

# TEXAS LAND TITLE ASSOCIATION

# 2017 LEGISLATIVE REPORT

**AARON DAY**  
*TLTA Director of  
Government Affairs and Counsel*



## TLTA Emerges Victorious From 85th Legislative Session

The 85th Session of the Texas Legislature began with TLTA fending off attacks on our rate system from well-funded special interest groups. Now that the session has concluded, we can look back and say with confidence that your industry won several key battles at the Texas Capitol.

The session began with:

- 21 new House members and one new Senate member, all Republicans
- Gov. Abbott's stated priorities, which included: CPS reform, sexual assault in schools, banning "sanctuary cities," protecting the border, protecting law enforcement officers, anti-abortion legislation, changing early childhood education, school vouchers, the Texas Enterprise Fund, limiting storm litigation, property tax reform, cutting the budget, ethics reform, stopping the collection of union dues by public entities and creating a convention of states to propose constitutional amendments

The session ended on May 29 with:

- A \$216.4 billion budget passed
- 6,631 bills filed (not including resolutions): 4,333 in the House and 2,298 in the Senate
- 1,163 bills and joint resolutions became law
- 50 bills vetoed by the governor

The session also ended with the following specific victories and accomplishments for the Texas title insurance industry:

- Re-regulation attempts defeated
- 2 TLTA affirmative agenda bills passed
- 9 bills and resolutions supported by TLTA passed

Shortly after the conclusion of the regular session, Gov. Greg Abbott called a special session to consider 20 emergency items. It will convene on July 17.

### Rate Re-regulation Attempts Defeated

Three bills were filed, that could have dramatically impacted our rate system. [SB 372](#) by Sen. Bob Hall would have created a "file-and-use" rate system, where each underwriter would file a rate. Even though [SB 2203](#) by Chairman Kelly Hancock, as filed, did not contain language amending the rate system, it was understood to be a vehicle for a rate re-regulation bill depending on how the conversation went during the session.

That conversation was centered around [HB 4239](#) – authored by Rep. Sergio Muñoz, Jr. – which would dramatically upend our rate system by injecting both a "file-and-use" and "flex band" approach to title rates.

This bill was eventually heard in the House Committee on Insurance. On Tuesday, April 25, the committee held a hearing for the bill. TLTA put forth a lineup of expert witnesses to testify against the bill, stating that it would increase costs for Texas homeowners, reduce competition by shuttering small businesses and increase risks and claims. Witnesses also pointed out the differences between title insurance and property/casualty insurance, reminding the committee that title insurance is more assurance than insurance, with premiums only paid once. The hearing drew a large crowd, with 142 people signing in as witnesses, the clear majority of whom registered in opposition. A big thank-you to all the TLTA members who packed the hearing room.

During her testimony, Leslie Midgley, CAE, Executive Vice President and CEO of TLTA, discussed how title insurance provides “13,000 quality Texas jobs” for 592 licensed title agencies, including 540 independently owned companies. She also elaborated on the fact that title insurance prices are 15 percent lower today than they were 25 years ago, stating, “This is a testament to the system we have in place. Today’s debate is really about what type of regulatory system the legislature wants. I can tell you that Texas is widely viewed across the country as a model for a successful title system.”

Proponents of the bill – which included Doug Deason, Texans for Free Enterprise (TFE); Bill Hammond, Executive Director, TFE; Dr. David Eaton of The LBJ School of Public Affairs at The University of Texas at Austin; Bill Peacock, Texas Public Policy Foundation (TPPF); and Rod Bordelon, TFE – claimed that the bill was about free market competition and would result in lower prices. However, they did not dispute that claims could potentially increase if the bill passed.

After hearing almost two hours of testimony, including extensive questioning by committee members, the committee voted to leave [HB 4239](#) pending, where it effectively died.

## Affirmative Agenda: Adverse Possession Amongst Co-Tenant Heirs

Part of TLTA’s affirmative agenda this legislative session included seeking the introduction and passage of a bill to provide a statutory means of adversely possessing real property against co-tenants. No such mechanism existed.

