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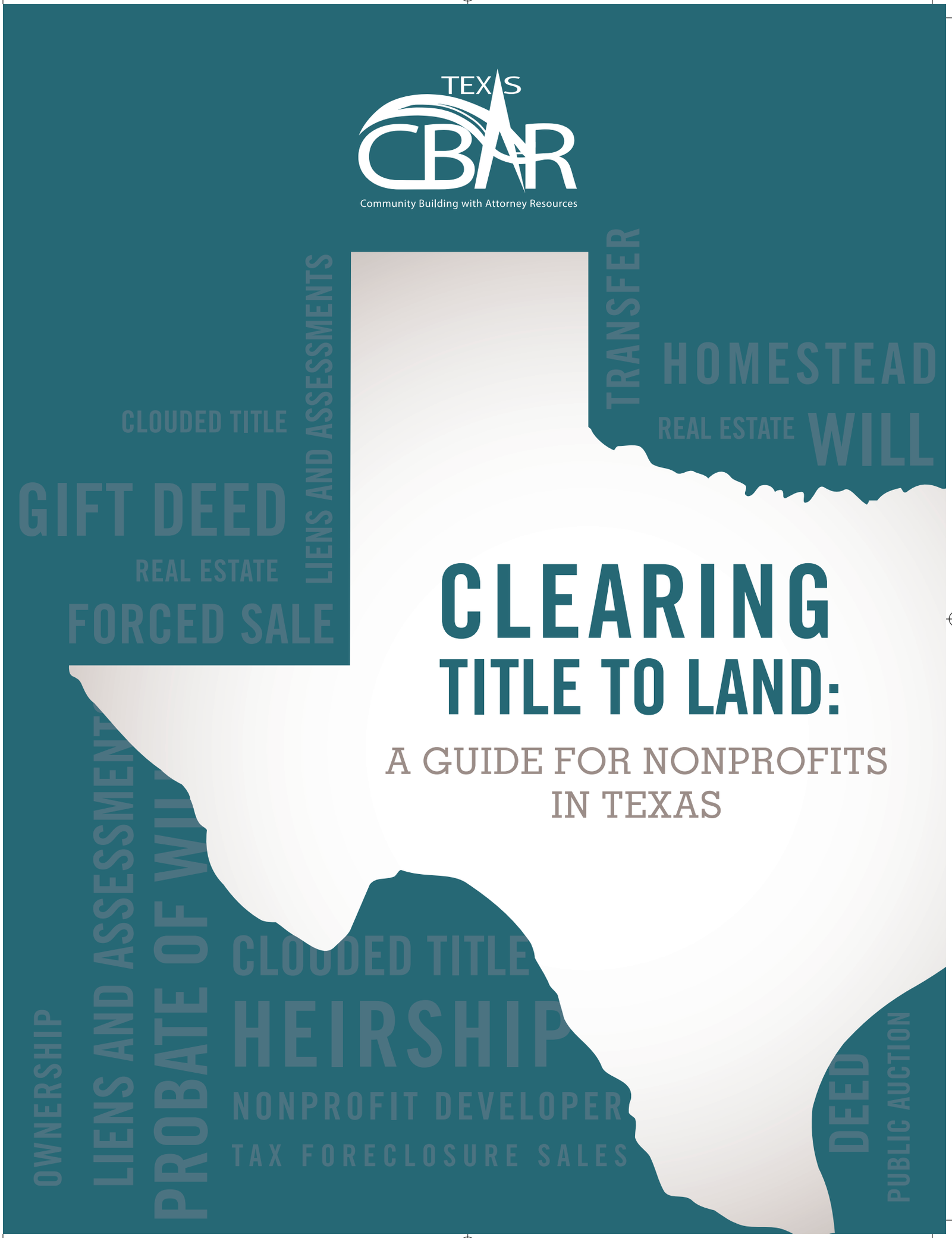
TEXAS CBAR
Community Building with Attorney Resources



CLEARING TITLE TO LAND:

A GUIDE FOR NONPROFITS IN TEXAS

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Introduction

Obtaining clear title to land is one of the most significant legal hurdles faced by nonprofit community development organizations in Texas. Many urban neighborhoods in Texas are plagued by vacant and abandoned lots with a variety of title problems, including unknown owners, tax liens, and municipal liens. Title problems are common in rural areas as well, especially in communities along the Texas-Mexico border. Nonprofit organizations would like to acquire these lots to develop housing for low-income families and for other economic development activities. Yet, without being able to obtain clear title, development is not practical.

Texas C-BAR designed this guide to serve as a resource for nonprofit community development organizations in Texas and their attorneys as they attempt to overcome this all too common hurdle and make decisions regarding the purchase and preparation of land for development. The guide provides an overview of Texas laws governing title to property, different legal measures to clear title, and steps to maintain clear title.

