copy of an original DPA will have the same effect, and may be relied upon to the same extent, as the original.

Authority of an Agent under a DPA – Rights of Survivorship [Sec. 751.031]

An agent may only create or change a right of survivorship if the DPA expressly grants that authority, and the exercise of that authority is not otherwise prohibited by another agreement. Additionally, only an agent who is an ancestor, spouse, or descendant of the principal may exercise authority under the DPA to create a right of survivorship in favor of the agent, unless the DPA expressly provides otherwise.

Termination of a DPA [Sec. 751.131]

A DPA terminates when: (1) the principal dies; (2) the principal revokes the power of attorney; (3) the power of attorney provides that it terminates; (4) the purpose of the power of attorney is accomplished; (5) one of the circumstances with respect to an agent described by (1), (2), or (3) arises and the power of attorney does not provide for another agent to act under the power of attorney; or (6) a permanent guardian of the estate of the principal has qualified to serve in that capacity as provided by Sec. 751.133.

Termination of Agent’s Authority [Sec. 751.132; Sec. 751.134]

Unless the DPA otherwise provides, the agent’s authority continues until (i) the principal revokes the authority, (ii) the agent dies, becomes incapacitated, is no longer qualified, or resigns, (iii) divorced from the principal or the marriage is annulled, or (iv) the DPA terminates on its own terms. Termination of an agent’s authority is not effective as to a third party that does not have actual knowledge of the termination and who acts in good faith.

Continuation of Previous DPA [Sec. 751.135]

Unless a DPA provides otherwise, it will not revoke a previous DPA.

Mandatory Acceptance of DPA; Exceptions [Sec. 751.201]

If a FI is presented with a DPA by an agent with authority to act under the DPA, the FI must either (i) accept the DPA, or (ii) make one of the following requests:

- (A) Request an agent's certification under Sec. 751.203 (discussed below) not later than the 10th business day after the DPA is presented; or
- (B) Request an opinion of counsel under Sec.751.204 (discussed below) not later than the 10th business day after the DPA is presented; or
- (C) Request, if applicable, an English translation under Sec. 751.205 (discussed below) not later than the 5th business day after the DPA is presented.

Unless there are grounds for refusal under Sec. 751.206 (discussed below), a FI who requests either an agent's certification of opinion of counsel must accept the DPA not later than the 7th business day after the DPA is presented, unless the FI and the agent agree to extend the time for acceptance.

If an English translation is requested, the DPA is not considered presented until the translation is provided.

A FI is not required to accept a DPA if the agent does not provide a requested certification, opinion of counsel, or translation.

Agent's Certification [Sec. 751.203]

The bill includes a promulgated form of the Agent's Certification, which is set out on **Annex 4**. The form includes a written statement from an attending physician that the principal is disabled or incapacitated (See Sec. 751.00201 for determination of "disabled or incapacitated"). Importantly, a certification made in compliance with the Act is conclusive proof of the subject matter of the certification.

Opinion of Counsel [Sec. 751.204]

A FI may request an opinion of counsel "regarding any matter of law concerning the [DPA] so long as the [FI] provides to the agent the reason for the request in a writing or other record." If the request has been timely made, the agent must provide the opinion at the principal's expense.

English Translation [Sec. 751.205]

A FI may request an English translation of a DPA if it contains, wholly or partly, language other than English. If the request is timely made, the agent must provide the translation at the principal's expense.

Grounds for Refusing Acceptance [Sec. 751.206]

The Act sets out the following exceptions under which a FI may, but is not obligated to, reject a DPA if:

- (1) the FI would not otherwise be required to engage in a transaction with the principal under the same circumstances, including a circumstance in which an agent seeks to establish a new customer relationship with the FI, or acquire a product or service the FI does not offer; or
- (2) the FI's engaging in the transaction with the principal or the agent under the same circumstances would be inconsistent with Texas or federal law, a request from a law enforcement agency, or a policy adopted by the FI in good faith that is necessary to comply with Texas or federal law or regulatory directive, guidance or executive order; or
- (3) the FI would not engage in a similar transaction with the agent because the FI or an affiliate of the FI (a) has filed a suspicious activity report under federal law with respect to the principal or agent, (b) believes in good faith that the principal or agent has a prior criminal history involving financial crimes, (c) has had a previous, unsatisfactory business relationship with the agent due to or resulting in material loss to the FI, financial mismanagement by the agent, litigation between the FI and the agent alleging substantial damages, or multiple nuisance lawsuits filed by the agent; or
- (4) the FI has actual knowledge of the termination of the agent's authority or of the DPA; or
- (5) the agent refuses to comply with a request for a certification, opinion of counsel or translation, or if the FI in good faith is unable to determine the validity of the DPA because the FI finds the document deficient in a manner that renders the document ineffective for its intended purpose; or
- (6) regardless of whether an agent's certification, opinion of counsel, or translation has been requested or received by the person under this subchapter, the FI believes in good faith that: (i) the DPA is not valid; or (ii) the agent does not have the authority to act as attempted; or (iii) the performance of the requested act would violate the terms of (a) a business entity's governing documents; or (b) an agreement affecting a business entity, including how the entity's business is conducted; or