On Monday, March 27, TLTA member Roland Love testified on [SB 1249](#) by Sen. Royce West. “This bill arose out of a situation where we had natural disasters such as hurricanes like Katrina,” said Love during his testimony. “It’s been patterned largely after bills that are laws that already exist in New York and Louisiana; however, it is more stringent.”

Added Love, “Typically there is one person who’s taken care of the property for many years, even multiple generations, paid the taxes, and yet they don’t have the clear title to allow them to get financial aid to mortgage the property, to improve the property and otherwise deal with the property, and this bill addresses that situation. It’s good for the economy, it’s good for the taxpayer base and it’s good for the families that have this property, and their families.”

[SB 1249](#), which was championed in the House by Rep. Mike Schofield, was signed by the governor on June 12 and becomes effective Sept. 1.

## Affirmative Agenda: Lis Pendens

TLTA strove to clarify the lis pendens expungement statute so title agents and insurers can rely upon it. [SB 1955](#) by Sen. Bryan Hughes ([HB 4086](#) was the companion bill by Rep. John Wray) passed out of the House and was signed into law by the governor. It becomes effective Sept. 1.

The effort was the result of a TLTA Board of Directors’ decision made just a few days before the bill filing deadline in response to a case being heard in the Texas Supreme Court and concern about its potential outcome. Sen. Hughes graciously agreed to file the bill on the deadline. Rep. Wray agreed to do the same, championing the Senate bill through the House process. TLTA is extremely grateful to both legislators for their responsiveness and leadership.

As feared, on June 16 the Texas Supreme Court – in Case No. 15-0847 and 15-0848 (Ron Sommers et. al. vs. Sandcastle Homes and vs. NewBiss Property) – reversed lower court decisions and found that the existing statute did not give all persons bona fide purchaser status as we had hoped and require for our ability to use the statute. Thankfully, the new law will ensure that the title industry can operate with more certainty going forward and rely on the expungement process.

## Bills Amended by TLTA: Public Records

[HB 3107](#) by Rep. Trent Ashby significantly limits the ability to obtain public records through a public information request process. Fortunately, the bill was successfully amended through TLTA's efforts to clarify that the "creation or maintenance of an abstract plant" was an exception to the bill. As a result, Texas title plants will be able to continue their work without being subject to new liabilities.

In addition, [SB 42](#) by Sen. Judith Zaffirini allowed for judges and their spouses to have their personal information redacted from public records. As filed, it created a situation that may have proved unworkable for clerks and invited the infamous closing of the land records experienced almost a decade ago. Concerned with this potential consequence, TLTA successfully sought amendments to the bill to prevent such an outcome. Both bills become effective Sept. 1.

## Bills Amended by TLTA: Powers of Attorney

[HB 1974](#) by Rep. John Wray – as filed – would have significantly reduced title agents' and underwriters' discretion and abilities to reject durable powers of attorney. On Tuesday, April 4, Aaron Day testified against [HB 1974](#). "It is our understanding that the bill will remove the discretion that's very fundamental for the underwriters and independent agents to take into account whether or not they're going to accept a power of attorney," said Day. "We are in a position of suspecting fraud often times, and it's that circumstance we're most concerned about... We're simply opposing this filed version of the bill. We are ready to negotiate with the other stakeholders, including the probate section of the bar, and we are very confident we have a good steward in the bill author, so we look forward to those conversations." After much negotiation, TLTA secured several protections for the industry, including a statutory road map for handling powers of attorney. The bill was amended and signed by the governor on June 15. It becomes effective Sept. 1.

## Remote E-Notarization

Rep. Tan Parker, Chairman of the Investment and Financial Services Committee, filed [HB 1217](#), a bill establishing the framework for remote e-notarization in Texas. The Texas Mortgage Bankers Association championed this bill and worked closely with the title industry, notary industry and the Secretary of State's office to craft a bill that could address the concerns of all the stakeholders. In response

to this bill, ALTA put together a national work group to establish model principles to be incorporated in any state legislation. There were subsequent revisions to the filed bill incorporating this feedback. In its final version, the bill allows for remote e-notary in Texas, creates guidelines and allows for rulemaking by the Secretary of State, requires documents to be identified as remotely notarized, prevents vendor monopoly and allows Texas to participate nationally. The bill was signed by the governor on June 1.