The materials in this guide are intended for informational purposes and to illustrate techniques for resolving frequently encountered problems relating to title problems for property located in Texas. These materials are not to be used as a substitute for the advice of an attorney. Persons reviewing this guide should not act upon the information in this guide without seeking legal counsel.

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Acknowledgments

The preparation and publication of this guide have been funded in part by the Real Estate, Probate and Trust Law Section of the State Bar of Texas; and Bank of America.

Thank you to Evan McCurdy, and Thompson & Knight LLP for your assitance in updating this guide.

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Chapter One: Overview of Title

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Chapter One: Overview of Title

What is Title?

"Title" means that a person (or entity) has the right of ownership and possession of land. Proof of title to land is usually shown by a deed filed in real estate records in the county where the land is located. "Clear title" means that there is no competing claim of ownership or interest in the property—that is, no other person or entity can claim a superior right of ownership or financial interest in the property.

Why Should a Nonprofit Developer Care about Title?

Title is an important issue for nonprofit developers regardless of whether property is purchased or donated. First, without clear title, real estate cannot be easily transferred to a new owner. Second, most (if not all), conventional lenders that use the property as security for a loan will require a nonprofit to obtain title insurance and have clear title to the property before making the loan. Third, by building on property without clear title, a nonprofit is exposing itself to the risk that someone else with an interest in the property could come along and make a claim to the property. If a nonprofit, for example, built a house on a lot and it turned out that someone else also had an ownership interest in the property, the other owner could force the nonprofit to go to court, force a sale of the property, and make a claim for a share of the proceeds from the sale.

While obtaining clear title is very important for nonprofit developers, many title problems are complex and difficult to cure. As a result, when title problems arise, they can pose a major obstacle for nonprofits attempting to obtain land for redevelopment projects. In order to avoid expending scare resources and time, nonprofit developers need to understand the importance of title in addition to when and how title can be cleared when a problem arises.

Determining Priority and/or Hierarchy of Claims

Under Texas law, the priority and/or hierarchy of "claims"[1] against real property is governed by the common law concept of "first in time, first in right", which states, generally, that whichever claim was granted first will control over any subsequently granted claims. For purposes of example, if a property owner granted a mortgage lien to a lender, then, unless the mortgage was released by the lender, any subsequent purchaser of the land would take title to the land subject to the mortgage. In other words, the earlier claim (in this case, the mortgage) would have priority over the later claim (in this case, the rights of the subsequent purchaser). Thus, in most cases, the classification of the claim (i.e., whether it is an easement, a mortgage, etc.) doesn't matter for purposes of determining priority. Rather, the dispositive factor is the date on which (a) the claim was granted to the applicable beneficiary, and (b) evidence of the claim was recorded (see below for discussion) in the real property records where the real property is located.

[1] It should be noted that a "claim" against real property could mean a number of things and is not limited to claims of full ownership of the land. For example, a claim could be a party claiming an easement right, a mortgage interest, oil and gas rights, water rights, and/or the right to enforce a restrictive covenant against the property.

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Recording title is the process of filing a "conveyancing instrument" (i.e., any instrument which evidences the conveyance of an interest in real property, for example, a deed, easement agreement, a mortgage lien, etc.) in the real property records of the county in which the affect real property is located. Recording title is important as, under Texas law, it is deemed to give all persons and/or parties who may deal with the affected real property, constructive notice that the conveyancing instrument exists and encumbers the applicable real property. Under Texas law, a "bona fide purchaser"[2] will (in many cases) not be subject to encumbrances or interests of prior purchasers. Thus, if the beneficiary under a conveyancing instrument should fail to immediately record title, then they would risk losing their interest in the real property to a future bona fide purchaser. By immediately recording notice of a conveyancing instrument, purchasers ensure that they protect their interest in real property as all future parties will be deemed to have notice of the purchaser's interest.

What is Clouded Title?

Clouded title occurs when more than one person has a claim to a piece of land. This can happen, for example, when a person dies without a will and there are many heirs, some of whom cannot be located. Other times, this can happen when a deed filed by a prior owner does not contain an accurate description of the property leading to confusion as to who owns the land. Another common example is when a utility easement runs across a lot that prohibits development on the lot. Other common "clouds" on title include:

- Forged documents
- Divorce agreements
- Liens
- Conflicting wills
- Clerical mistakes in public records
- Confusion due to the similarity of names
- Mineral rights

What is the Benefit of Title Insurance?

Purchasing title insurance is important for several reasons. First, issues affecting the title of property may date back many years, and some issues might not appear in any public records. Even the most careful search of public records may not discover every problem. Second, most financial lenders will require a title insurance policy before lending money for the purchase or improvement of a piece of property. Third, without title insurance, a nonprofit could lose the property if someone else successfully asserts a claim against the property—and the nonprofit could still be held responsible for paying the mortgage on the property. Finally, without title insurance, a nonprofit could be accountable for prior liens, judgments, and back taxes, even without knowledge of their existence.