- (7) the FI commenced, or has actual knowledge that another person commenced, a judicial proceeding to construe the DPA or review the agent's conduct and that proceeding is pending; or
- (8) the FI commenced, or has actual knowledge that another person commenced, a judicial proceeding for which a final determination was made that found: (a) the DPA invalid with respect to a purpose for which the DPA is being presented for acceptance; or (b) the agent lacked the authority to act in the same manner in which the agent is attempting to act under the DPA; or
- (9) the FI makes, has made, or has actual knowledge that another person has made a report to a law enforcement agency or other federal or state agency, including the Department of Family and Protective Services, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting with or on behalf of the agent; or
- (10) the FI receives conflicting instructions or communications with regard to a matter from co-agents acting under the same DPA or from agents acting under different powers of attorney signed by the same principal or another adult acting for the principal as authorized by Sec. 751.0021, provided that the person may refuse to accept the DPA only with respect to that matter; or
- (11) the FI is not required to accept the DPA under the law of the jurisdiction that applies in determining the DPA's meaning and effect, or the powers conferred under the DPA that the agent is attempting to exercise are not included within the scope of activities to which the law of that jurisdiction applies.

Written Statement of Refusal of Acceptance Required [Sec. 751.207]

If a FI refuses to accept a DPA, it must provide the agent a written statement advising of the reason or reasons for doing so. If the ground(s) for refusal is either Sec. 751.206 (2) or (3), the statement must be provided under penalty of perjury. The statement must be provided on or before the date the FI would otherwise be required to accept the DPA under Sec. 751.201.

Date of Acceptance [Sec. 751.208]

A DPA is considered accepted by a FI under Sec. 751.201 on the first day the FI agrees to act at the agent's direction under the DPA.

Good Faith Reliance on DPA [Sec. 751.209]

A FI that in good faith accepts a DPA may rely on the presumption under Sec. 751.0022 that the signature is genuine, and that the DPA was properly executed, unless the FI has *actual knowledge* that the signature of the principal (or of another adult directed by the principal to sign the principal's name as authorized by Sec. 751.0021) is not genuine. Likewise, a FI may in good faith accept a DPA relying on the presumption that the DPA is not void, invalid, or terminated,

that the purported agent's authority is not void, invalid, or terminated, and that the agent is not exceeding or improperly exercising the agent's authority, unless the FI has *actual knowledge* to the contrary. A potential problem here is that under Sec. 751.211 any knowledge on the part of *an employee* of a FI is considered knowledge on the part of the FI.

Reliance on Requested Information [Sec. 751.210]

A FI may rely on, without further investigation or liability to another person, an agent's certification, opinion of counsel, or English translation that is provided to the FI. While this section appears to provide a broad "safe harbor" to protect a FI against liability exposure, it is not clear whether it would protect a FI in the event an employee of a FI had actual knowledge that any factual statements contained in an agent's certification were untrue. There appears to be a potential conflict between this Section and Sec. 751.209.

Cause of Action for Refusal to Accept DPA [Sec. 751.212]

The principal or agent may bring a cause of action against the FI who refuses to accept a DPA in violation of the Act. If the court finds against the FI, the court must order the FI to comply with the DPA and may award court costs and reasonable and necessary attorney's fees. The Act contains no other penalties for wrongful failure to accept a DPA.

Judicial Relief [Sec. 751.251]

A FI that is asked to accept a DPA may bring an action requesting the court to construe or determine the validity or enforceability of, the DPA.

Conforming Changes to Statutory DPA Form [Sec. 752.051]

The Statutory DPA form has been revised to be consistent with the provisions of the Act.

Effective Date: September 1, 2017

Revised Uniform Fiduciary Access to Digital Assets Act [SB 1193]

General Overview

This Act sets out a new Chapter 2001 to the Estates Code. It is designed to provide certain "fiduciaries" that have access to traditional assets of the individual for whom they are acting also with a degree of access to "digital assets" owned by that individual. It sets out a complex statutory scheme whereby such fiduciaries may obtain access to digital assets of a "user" held by a "custodian." A "fiduciary" is (i) an agent under a power of attorney (other than a medical power of attorney), (ii) an executor/administrator of an estate of a deceased individual, (iii) a guardian of the estate of an incapacitated individual, or (iv) a trustee. A "digital asset" is "an electronic record in which an individual has a right or interest." A "user" is a person who has an "account" with a custodian. An "account" is "an arrangement under a terms-of-service

agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides good or services to the user.” A “custodian” is a person or entity that “carries, maintains, processes, receives, or stores a digital asset of a user.” Set out below is a discussion of those provisions of the Act that we view to be the most significant. As with the new DPA legislation the discussion is somewhat lengthy, reflecting the length of the bill (which runs 29 pages), and is provided (i) for those readers who have an interest in the details of the legislation, and (ii) as a reference guide the reader may find helpful when dealing with requests for access to digital assets in the future.