It's important to note that the bill does not become effective until July 1, 2018 and will require substantial rulemaking by the Secretary of State.

## Home Equity

Both the Texas House and Senate have adopted [SJR 60](#), a proposed constitutional amendment that would take effect Jan. 1, 2018 and would apply to a home equity loan made on or after the effective date and to an existing home equity loan that is refinanced on or after the effective date.

The amendment would:

- Exclude three fees from the fee limit, including title insurance
- Enable home equity loans to be used on homesteads designated for agricultural use
- Lower the fee limit from three percent to two percent
- Allow a "seasoned" refinance of an equity loan to be a non-home equity loan
- Change the "Notice Concerning Extensions of Credit" to include these changes

# Thanks for Making This Session a Success

## Day at the Capitol



More than 225 title insurance professionals packed the halls at the Texas Capitol for the 2017 Day at the Capitol, meeting with more than 160 legislators. This was by far the largest Day at the Capitol that TLTA has ever hosted.

Thanks again to everyone who came out to Austin and made Day at the Capitol such a huge success!



Rep. Andrew Murr

## Rep. Andrew Murr Named TLTA Legislator of the Year

At the Annual Conference and Business Meeting, TLTA presented our Outstanding Legislator Award to Rep. Andrew Murr (R-Junction).

Rep. Andrew Murr was first elected in 2014 to represent District 53 in the Texas House of Representatives. He is currently Vice Chair of the House Select Committee on State and Federal Power and Responsibility. He also serves on the Judiciary and Civil Jurisprudence, Local and Consent Calendars and Ways and Means Committees. TLTA had many conversations before the Judiciary Committee and Rep. Murr's understanding of the title perspective and property law proved helpful to our efforts. Rep. Murr lives on the family ranch outside of Junction and raises cattle. He also owns a small business, Telegraph Title Company, and maintains a general law practice.

## Special Thanks to Our Bill Authors


We would like to thank **Sen. Bryan Hughes** and **Rep. John Wray** for their work on [SB 1995](#) and [HB 4086](#), respectively, relating to the lis pendens expungement statute. These bills clarified that title insurance companies could rely on an expungement of lis pendens when evaluating a transaction. A recent combined case heard before the Texas Supreme Court has begun to shed doubt on this previous certainty.


A seven-term senator from District 5 serving his first term in District 1, Sen. Hughes serves on the Juvenile Justice and Family Issues Committee as well as the Appropriations Committee and Subcommittee on Articles I, IV and V. Representing District 10, Rep. Wray serves on the House Committees on Homeland Security and Public Safety, Rules and Resolutions and Transportation. He is also co-owner of Town Square Title in Ellis County.

In addition, we want to thank **Sen. Royce West** and **Rep. Mike Schofield** for working with us on their respective bills on adverse possession amongst co-tenant heirs. This bill was drafted a few sessions ago by TLTA volunteers Richard Black and Roland Love at the behest of Sen. West, who learned of the fate of many rural and inner-city lower-income individuals and families who could not receive Disaster Relief Assistance because they could not prove up title. After the bill failed to pass two sessions in a row on its own devices, TLTA made it a priority this session by adding it to our affirmative agenda. TLTA is grateful for the leadership of Sen. West for initiating the discussion and filing the bill in the Senate and for Rep. Schofield for filing and championing the bill in the House.

First elected in 1993 and representing District 23, Sen. West currently serves as the Vice Chair of the Senate Committee on Higher Education; he also sits on the Committees on Administration, Education and Finance. Now in his second term representing District 132, Rep. Schofield sits on the House Committee on Judiciary and Civil Jurisprudence as well as the Committee on Juvenile Justice and Family Issues.

# Other Legislation of Interest

A  indicates the bill has passed and will become law on the noted effective date.

An  indicates the bill did not pass. To view more about each bill, click on the bill number. To read the text of the bill, click on the bill number and then select the "text" tab.