[2] I.e., a common law concept which means, in simplified terms, a person or party who (i) gives valuable consideration for interest in real property, and (ii) who does not have notice of a prior claim and/or the conflicting interest in the real property held by of a prior purchaser.

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There are two types of title insurance: a mortgagee policy that protects the lender and an owner's policy that protects the owner. Owner's title insurance usually protects the owner for the amount of real estate purchase and pays for legal fees involved in defending a claim against the owner's title. Owner's title insurance protects a nonprofit developer against financial loss if problems develop regarding the right of ownership to property. For example, in the event mistakes are made in a title search or the nonprofit later discovers hidden defects in the title, a nonprofit with title insurance is protected. Title insurance does not guarantee that a nonprofit developer will continue to have the right to possess or use property, but it does guarantee that a title company will defend the nonprofit from lawsuits by other persons claiming an interest in the property and that the title company will reimburse the nonprofit for any financial loss incurred as a result of claims covered by the title policy.

Before a title company will issue a title insurance policy, the company will first research the title to determine whether there are any defects to the title, including defects from any past sales or transfers of the property. The title company will review public records, maps, tax history, and other documents. The title company will then issue a title commitment that will list any defects in title that the title policy will not cover.

What is a Title Commitment?

A Title Commitment is a promise from a title insurance company to issue a title insurance policy on a piece of property. A Title Commitment is organized into parts, called Schedules. Schedule A contains basic information about the proposed transaction such as the amount of insurance coverage and the name of the insured, the current record owner, and the legal description. Schedule B is important to review because it contains a list of preprinted exceptions and other exceptions that the title policy will not cover. These exceptions may include items such as restrictive covenants, tax liens, easements, mineral rights, and right-of-way provisions. Restrictive covenants may limit the type of development that is permissible on the property, so this section should be carefully reviewed.

Schedule C is the most important part of the Title Commitment. This section contains the requirements that must be met before the title insurance policy will be issued. For example, this section will list all liens that must be paid at closing and any title defects such as an Abstract of Judgment, federal tax liens, or pending lawsuits. A nonprofit needs to pay very close attention to the requirements listed in Schedule C. These problems or defects must be corrected before a title insurance policy will be issued.

Finally, Schedule D is the disclosure part of the title commitment which contains information about the ownership of the title insurance underwriter and title premium disbursement.

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Chapter Two: Establishing Clear Title

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Chapter Two: Establishing Clear Title

Why Wills Are Important

Having a will reduces the likelihood that property will have clouded title (unclear title). One of the most significant problems that nonprofits encounter when they are interested in acquiring a piece of land is the discovery that the property is owned by multiple relatives because a former owner of the property died without a will. In order to purchase such a property with clear title, a nonprofit must locate each and every owner of the property and obtain their permission to purchase their interests in the property.

Whenever a property owner dies without a will, the surviving family members inherit the property "in common," which means that the surviving family members own an interest in the entire property—no single person owns a specific part of the property. Specific laws govern which family members inherit the property; these laws are discussed in part below. Family members who inherit property are called heirs. The chart on the following page shows how it can take just two generations of a parent dying without a will to end up with dozens of heirs owning the same piece of property. The chart is based on an actual family that had a difficult time clearing title to a house because the original homeowner died without a will.

Without clear title, questions of who pays for repairs, who lives in the house, who pays the property taxes, and who is entitled to mortgage or sell the property can be the cause of many family feuds. These disputes can lead to abandonment, delinquent property tax lawsuits, and tax or mortgage foreclosure sales.

The lack of clear ownership that can result when a person dies without a will makes it difficult to sell the property. For a nonprofit trying to acquire the property, it may take years to find all the heirs and get their permission to purchase the property. Together, the time and expense incurred in locating all of the heirs can make the purchase cost prohibitive for the nonprofit. The nonprofit will encounter even greater barriers when one or more of the heirs cannot be located or are unwilling to sell their interests in the property. As a general rule, a nonprofit should not purchase a property unless all of the heirs are identified or determined through probate court proceedings, all of the heirs are located, and all of the heirs consent to sale of the property. Otherwise, a title insurance company is less likely to insure the property, and the nonprofit is taking a risk that an heir could resurface and make a claim against the property, jeopardizing the nonprofit's investment in the property.