Discussion of Key Provisions

Applicability [Sec. 2001.003]

The Act only applies to a FI if the user resides in Texas or resided in Texas on the date of his or her death. It does not apply to a digital asset of the FI used by an employee of the FI in the FI’s ordinary course of business.

Procedures for Access – User Direction [Sec. 2001.051]

A user may use an online tool (as defined in the Act) to direct the FI to disclose or not disclose to a designated recipient some or all of the user’s digital assets (which includes electronic communications). If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool will control over the provisions of a will, trust, power of attorney or other record.

If a user has not provided direction via an online tool, or no online tool is available, the user may allow or prohibit disclosure in a will, trust, power of attorney, or other record.

A user’s direction under either scenario set out above will override the provisions of a terms-of-service agreement between the FI and the user. If a user has not provided such direction, then access to a user’s digital assets may be modified by the user, by federal law, or by the provisions of a terms-of-service agreement.

Procedures for Access – Authority of the FI [Sec. 2001.053]

When disclosing information under the Act, the FI may, in its sole discretion (i) grant full access to the user’s account, (ii) grant partial access to the account sufficient to perform the tasks with which the fiduciary is charged, or (iii) provide the fiduciary with a copy of any digital asset that the user could have obtained if the user were alive or had full capacity to act. the FI may assess a “reasonable administrative charge” for costs incurred. the FI is not required to disclose any digital assets that have been deleted by the user.

If a user has directed the FI to disclose some, but not all, of the user’s digital assets, the FI is not required to disclose the assets if segregation of the assets would “impose an undue burden” on the FI. If the FI believes the request imposes an undue burden, the FI or the fiduciary may seek a court order determining what assets the FI is required to disclose.

Procedures for Access – Electronic Communications of Deceased User [Sec. 2001.101]

If a deceased user consented to or a court directs disclosure of the content of an electronic communication of the user, the FI is required to disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the FI: (1) a written request for disclosure in physical or electronic form; (2) a certified copy of the death certificate of the user; (3) a certified copy of letters testamentary or of administration, a small estate affidavit filed under Sec. 205.001, or other court order; and (4) unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of an electronic communication if the user consented to the disclosure.

In addition to the above items, the personal representative must provide the following if requested by the FI: (1) a number, user name, address, or other unique subscriber or account identifier assigned by the FI to identify the deceased user's account; (2) evidence linking the account to the user; or (3) a finding by the court that:

- (A) the deceased user had a specific account with the FI, identifiable by the information specified under (1) above;
- (B) disclosure of the content of an electronic communication of the user would not violate 18 U.S.C. Sec. 2701 et seq., 47 U.S.C. Sec. 222, or other applicable law;
- (C) unless the user provided direction using an online tool, the user consented to disclosure of the content of an electronic communication; or
- (D) disclosure of the content of an electronic communication of the user is reasonably necessary for administration of the estate.

Procedures for Access – Other Digital Assets of Deceased User [Sec. 2001.102]

Unless the deceased user prohibited disclosure of digital assets or the court directs otherwise, the FI is required to disclose to the personal representative of the estate of a deceased user a catalog of electronic communications sent or received by the user and digital assets, other than the content of an electronic communication, of the user if the representative provides the FI: (1) a written request for disclosure in physical or electronic form; (2) a certified copy of the death certificate of the user; and (3) a certified copy of letters testamentary or of administration, a small estate affidavit filed under Sec. 205.001, or other court order. In addition, the personal representative must provide the following if requested by the FI: (i) a number, user name, address, or other unique subscriber or account identifier assigned by the FI to identify the deceased user's account; (ii) evidence linking the account to the user; (iii) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or (iv) a finding by the court that:

- (A) the deceased user had a specific account with the FI, identifiable by the information specified under (i) above; or
- (B) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

Procedures for Access – Electronic Communications of Principal [Sec. 2001.131]

To the extent a power of attorney expressly grants an agent authority over the content of an electronic communication sent or received by the principal and unless directed otherwise by the principal or the court, the FI is required to disclose to the agent the content of an electronic communication if the agent provides the FI: (1) a written request for disclosure in physical or electronic form; (2) an original or copy of the power of attorney expressly granting the agent authority over the content of an electronic communication of the principal; and (3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect. In addition, the agent must provide the following if requested by the FI: (1) a number, user name, address, or other unique subscriber or account identifier assigned by the FI to identify the principal's account; or (2) evidence linking the account to the principal.

Procedures for Access – Other Digital Assets of Principal [Sec. 2001.132]

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, the FI is required to disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalog of electronic communications sent or received by the principal and digital assets of the principal, other than the content of an electronic communication, if the agent provides the FI: (1) a written request for disclosure in physical or electronic form; (2) an original or copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal; and (3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect. In addition, the agent must provide the following if requested by the FI: (1) a number, user name, address, or other unique subscriber or account identifier assigned by the FI to identify the principal's account; or (2) evidence linking the account to the principal.

Procedures for Access – Assets Held in Trust; Trustee is Original User [Sec. 2001.151]

Unless otherwise ordered by the court or provided in a trust, the FI is required to disclose to a trustee that is an original user of an account, any digital asset of the account held in trust, including a catalog of electronic communications of the trustee and the content of an electronic communication.