## Title Insurance Regulation



### [HB 2542](#) by Rep. Rodney Anderson

This bill requires the Commissioner of Insurance to provide written notice to title insurance underwriters if the commissioner places a title agent in conservatorship or under supervision.

*EFFECTIVE SEPT. 1, 2017*

TLTA MONITORED



### [HB 4264](#) by Rep. Gary Elkins

This bill related to the sale and leaseback of homesteads ("pretended sale"), and would have repealed section 41.006 of the Property Code providing regulation of the practice.

*FAILED TO PASS*

TLTA MONITORED



### [SB 1994](#) by Sens. Judith Zaffirini, José Rodriguez and Kirk Watson

This bill related to the financing of wrap mortgage loans. It would have prohibited a person from originating or making a wrap mortgage loan (as defined by the bill) unless the person is: licensed to originate or make residential mortgage loans under the Residential Mortgage Loan Company Licensing and Registration Act or the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, or is exempt from licensing as provided under the applicable provisions of those acts.

*FAILED TO PASS*

TLTA MONITORED

## Texas Department of Insurance



### [SB 1450](#) by Sen. Larry Taylor

This bill allows for legislative oversight before any changes to a model law are adopted in the state. Previously, the National Association of Insurance Commissioners could put forth model laws that would instantly become effective in Texas due to regulations that refer to "the current [NAIC] model." To re-establish Texas legislative oversight, this bill requires these types of changes to be reviewed and approved by the state legislature before becoming law. However, the commissioner has the ability to temporarily approve changes to conform with a NAIC model law if said change is non-substantive or necessary to preserve the department's accreditation.

*EFFECTIVE IMMEDIATELY*

TLTA MONITORED



### [SB 2212](#) by Sen. Kelly Hancock

This bill addresses real estate wholesalers and advertising rules for real estate license holders.

*EFFECTIVE SEPT. 1, 2017*

TLTA MONITORED

## Real Estate Transactions



### [HB 4244](#) by Rep. Gary Elkins

This bill related to executory contracts and would have repealed Property Code Sections 5.061 through 5.085, Subchapter D. Executory Contract for Conveyance, and therefore all statutory regulation of the practice.

*FAILED TO PASS*

TLTA MONITORED



### [HB 804](#) by Rep. Tony Dale

This bill requires a real property owner to send notice to a lessee who is required to pay the property taxes. It also allows for 30 extra days to file a protest in certain circumstances.

*EFFECTIVE SEPT. 1, 2017*

TLTA MONITORED

## Property Taxes



**SB 1397 by Sen. Robert Nichols and Rep. René Oliveira**

This bill would have required a property owner contemplating a property tax loan to notify their mortgage service 10 days before executing a contract. This would have provided an opportunity for the mortgage lender to work out a potential alternative and perhaps, as a result, preserve their lien priority on the property.

*FAILED TO PASS*

**TLTA SUPPORTED**



**SB 1745 by Sen. Juan “Chuy” Hinojosa**

This bill would have prevented new owners from being subject to back taxes due to erroneous exemptions on the property while in possession of the previous owners.

*FAILED TO PASS*

**TLTA MONITORED**

**Foreclosure**



**HB 1470 by Reps. Jason Villalba, René Oliveira and Sen. Brandon Creighton**

This comprehensive bill addresses the relationships and duties of auction companies, trustees, attorneys and foreclosing entities.

*EFFECTIVE SEPT. 1, 2017*

**TLTA SUPPORTED**



**HB 1128 by Rep. John Wray**

This bill provides alternate dates for the sale of property under contract liens, specifically addressing holidays. Under current law, foreclosure auctions and other real estate sales must take place publicly on the first Tuesday of every month between 10 a.m. and 4 p.m.; however, the first Tuesday of the month can fall on Jan. 1 or July 4, which impacts buyer turnout. This bill amended Section 51.002, Property Code; Section 34.041, Civil Practices and Remedies Code; and Section 34.01, Tax Code, to move the statutorily required date to the first Wednesday if the first Tuesday falls on Jan. 1 or July 4.

*EFFECTIVE SEPT. 1, 2017*

**TLTA MONITORED**

**Access to Public Records**



**HB 526 by Rep. Mike Schofield**

This bill would have amended public information request laws to require that the requestor reside in Texas.