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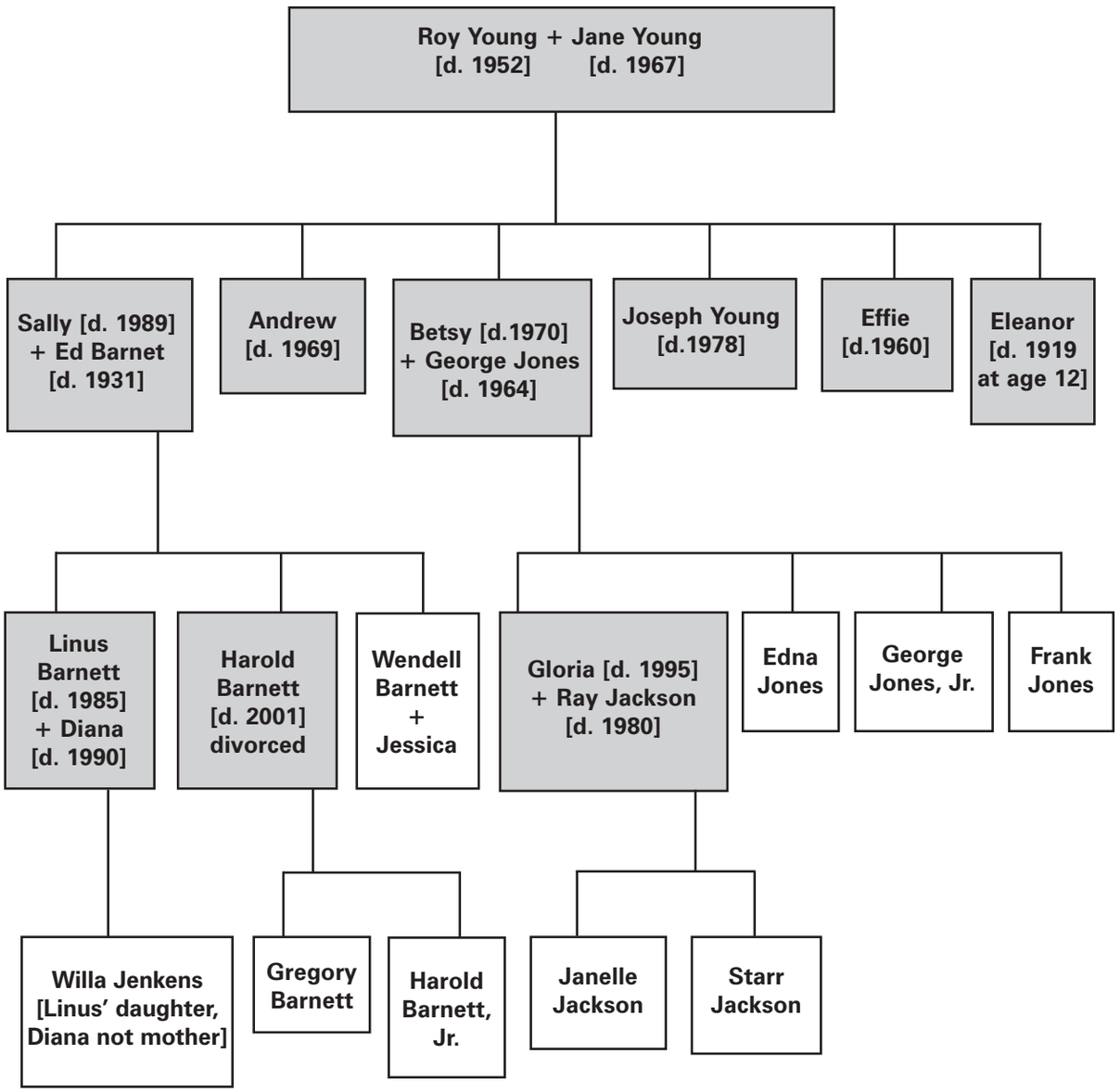
Family Tree for Roy & Jane Young

(Roy & Jane owned a house.
All persons who are deceased died without a will.)



Who owns the property in 2003?

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Determining the Status of Title

When a nonprofit identifies property that could be used for affordable housing, it should first identify the owners of the property and the status of title to the property. This includes checking to see whether there are any restrictions, easements, liens, and other encumbrances filed in the real estate records against the property. A nonprofit can perform some preliminary title research itself, but such research can be time-consuming and confusing for a novice. To determine the status of the property's title, a nonprofit will generally want to work with a title company that will research the real property, probate, and other applicable public records of the county where the property is located.

There are some simple steps, however, that a nonprofit can take to begin the process. Generally, the first step to take in researching the title is to check the property tax records to determine who receives the tax bill for the property. In many Texas counties, this information is now available on the internet. The nonprofit can then go to the county courthouse where the property is located and search the real estate records to determine who is listed in the records as the current owner. The nonprofit can also check the real estate records to follow the "chain of title" from the original grant of the land to the current owner. The term "chain of title" refers to the history of all sales and transfers of a piece of property. If the nonprofit remains interested in a property after the nonprofit's initial research, it should then obtain a title commitment from a local title company to confirm ownership and the status of title to the property. The title commitment will identify the owner of record, all documents and proceedings affecting the property, and the necessary documents and steps which the nonprofit must take in order to obtain clear title to the property.