Procedures for Access – Electronic Communications Held in Trust; Trustee not Original User [Sec. 2001.152]

Unless otherwise ordered by the court, directed by the user, or provided in a trust, the FI is required to disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried,

maintained, processed, received, or stored by the FI in the account of the trust if the trustee provides the FI: (1) a written request for disclosure in physical or electronic form; (2) a certified copy of the trust instrument or a certification of trust under Section 114.086, Property Code, that includes consent to disclosure of the content of an electronic communication to the trustee; and (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust. In addition, the trustee must provide the following if requested by the FI: (1) a number, user name, address, or other unique subscriber or account identifier assigned by the FI to identify the trust's account; or (2) evidence linking the account to the trust.

Procedures for Access – Other Digital Assets Held in Trust; Trustee no Original User [Sec. 2001.153]

Unless otherwise ordered by the court, directed by the user, or provided in a trust, the FI is required to disclose to a trustee that is not an original user of an account a catalog of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the FI in an account of the trust and any digital assets in which the trust has a right or interest, other than the content of an electronic communication, if the trustee provides the FI: (1) a written request for disclosure in physical or electronic form; (2) a certified copy of the trust instrument or a certification of trust under Section 114.086, Property Code; and (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust. In addition, the trustee must provide the following if requested by the FI: (1) a number, user name, address, or other unique subscriber or account identifier assigned by the FI to identify the trust's account; or (2) evidence linking the account to the trust.

Procedures for Access – Disclosure of Digital Assets Held by Guardian [Sec. 2001.171]

After an opportunity for a hearing under the Guardianship provisions of the Estates Code, the court may grant the guardian of a ward access to the digital assets of the ward. Unless otherwise ordered by the court or directed by the user, the FI is required to disclose to the guardian of a ward the catalog of electronic communications sent or received by the ward and any digital assets in which the ward has a right or interest, other than the content of an electronic communication, if the guardian provides the FI: (1) a written request for disclosure in physical or electronic form; and (2) a certified copy of the court order that gives the guardian authority over the digital assets of the ward. In addition, the guardian must provide the following if requested by the FI: (1) a number, user name, address, or other unique subscriber or account identifier assigned by the FI to identify the account of the ward; or (2) evidence linking the account to the ward.

The guardian of a ward may request that the FI suspend or terminate an account of the ward for good cause. Such a request must be accompanied by a certified copy of the court order giving the guardian authority over the ward's digital assets.

Authority to Terminate Account [Sec. 2001.202]

The FI may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

A fiduciary of a user may request that the FI terminate the user's account. Such a request must be in writing, in physical or electronic form, and accompanied by: (1) if the user is deceased, a certified copy of the death certificate of the user; and (2) one of the following giving the fiduciary authority over the account: (a) a certified copy of letters testamentary or of administration, a small estate affidavit filed under Sec. 205.001, or other court order; (b) a power of attorney; or (c) the trust instrument. In addition, the fiduciary shall provide the following if requested by the FI: (i) a number, user name, address, or other unique subscriber or account identifier assigned by the FI to identify the user's account; (ii) evidence linking the account to the user; or (iii) a finding by the court that the user had a specific account with the FI, identifiable by the information specified under (i) above.

Custodian Compliance [Sec. 2001.231]

The FI is required to comply with a properly submitted request for information regarding digital assets within 60 days following the FI's receipt of all information the fiduciary is required to provide. If the FI fails to do so, the fiduciary may apply to the court for an order directing compliance.

The FI may notify a user that a request for disclosure or to terminate an account has been received.

The FI may deny a request if the FI is aware of any lawful access to the account following the receipt of the request.

The FI is authorized to require a fiduciary to obtain a court order that: (1) specifies that an account belongs to the ward or principal; (2) specifies that there is sufficient consent from the ward or principal to support the requested disclosure; and (3) contains a finding required by other law.

Custodian Immunity [Sec. 2001.232]

The FI and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with the Act.

Conforming Change to Statutory DPA Form [Sec. 752.051]

The Statutory DPA form has been revised to specifically include access to digital assets and the content of electronic communications as a power the principal may select to grant the agent.

Effective Date: September 1, 2017

Financial Exploitation of Vulnerable Adults (HB 3921)

Summary: This bill makes a number of important changes to current law governing the obligation to report suspected financial exploitation of vulnerable adults. The current law is set out in Chapter 48 of the Human Resources Code, which provides that any person having cause to believe that an elderly or disabled person is being financially exploited must report the suspected abuse to the Department of Family and Protective Services. Failure to report if required to is a Class A misdemeanor. Various stakeholders such as TBA, IBAT, the securities industry, and AARP supported this legislation which makes, in the view of many in the banking industry, “common sense” revisions to current law.