*FAILED TO PASS*

**TLTA MONITORED**



**HB 1258 by Rep. Travis Clardy, et al.**

This bill would have maintained local custodial authority for public access to court documents across the state. TLTA successfully sought revisions to the bill to maintain the integrity of the public records system in Texas.

*FAILED TO PASS*

**TLTA SUPPORTED WITH CLARIFYING AMENDMENTS**



**HB 2710 by Rep. Todd Hunter**

This bill addressed the availability of birthdates under public information law.

*FAILED TO PASS*

**TLTA SUPPORTED**



**HB 3222 by Rep. Craig Goldman**

This bill addressed public information law and would have removed an important county or district clerk exception. Existing law exempts district and county clerk records from the requirements of existing public information law regarding the redaction and nonproduction of police officers’ information.

*FAILED TO PASS*

**TLTA OPPOSED UNLESS AMENDED TO REMOVE CLERK LIABILITY**

**Privacy Issues**



**HB 457 by Reps. Justin Holland, John Wray, Jim Murphy, Eddie Lucio III and James White**

This bill adds the spouse, surviving spouse and adult children of peace officers to the tax code section exempting/providing confidentiality of home address information on tax appraisal records.

*EFFECTIVE IMMEDIATELY*

**TLTA MONITORED**



**SB 256 by Sen. Van Taylor**

This bill adds family violence/sexual assault victims to the tax code section exempting/providing confidentiality of the home address information on tax appraisal records. It also amends the Code of Criminal Procedure to protect victims.

*EFFECTIVE IMMEDIATELY*

**TLTA MONITORED**

## Estates/Wills



### **HB 2271 by Rep. John Wray and Sen. José Rodríguez**

This bill is a comprehensive decedents' estates bill brought by the Real Estate, Probate and Trust Section of the State Bar (REPTL). It modifies the Estates Code provisions dealing with the estate of a deceased person. Changes include setting the deadline for modifying or reforming a will to four years following admission to probate, increasing the limit for small estate affidavit proceedings from \$50,000 to \$75,000, providing independent executors the default power to make non-pro-rata distributions, clarifying definitions that currently exist in the Estates Code, dealing with a decedent's next of kin, applying the generation-skipping transfer tax and dealing with a child adopted by estoppel.

*EFFECTIVE SEPT. 1, 2017*

TLTA MONITORED



### **SB 499 by Sen. Royce West and Rep. John Wray**

The bill adopts the model Uniform Partition of Heirs Property Act. It modifies current partition law by adopting a uniform national standard in cases where heirs or co-tenants seek to divide their individual interests.

*EFFECTIVE SEPT. 1, 2017*

TLTA MONITORED



### **SB 617 by Sen. José Rodríguez and Rep. John Wray**

The bill addresses a beneficiary's right to withdraw funds from contributions. It also amends modification provisions to correct drafting errors, and provides trustees more flexibility to transfer assets from one trust to another. Additionally, it allows the beneficiary to exercise a power of appointment to address certain tax issues and notice requirements in some cases.

*EFFECTIVE SEPT. 1, 2017*

TLTA MONITORED



### **SB 2150 by Sen. Joan Huffman**

This bill relates to revocable deeds that transfer real property upon the transferor's death. It amends the law from last session regarding transfer on death deeds, improving its workability. The changes ensure that the anti-lapse statute, by default, applies in all transfer on death deed cases by eliminating Section 114.103(a)(4), Estates Code. This bill also makes relevant changes to the forms codified in Subchapter D, Section 114.151, Estates Code.

*EFFECTIVE SEPT. 1, 2017*

TLTA MONITORED

## Liens



### **HB 3063 by Reps. Kyle Kacal and DeWayne Burns**

This bill relates to agricultural liens. It clarifies and extends the applicability of laws regarding the creation and priority of certain agricultural liens regarding open storage crops and warehouses. In addition, it clarifies the applicability of various protections related to agricultural liens by expanding protections for the producers of agricultural products.