Clearing Title To Property When an Owner Dies Without a Will Identification of Heirs

Specific inheritance laws govern which family members inherit an interest in property of an owner who dies without a will, as illustrated by the following charts. For example, when a man who owns a house with his second wife as community property dies without a will and is survived by her and his child from a prior marriage, the law provides that his one-half interest in the house passes to the child and that the wife retains her one-half interest. Consequently, the second wife will own the house in which she lives along with her stepchild. The more children involved, the more complicated the ownership becomes. The identification of the heirs of a deceased property owner is usually determined through interviews with other family members and family friends, but can also involve research of public records on marriages, births, and deaths. In certain instances, heirs can be determined through court proceedings in the county where property is located or the county in which the deceased resided at the time of death.

Status of Heirs as Cotenants

Under Texas law, when a person dies without a will and leaves heirs, the heirs all become co-owners of the property. The heirs own the property as "tenants in common," which is also called a "co-tenancy." All cotenants have an equal right to occupy and use the property. Each of the cotenants–or cowners–has a right to transfer his interest in the property without the consent of the other cotenants. If a third party, such as a nonprofit, purchases the interest of one of the cotenants, the third party then becomes a tenant in common with the other owners. Because of the complications involved with

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co-ownership of property, it is generally not recommended that nonprofits acquire a co-ownership interest in property unless the nonprofit has a contractual relationship with the other co-owners.

The following chart explains what happens to real property in the most common cases where an owner dies without a will.

Spousal Life Estate

An additional consideration when determining the status of title, relates to a concept known as the "Spousal Life Estate" (the "SLE"). Under Texas law, if the spouse of a deceased person properly claims any portion of the deceased person's property as their "Homestead" (i.e., as their primary residence), then (i) the surviving spouse will be granted an SLE in the Homestead and will be permitted to use and occupy the Homestead for the remainder of their lifetime, and (ii) the SLE will be considered superior to the claims of other family members or parties who may have inherited an interest in the Homestead through the will of the deceased party (thus, for example, if the deceased party left the family home to his children in his will, the children will not be able to take possession of the home until either the SLE terminates or the surviving wife of the deceased party dies).

In order for a surviving spouse to claim an SLE, the spouse has to be able to show the applicable real property qualified as their Homestead (i.e., their primary residence) prior to the death of their spouse. Furthermore, in order for the SLE to continue, the surviving spouse must continue to utilize the real property as their Homestead for the remainder of their lifetime. It is also important to note that the surviving spouse cannot be deprived of their SLE without their express written consent. Thus, the deceased party cannot deprive their spouse of their SLE rights without consent.

The SLE concept should be remembered when reviewing the charts below regarding "Distribution of Real Estate When There is No Will", as the Spouse of the deceased party will, in many cases, be granted an SLE and be permitted to continue to use and occupy the family home regardless of the application of principals of intestate succession referenced below.

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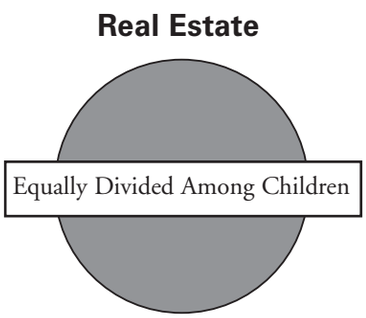
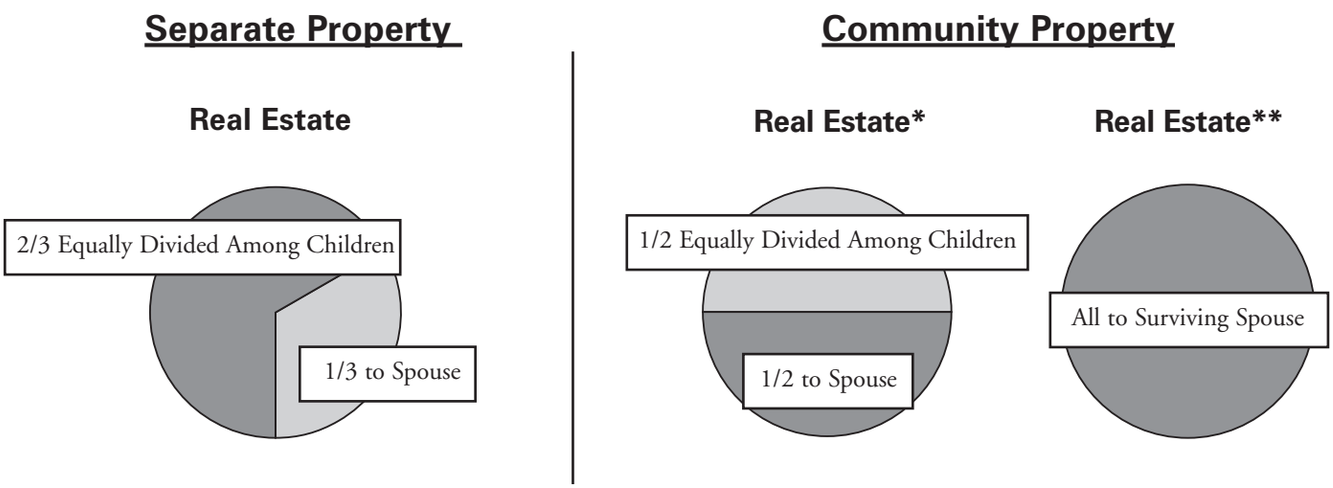
Distribution of Real Estate When there is No Will