The bill sets out a detailed set of procedures specifically applicable to a FI. The bill defines “financial exploitation,” which is currently an undefined term under Texas law. If a FI employee has cause to believe that financial exploitation has occurred, the employee must notify the FI. The FI must then assess the situation and submit a report to DFPS that complies with Sec. 48.051 of the Human Resources Code no later than the earlier of (i) the date the FI completes its assessment, or (ii) the fifth business day after the employee notifies the FI of the FI otherwise has cause to believe that the suspected exploitation has occurred, is occurring, or has been attempted. The FI is required to adopt internal policies and procedures for (i) required employee notifications, and (ii) FI assessments. These may authorize the FI to report the suspected exploitation to other appropriate agencies, such as the Attorney General, the Federal Trade Commission, and law enforcement agencies. The FI is permitted to also notify third parties “reasonably associated” with the vulnerable adult of the suspected exploitation (but not third parties suspected of committing the exploitation).

The FI is permitted to place a hold on the vulnerable adult’s account, and must place a hold on the account if requested to do so by DFPS or a law enforcement agency. A hold expires ten days after the FI’s report is submitted to DFPS; provided that the hold may be extended for up to thirty days if requested by a state or federal agency or law enforcement agency. The FI may also petition a court to extend or shorten the hold. The FI is required to adopt policies and procedures for placing holds on accounts under the new law.

The bill provides immunity to FI employees and to the FI from any civil or criminal liability arising out of reporting suspected abuse or who testifies or otherwise participates in a judicial proceeding arising out of the report except for actions taken in bad faith or with a malicious purpose. Likewise, the FI is granted similar immunity in connection with placing holds on accounts so long as it acts “in good faith and with the exercise of reasonable care.”

Unless otherwise prohibited by law, the FI is required to provide upon request records concerning the suspected exploitation to DFPS, a law enforcement agency, or prosecuting attorney’s office.

Effective Date: September 1, 2017

Online Notarizations (HB 1217)

Summary: This bill establishes procedures whereby it will be possible for a notary public to notarize documents online electronically, without the signatory being in the physical presence of the notary. The bill is complex, and a detailed analysis is beyond the scope of this Memorandum. Moreover, the Secretary of State is given broad authority to establish rules to implement the bill's provisions. Until those rules become effective there can be no certainty as to precisely how the online acknowledgments will be required to be conducted.

Generally, in lieu of appearing personally before the notary, a signatory may appear via two-way audio and video communication that meets the requirements set out in the bill and the rules adopted by the Secretary of State. The bill establishes a procedure whereby a notary may apply to become qualified to be appointed as an online notary. An online notary will be required to comply with the bill's detailed (and stringent) requirements regarding (i) recordkeeping, (ii) taking "reasonable steps" to ensure the integrity, security, and authenticity of online notarizations, maintain a backup for the electronic record, protect the backup from unauthorized use, and ensuring that any registered device used to create an electronic signature is current and has not been revoked, (iii) keeping the notary's electronic record, electronic signature, and electronic seal secure, and (iv) notification of law enforcement and the Secretary of State of the theft or vandalism of the notary's electronic record, electronic signature, or electronic seal. A notary is required to follow the bill's requirements concerning verification of identity. The notary must take "reasonable steps" to ensure that the two-way communication is secure from unauthorized notarization.

Effective Date: July 1, 2018

Consumer Account Selection Disclosure (SB 714)

Summary: This bill undoes the confusing and unwieldy changes made last session to the new bank account disclosures form found in Estates Code Sec. 113.052 (SB 1791). The customer will no longer be required to initial to the right of every paragraph on the form, regardless of whether the customer has selected that account or not. The customer will only be required to initial the specific account type selected by the Customer, and sign an acknowledgment at the end of the form that he or she has read each paragraph of the form, has received the disclosure set out in the form, and has initialed the type of account selected. It is no longer necessary to send a separate disclosure form. The disclosures may be included with other account documentation so long as the disclosures are the first items of the documentation. The disclosures are no longer required to be printed in 14-point bold type or in Spanish. Finally, if a type of multi-party account is not offered, no disclosure is required as to that type of account. The bill sets out an acceptable form disclosure, which is attached as **Annex 3**.

Effective Date: September 1, 2017

Residential Foreclosures (HB 1470)

Summary: This bill applies only to foreclosures of residential real property, defined as (i) a single-family house, (ii) a duplex, triplex or quadraplex, or (iii) a condominium or co-op unit owned by the borrower. The purpose of the legislation is to better define certain aspects of the foreclosure process. A trustee or substitute trustee conducting a foreclosure sale is specifically authorized to contract with an attorney to advise the trustee or substitute trustee or to administer or perform any of the trustee's or substitute trustee's functions or responsibilities under the deed of trust. The bill requires a winning third-party bidder to provide certain specified information to the trustee or substitute trustee at the time the sale is completed, and authorizes the trustee or substitute trustee to decline to complete the transaction or deliver a deed if a winning bidder fails to provide such information. A trustee or substitute trustee is now required (i) to provide the winning bidder with a receipt for the sale proceeds tendered and, (ii) except when prohibited by law and within a reasonable time, to deliver the deed to the winning bidder or to file the deed for recording. The bill requires the trustee or substitute trustee (i) to ensure that funds received at the sale are maintained in a separate account until distributed and to cause to be maintained a written record of deposits to and disbursements from the account, and (ii) to make reasonable attempts to identify and locate the persons entitled to all or any part of the sale proceeds. A trustee or substitute trustee is now authorized to receive in connection with the sale and specified related post-sale actions reasonable actual costs incurred, a reasonable trustee's or substitute trustee's fee, and reasonable trustee's or substitute trustee's attorney's fees. The bill also sets out provisions relating to the timing, payment, and reasonableness of such fees. The bill entitles a trustee or substitute trustee who prevails in a suit based on a claim that relates to the sale and that is found by a court to be groundless in fact or in law to recover reasonable attorney's fees necessary to defend against the claim and authorizes such fees to be paid from the excess sale proceeds, if any.