*EFFECTIVE SEPT. 1, 2017*

TLTA MONITORED

## Mechanic's and Materialman's Liens



### **HB 3065 by Rep. Joe Deshotel et al. and Sen. Juan "Chuy" Hinojosa**

This bill related to mechanic's and materialman's liens. It contained comprehensive lien statute reform that would have potentially upset the balance of interests of many stakeholders. It was part of a multi-year conversation hosted by subcontractors that included many stakeholders in the building trades industry. Unfortunately, compromise and consensus were not reached.

*FAILED TO PASS*

TLTA OPPOSED UNLESS AMENDED TO ADDRESS ALL BUILDING TRADE INDUSTRY CONCERNS



### **HB 1909 by Rep. Jason Villalba**

This bill also related to mechanic's and materialman's liens – specifically, to liens of registered interior designers. TLTA's amendment was adopted.

*FAILED TO PASS*

TLTA SUPPORTED WITH AMENDMENT ADDING STATUTORY REFERENCE FOR "REGISTERED INTERIOR DESIGNER"

## Thank You, Volunteers and Experts

We appreciate all of our volunteers who took time out of their busy schedule to testify before the House and Senate Committees and helped educate lawmakers about our industry and the importance of title insurance in Texas.

- Todd Boykin
- James Dudley
- John Dwyer
- Roland Love
- John Rothermel
- Kergin Bedell
- Jon Hockenyos

## Legislative Committee Thank Yous

The TLTA lobby team would also like to thank the Legislative Committee for all their input and hard work. Committee members spent countless hours crafting legislation, reviewing bills to recommend positions of support or opposition and contacting their legislators.

- Ginny Abiassi
- Daryl Bailey
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- Richard Black
- Steve Black
- Andrew Boyce
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- John DeLoach, CTIP
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- Ann Garza
- Bruce Goldston
- Jim Gosdin
- Peter Graf
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- David Hays
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- Michael Knudsen
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- Paul McConnell
- Eric McNeese
- Amanda Miller
- Alan Monroe
- Robert Morris, CTIP
- Greg Nix
- Chris Phillips
- Ryan Pitts
- Paul Rodriguez
- Patrick Rose
- Mike Savas, CTIP
- Randy Schaffner
- Fred Schraub, CTIP
- James Sibley
- Sawyer Sikes
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- Mabel Simpson
- Steve Streiff
- John Updegraff
- Susan Valdez
- Frank Vandiver
- Jason Vasek
- NolaAnn Waggoner
- Ross Weaver
- Ellen Wied
- Erwin Wilbanks, CAEP
- Whitney Withers
- Briana Woltmann, CESP

## Thanks to Related Industry Associations

TLTA would like to thank these associations for working closely with us throughout the legislative session.

- Independent Bankers Association of Texas
- NFIB Texas
- Real Estate, Probate and Trust Law Section of the State Bar of Texas
- Texas Association of Builders
- Texas Association of Realtors
- Texas Bankers Association
- Texas Conference of Urban Counties
- Texas Court Clerks Association
- Texas Independent Producers & Royalty Owners Association
- Texas Mortgage Bankers Association

## Thanks to Our Industry Lobbyists

### *TLTA Lobby Team*

- Brandon Aghamalian
- Trey Blocker
- Margo Cardwell
- Snapper Carr
- James Clark
- Erin Courreges
- Robert Floyd
- Kent Hance
- Cheri Huddleston
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- Lara Keel
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- Tyler Norris
- Allen Place
- Shea Place
- Marc Rodriguez
- Curt Seidlits
- Mark Shilling
- Carrie Simmons
- David White
- Liz White

### *Fidelity National Lobby Team*

- Nick Krajl

### *First American Title Insurance Company Lobby Team*

- Galt Graydon
- Jay Propes
- Machree Gibson
- Shannon Swan

### *Stewart Title Guaranty Lobby Team*

- Randy Lee
- Jim Gosdin
- Heidi Junge
- John Rothermel

### *San Jacinto Title Services of Texas and First Title Company Lobby Team*

- Kurt Johnson
- Steve Ray
- Chuck Rice
- Rose Vela

### *Title Data, Inc., Lobby Team*

- Nora del Bosque