DECEASED = Unmarried Person with Children



DECEASED = Married Person with Children



* Death before September 1, 1993, or after that date if surviving spouse is not parent of all children.

** After 1993, all community property passes to surviving spouse if the spouse is the parent of all the children.

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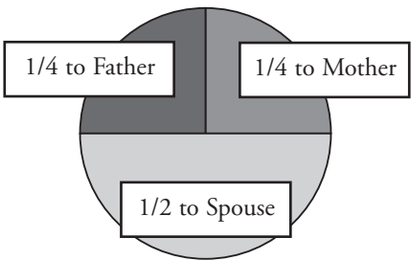
DECEASED = Married Person without Children

Separate Property

Real Estate



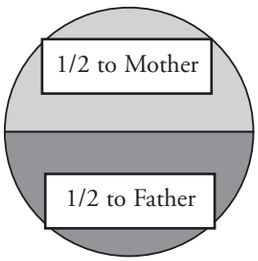
Community Property

Real Estate

For separate property, if only one parent survives, the surviving parent takes one-fourth of the real estate, and one-fourth is divided equally between the siblings of the deceased. If there are no surviving siblings or descendants of the siblings, then the surviving parent takes one-half of the real estate. If neither parent survives, then one-half of the real estate is divided equally among siblings of the deceased. If none of them survive, then all of the real estate goes to the surviving spouse.

DECEASED = Umarried Person without Children but with Living Parents

Real Estate



If one parent survives, then one-half of the property is divided equally among the deceased's siblings. Children of a deceased sibling inherit the deceased sibling's share. If there are no surviving siblings or children of a deceased sibling, then the whole estate goes to the surviving parent.

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Methods to Transfer Ownership of Property When There is No Will

There are several procedures which a nonprofit can use to clear title when a prior owner has died without a will and the heirs have been located. Some of the most common procedures are discussed below, and some forms are included in the Appendix. In all cases, the attorney who is working with the nonprofit on the acquisition of property should consult with a title company to confirm which form of conveyance is acceptable for title insurance purposes.

Small Estate Affidavit

In certain cases a deceased's property may be distributed to his heirs simply by filing a small estate affidavit. In order to file a valid affidavit, at least 30 days must have elapsed since the owner's death and no case related to the deceased individual can have been filed in probate court. In addition, the value of the person's estate (excluding homestead property and other exempt property) must not exceed $50,000**.** Homestead property is the property used or designated by the owner as his primary residence. Exempt property, in general, includes common household items such as furniture and clothing. A small estate affidavit may not be used to transfer an interest in real property other than the deceased's homestead.

A Small Estate Affidavit must be:

- executed by two disinterested witnesses and all of the potential heirs;
- filed with and approved by the probate court;
- identify all assets, including a legal description of the property and liabilities of the estate; and
- set forth the facts that establish the right of the heirs to receive the estate.

After a certified copy of a Small Estate Affidavit is approved by the probate court and filed in the real estate records of the county where the property is located, the affidavit transfers title to the person's heirs. A bona fide purchaser of the property, such as a nonprofit, may rely on the recorded Small Estate Affidavit as proof of a transfer in title to the heirs identified in the affidavit.

Unqualified Community Survivor

If the deceased was married at the time of death, the surviving spouse may be able to transfer jointly owned property without the necessity of a court order appointing the survivor as an executor. The surviving spouse can sell or transfer any part of the couple's community property in order to discharge a community debt and otherwise "wind up" the couple's "community affairs." In general, community property is the property acquired by either spouse during the couple's marriage (unless the property was acquired by gift or inheritance). As long as no executor has been appointed to act on behalf of the deceased's estate, this procedure may be used even when children would otherwise inherit the deceased's portion of the community property.

The best application of this procedure would be a situation in which:

- title to the property was acquired during the marriage in the names of both husband and wife (i.e., clearly community property); and

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- the sale of the property by the surviving spouse will discharge a debt against the property which was incurred while the non-surviving spouse was still alive (e.g., a purchase lien, a home improvement lien, or delinquent ad valorem taxes).