Effective Date: September 1, 2017

Savings Promotion Raffles (HB 471)

Summary: Subject to approval through constitutional amendment, HB 471 seeks to allow financial institutions to create incentive programs to encourage the opening of savings accounts. The scope is somewhat limited and some specific guidelines apply, but if followed there is safe harbor from the general Texas prohibition on sweepstakes in connection with the purchase of goods and services. Specifically, financial institutions will be authorized to conduct a raffle associated with opening a savings account or other savings program, provided that each entry has an equal probability of winning. Additionally, there cannot be a fee for participation (a deposit into the account is not a fee), and any service fees, withdrawal limits, interest, or other terms must be similar to those imposed by the financial institution on other accounts.

Effective Date: The proposed amendment will be submitted to the voters on November 7, 2017. If approved by the voters, the changes will be effective immediately.

Prohibition on Surcharges for Credit Card Purchases (SB 560)

Summary: Currently, the prohibition of surcharges on credit card purchases by merchants is contained in the Finance Code, under the authority of the Finance Commission of Texas, while a similar prohibition for surcharges on debit and stored value purchases is contained in the Business & Commerce Code, under the authority of the Attorney General. Presumably, the enforcement resources differ. For consistency, this bill transfers the prohibition relating to credit card purchases to the Business & Commerce Code, along with the prohibition relating to debit card purchases. As a result, any surcharge by sellers for using any credit card, debit card, or other stored value card is subject to a uniform civil penalty (up to \$500 per violation), which may be consistently enforced by the state.

Effective date: September 1, 2017

Photo Identification for Credit or Debit Card Transactions (SB 1381)

Summary: This amendment to the Business & Commerce Code specifically authorizes a merchant to decline a credit or debit card for payment in a point of sale transaction if the customer fails or refuses to produce photo identification. This bill does not establish a requirement for merchants to require identification, nor does it create a penalty if they choose not to—it merely provides a safe-haven for merchants to decline transactions, where it might otherwise be a violation of their agreement with Visa or MasterCard. Presumably, this will have a positive impact on unauthorized transactions.

Effective date: January 1, 2018

Money Market Accounts Authorized for Public Funds (HB 2647)

Summary: Under the Public Funds Investment Act, state agencies, local governments, and non-profit corporations acting on their behalf must follow specific guidelines when investing or depositing their public funds. This bill seeks to remove uncertainty as to whether some specific investments, such as money market deposit accounts, are authorized investments under the Public Funds Investments Act. More specifically, the bill expands the list of authorized investments contained in Government Code Sec. 2256.009 to include deposits in virtually any interest-bearing deposit account insured by the FDIC or an instrumentality of the United States.

Effective date: September 1, 2017

Expungement of Notice of Lis Pendens (SB 1955)

Summary: A Notice of Lis Pendens (NLP) is a document filed in a county's Real Property Records providing notice that a lawsuit has been filed involving either the title to a parcel of real property or a claimed ownership interest in it. Historically, a filed release was

needed to remove the cloud on title. In some situations though, it was not possible to obtain a release. To address this problem, the Legislature in 2009 passed a bill authorizing the expungement of a NLP by court order (HB 396, 81st Legislature). However, some question remained as to whether a purchaser of property subject to an expunged NLP was entitled to “bona fide purchaser” status.

This bill clarifies that once a certified copy of an order expunging a NLP has been filed, the property may be transferred free and clear of all matters contained in the NLP, as well as matters arising in connection with the action behind the NLP. As a result purchasers, lenders, title companies, and others will be entitled to rely on an expungement order, and the purchaser is entitled to status as a “bona fide purchaser.”

Effective date: This bill is effective as to orders filed after September 1, 2017.

Termination of Safe Deposit Box Agreements (SB 1400)

Summary: SB 1400 modifies Sec. 509.109 of the Finance Code relating to the termination of safe deposit box agreements. Upon its effectiveness, any business that maintains and rents safe deposit boxes must give notice to the lessee at least 90 days prior to terminating the safe deposit agreement, and provide the opportunity for the lessee to retrieve the contents throughout the notice period. If the rent has been delinquent for at least six months, however, notice to each lessee is only required to be given 60 days prior to termination. Notice will no longer be discretionary; it will become mandatory for any termination of the safe deposit box agreement. The notice must also be specific, and state that the contents will be removed if they are not retrieved by a specified date. Additionally, if the contents are not retrieved, they must be disposed of not later than two years following the opening of the box.

Effective Date: September 1, 2017

Annex 1

Notice Required in Connection with the
Refinance of Home Equity Loan
as a Non-Home Equity Loan

[Follows this page]

YOUR EXISTING LOAN THAT YOU DESIRE TO REFINANCE IS A HOME EQUITY LOAN. YOU MAY HAVE THE OPTION TO REFINANCE YOUR HOME EQUITY LOAN AS EITHER A HOME EQUITY LOAN OR AS A NON-HOME EQUITY LOAN, IF OFFERED BY YOUR LENDER.

HOME EQUITY LOANS HAVE IMPORTANT CONSUMER PROTECTIONS. A LENDER MAY ONLY FORECLOSE A HOME EQUITY LOAN BASED ON A COURT ORDER. A HOME EQUITY LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE.

IF YOU HAVE APPLIED TO REFINANCE YOUR EXISTING HOME EQUITY LOAN AS A NON-HOME EQUITY LOAN, YOU WILL LOSE CERTAIN CONSUMER PROTECTIONS. A NON-HOME EQUITY REFINANCED LOAN:

- (1) WILL PERMIT THE LENDER TO FORECLOSE WITHOUT A COURT ORDER;
- (2) WILL BE WITH RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE; AND
- (3) MAY ALSO CONTAIN OTHER TERMS OR CONDITIONS THAT MAY NOT BE PERMITTED IN A TRADITIONAL HOME EQUITY LOAN.

BEFORE YOU REFINANCE YOUR EXISTING HOME EQUITY LOAN TO MAKE IT A NON-HOME EQUITY LOAN, YOU SHOULD MAKE SURE YOU UNDERSTAND THAT YOU ARE WAIVING IMPORTANT PROTECTIONS THAT HOME EQUITY LOANS PROVIDE UNDER THE LAW AND SHOULD CONSIDER CONSULTING WITH AN ATTORNEY OF YOUR CHOOSING REGARDING THESE PROTECTIONS.

YOU MAY WISH TO ASK YOUR LENDER TO REFINANCE YOUR LOAN AS A HOME EQUITY LOAN. HOWEVER, A HOME EQUITY LOAN MAY HAVE A HIGHER INTEREST RATE AND CLOSING COSTS THAN A NON-HOME EQUITY LOAN.

Annex 2

**Revised Notice Required in Connection with the
Origination of New Home Equity Loan**

[Follows this page]

NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;

(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 2 PERCENT OF THE LOAN AMOUNT, EXCEPT FOR A FEE OR CHARGE FOR AN APPRAISAL PERFORMED BY A THIRD PARTY APPRAISER, A PROPERTY SURVEY PERFORMED BY A STATE REGISTERED OR LICENSED SURVEYOR, A STATE BASE PREMIUM FOR

A MORTGAGEE POLICY OF TITLE INSURANCE WITH ENDORSEMENTS, OR A TITLE EXAMINATION REPORT;

(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

(I) (repealed);

(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;

(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A LOAN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND MAY NOT WITHOUT YOUR CONSENT CLOSE BEFORE ONE BUSINESS DAY AFTER THE DATE ON WHICH YOU RECEIVE A COPY OF YOUR LOAN APPLICATION IF NOT PREVIOUSLY PROVIDED

AND A FINAL ITEMIZED DISCLOSURE OF THE ACTUAL FEES, POINTS, INTEREST, COSTS, AND CHARGES THAT WILL BE CHARGED AT CLOSING; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN, UNLESS ON OATH YOU REQUEST AN EARLIER CLOSING DUE TO A DECLARED STATE OF EMERGENCY;

(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;

(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT EXCEPT A DEBT THAT IS SECURED BY YOUR HOME OR OWED TO ANOTHER LENDER;

(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS FOR SUBSTANTIVE TERMS OF AGREEMENT LEFT TO BE FILLED IN;

(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

(5) PROVIDE THAT YOU RECEIVE A COPY OF YOUR FINAL LOAN APPLICATION AND ALL EXECUTED DOCUMENTS YOU SIGN AT CLOSING;

(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND REBORROW MONEY UNDER THE LINE OF CREDIT;

(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN AMOUNT OF AT LEAST \$4,000;

(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, OR SIMILAR DEVICE, OR PREPRINTED CHECK THAT YOU DID NOT SOLICIT, TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;

(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF CREDIT IS ESTABLISHED;

(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT ANY TIME EXCEEDS 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 80 PERCENT OF THE FAIR MARKET VALUE; AND

(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE LINE OF CREDIT.

THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE.

Annex 3

Account Disclosure Form

[Follows this page]

[NAME OF FINANCIAL INSTITUTION]

UNIFORM SINGLE-PARTY OR MULTIPLE-PARTY ACCOUNT SELECTION

FORM NOTICE: The type of account you select may determine how property passes on your death. Your will may not control the disposition of funds held in some of the following accounts. You may choose to designate one or more convenience signers on an account, even if the account is not a convenience account. A designated convenience signer may make transactions on your behalf during your lifetime, but does not own the account during your lifetime. The designated convenience signer owns the account on your death only if the convenience signer is also designated as a P.O.D. payee or trust account beneficiary.