In order to sell the community property according this procedure, the surviving spouse would execute a deed including the following sample language: "Jane Smith, acting individually and as surviving partner of the marital partnership of herself and her deceased husband, John Smith, pursuant to TEXAS PROBATE CODE Section 160 . . . ." A nonprofit, however, should always first confirm with a title company that the method used to transfer title is acceptable to the title company.

Affidavit of Heirship

One of the most common means to establish ownership of inherited property when there is no probated will is an Affidavit of Heirship. This procedure is useful when the heirs are known and the facts are not in controversy. The affidavit states the family history, marital history, and identity of survivors. These facts are then used to determine which family members inherit from the deceased and what percentage of property they are entitled to inherit under the law.

This procedure is used primarily in two ways:

In a court proceeding to establish heirs. Texas Probate Code Section 52A sets out a form titled "Affidavit of Facts Concerning the Identity of Heirs" that may be used as a statement of facts in a court proceeding to declare heirship or in a lawsuit involving title to real property.

Filed in real estate records as proof of ownership. An Affidavit of Heirship may also be filed in the real estate records of any county where the property is located as proof of ownership. The Affidavit specifies the deceased's interest in the property, which is determined according to Texas law. If the real property is located in multiple counties, the same original affidavit of heirship can be filed in the various counties, or a certified copy can be obtained from the county clerk of any county where the affidavit has already been recorded. This procedure can be used only if no court administration of the deceased's estate is pending or expected and there is no necessity for the administration of the estate (i.e., because there is satisfactory proof that there are no outstanding taxes or debts of the estate). As in all of these procedures, a nonprofit should first confirm with a title company the appropriate form to use.

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Transfer on Death Deed

A Transfer on Death Deed (sometimes referred to as a Beneficiary Deed) ("TODD") is a nonprobate method to convey real property to a Beneficiary. Rather than conveying real property through the use of a will, the Grantor can, prior to death, execute and record a document that meets the following terms and requirements:

1. the document must contain the essential elements and formalities of a recordable deed (i.e., it must be in writing; it must be signed by the Grantor; it must contain a description of the real property which is sufficient to describe the real property with reasonable certainty; and it must contain words of intent;

2. the document must state that the transfer of interest in the real property is to occur at or upon the Grantor's death; and

3. the document must be recorded in the Real Property Records of the County in which the real property is located.

Upon the Grantor's death, the recorded TODD will be considered immediately effective and title to the applicable real property will be vested in the stated Beneficiary. Furthermore, the Grantor's ownership of the real property will not be affected during the lifetime of the Grantor. Thus, the Grantor will be permitted to continue to use, operate, mortgage and/or encumber the real property during the remainder of his/her lifetime.

There are, however, a couple of things that a non-profit should be aware of when taking property via use of a TODD: the Beneficiary under a TODD will take title to the property (i) without warranties of title from the Grantor, and (ii) subject to any and all mortgages, liens, judgments, and other encumbrances which may exist and/or encumber title to the real property as of the date of the Grantor's death. Thus, if the real property is subject to a lien (e.g., a lien secured by a deed of trust, a mechanic's liens, etc.), the Beneficiary will be obligated to pay the amounts secured by the lien, otherwise, the Beneficiary will risk losing the real property due to foreclosure.

Furthermore, although the property is technically owned by the Beneficiary as of the date of the Grantor's death, if the Grantor's remaining estate is not sufficient to satisfy the outstanding debts of the Grantor (e.g., (i) expenses of administering the estate, (ii) estate taxes, (iii) family allowance to a surviving spouse, minor children, or incapacitated adult children, etc.), then the administrator of the Grantor's estate may enforce such liabilities against the real property which was transferred by the TODD. Thus, the Beneficiary's title to the real property may be clouded until all of the Grantor's liabilities have been fully paid from the remainder of the Grantor's estate.

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Gift Deed

A Gift Deed is a conveyancing instrument that contains the essential elements and formalities of a recordable deed, but for which consideration (i.e., payment of money, exchange of goods or services, etc.) from the Beneficiary is not a requirement. In order to be effective, a Gift Deed must meet the following requirements:

1. the document must contain the essential elements and formalities of a recordable deed (i.e., it must be in writing; it must be signed by the Grantor; it must contain a description of the real property which is sufficient to describe the real property with reasonable certainty; consideration or, alternatively, donative intent; and it must contain words of intent; and it must be delivered to and accepted by the Beneficiary);

2. the document must establish a present donative intent (see below for details); and

3. the document must be recorded in the Real Property Records of the County in which the real property is located.

If appropriately drafted, executed and recorded, a Gift Deed is a binding means to gift real property to a Beneficiary in the absence of consideration from the Beneficiary.