Select one of the following accounts by placing your initials next to the account selected:

___ (1) SINGLE-PARTY ACCOUNT WITHOUT "P.O.D." (PAYABLE ON DEATH)

DESIGNATION. The party to the account owns the account. On the death of the party, ownership of the account passes as a part of the party's estate under the party's will or by intestacy.

Enter the name of the party:

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

___ (2) SINGLE-PARTY ACCOUNT WITH "P.O.D." (PAYABLE ON DEATH)

DESIGNATION. The party to the account owns the account. On the death of the party,

ownership of the account passes to the P.O.D. beneficiaries of the account. The account is not a part of the party's estate.

Enter the name of the party:

Enter the name or names of the P.O.D. beneficiaries:

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

___ (3) MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP. The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes as a part of the party's estate under the party's will or by intestacy.

Enter the names of the parties:

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

___ (4) MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP. The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes to the surviving parties.

Enter the names of the parties:

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

___ (5) MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND P.O.D. (PAYABLE ON DEATH) DESIGNATION. The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of the last surviving party, the ownership of the account passes to the P.O.D. beneficiaries.

Enter the names of the parties:

Enter the name or names of the P.O.D. beneficiaries:

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

___ (6) CONVENIENCE ACCOUNT. The parties to the account own the account. One or more convenience signers to the account may make account transactions for a party. A convenience signer does not own the account. On the death of the last surviving party, ownership of the account passes as a part of the last surviving party's estate under the last surviving party's will or by intestacy. The financial institution may pay funds in the account to a convenience signer before the financial institution receives notice of the death of the last surviving party. The payment to a convenience signer does not affect the parties' ownership of the account.

Enter the names of the parties:

Enter the name(s) of the convenience signer(s):

___ (7) TRUST ACCOUNT. The parties named as trustees to the account own the account in proportion to the parties' net contributions to the account. A trustee may withdraw funds from the account. A beneficiary may not withdraw funds from the account before all trustees are deceased. On the death of the last surviving trustee, the ownership of the account passes to the beneficiary. The trust account is not a part of a trustee's estate and does not pass

under the trustee's will or by intestacy, unless the trustee survives all of the beneficiaries and all other trustees.

Enter the name or names of the trustees:

Enter the name or names of the beneficiaries:

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

ACKNOWLEDGMENT: I acknowledge that I have read each paragraph of this form and have received disclosure of the ownership rights to the accounts listed above. I have placed my initials next to the type of account I want.

Signature

Annex 4

Agent's Certification Form

[Follows this page]

CERTIFICATION OF DURABLE POWER OF ATTORNEY BY AGENT

I, _____ (agent), certify under penalty of perjury that:

1. I am the agent named in the power of attorney validly executed by _____ (principal) ("principal") on _____ (date), and the power of attorney is now in full force and effect.

2. The principal is not deceased and is presently domiciled in _____ (city and state/territory or foreign country).

3. To the best of my knowledge after diligent search and inquiry:

a. The power of attorney has not been revoked by the principal or suspended or terminated by the occurrence of any event, whether or not referenced in the power of attorney;

b. At the time the power of attorney was executed, the principal was mentally competent to transact legal matters and was not acting under the undue influence of any other person;

c. A permanent guardian of the estate of the principal has not qualified to serve in that capacity;

d. My powers under the power of attorney have not been suspended by a court in a temporary guardianship or other proceeding;

e. If I am (or was) the principal's spouse, my marriage to the principal has not been dissolved by court decree of divorce or annulment or declared void by a court, or the power of attorney provides specifically that my appointment as the agent for the principal does not terminate if my marriage to the principal has been dissolved by court decree of divorce or annulment or declared void by a court;

f. No proceeding has been commenced for a temporary or permanent guardianship of the person or estate, or both, of the principal; and

g. The exercise of my authority is not prohibited by another agreement or instrument.

4. If under its terms the power of attorney becomes effective on the disability or incapacity of the principal or at a future time or on the occurrence of a contingency, the principal now has a disability or is incapacitated or the specified future time or contingency has occurred.

5. I am acting within the scope of my authority under the power of attorney, and my authority has not been altered or terminated.

6. If applicable, I am the successor to _____ (predecessor agent), who has resigned, died, or become incapacitated, is not qualified to serve or has declined to serve as agent, or is otherwise unable to act. There are no unsatisfied conditions remaining under the power of attorney that preclude my acting as successor agent.

7. I agree not to:

a. Exercise any powers granted by the power of attorney if I attain knowledge that the power of attorney has been revoked, suspended, or terminated; or

b. Exercise any specific powers that have been revoked, suspended, or terminated.

8. A true and correct copy of the power of attorney is attached to this document.

9. If used in connection with an extension of credit under Section 50(a)(6), Article XVI, Texas Constitution, the power of attorney was executed in the office of the lender, the office of a title company, or the law office of _____.

Date: _____, 20__.

_____ (signature of agent)