A "present donative intent" means that there is language within the Gift Deed showing that (i) the Grantor is currently (i.e., as of the date of the Gift Deed) relinquishing all dominion and control over the real property to the Beneficiary, and (ii) the conveyance is being made as a gift or donation to the Beneficiary, without the intent of receiving any consideration or benefit from the Beneficiary in return.

A Gift Deed is not a testamentary instrument. In other words, the Gift Deed must be executed and recorded during the lifetime of the Grantor and, upon execution, it will act to immediately and irrevocably convey the applicable real property to the Beneficiary. Thus, the Grantor will not be permitted to use, mortgage and/or encumber the real property after the Gift Deed is effectuated.

Quitclaim Deed

A Quitclaim Deed is a deed in which the Grantor conveys any claim of interest it has in the real property to the Beneficiary, without giving the beneficiary any warranty or covenants as to title. Thus, in a properly drafted Quitclaim Deed, the Grantor is essentially saying "I am not claiming to own any portion of the property, however, any portion of the property that I do own is hereby conveyed to the Beneficiary".

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This deed puts the beneficiary in a bad position, if the Beneficiary ever had to prove its ownership rights in the applicable real property, the Quitclaim Deed would be, in and of itself, insufficient to establish ownership, and the Beneficiary would have the burden of showing that the Grantor owned the property at the time Quitclaim Deed was executed. If the Grantor didn't own the real property at the time of the conveyance, then the Quitclaim Deed would essentially be useless and the Beneficiary would have no claim against the Grantor for the failure of title. Furthermore, even if the Quitclaim Deed conveyed the applicable real property, the Beneficiary would be taking title to the real property subject to any and all encumbrances, mortgages, and/or claims which may exist against the property and the Beneficiary would have no claim against the Grantor for any failure of title.

If possible, nonprofits should avoid taking title to real property through the use of Quitclaim Deed.

Methods to Transfer Ownership of Property When There is a Will

Beneficiaries

In a will the deceased specifies which persons will inherit the deceased's interest in the property. These persons are called beneficiaries. A beneficiary does not have to be related to the deceased. Even though a beneficiary is named in a will, the beneficiary still has to obtain title to the property from the estate of the deceased owner prior to transferring the property to the nonprofit.

Methods to Transfer Ownership of Property

There are a number of methods for transferring title to property from an estate to a beneficiary when a will is involved. Some of the common methods are summarized below. In all cases, the attorney working with the nonprofit on the acquisition of property should consult with the title company that will insure title to the property to confirm that the form of conveyance is acceptable for title insurance purposes. If a deceased property owner left a will, the nonprofit should first determine whether the will has been admitted to probate in the probate court and, if it has not, whether it is necessary to admit the will to probate.

Probate of Will

If the will of the deceased owner is admitted to the probate court for administration, either an executor or administrator will be appointed by the court to administer the estate. After complying with required procedures in the probate court, the executor or administrator of the estate will be authorized to convey title to property by deed to the beneficiary named in the will. After the beneficiary obtains title to the property from the executor or administrator, he can convey the property to a third party. Whether the will must be admitted to probate will largely depend on the extent of assets and debts of the estate.

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Affidavit of Heirship

If the estate is small and all outstanding debts of the estate have been paid, probate of the will is not necessary to transfer title of the property to a beneficiary. In these instances, an Affidavit of Heirship as described above can be filed in the real estate records of the county where the property is located to transfer title to the beneficiary. The Affidavit should be modified to state that the person died with a will and should be signed by all of the deceased heirs and beneficiaries under the will. The will must be attached as an exhibit to the Affidavit.

Muniment of Title

Another informal procedure called "muniment of title" may be used when the owner of the property dies with no debts (other than debts secured by liens on real property). The muniment-of-title procedure avoids an actual administration of the person's estate and provides a cost-effective means of giving effect to the person's intent in making the will. This procedure involves admitting a deceased person's will to probate solely as a "muniment of title." The admission of the will creates an official record of the transfer of ownership that occurs under the terms of the will.

If more than four years have elapsed since the person's death, the will can still be probated as a muniment of title, but the applicant must demonstrate that he was "not in default" for failing to present the will for probate within the initial four-year period following death. If a will is offered for probate more than four years after death, notice of the application must be given to all persons who would constitute the person's heirs under the law if the person had died without a will.

Wills Probated Out of State

Wills probated outside of Texas can also operate as a muniment of title for property located in Texas. A copy of the will and the court order must be "attested" (i.e., certified) by the clerk of the probate court in which the will was admitted and must include a certificate from the probate court's presiding magistrate certifying that the clerk's attestation is in the proper form. A copy of the will and certification should then be filed in the real estate records in the county where the property is located. The document shall then be valid as a deed of conveyance for all property covered by the will.

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Summary of Non-Probate Methods for Transferring Ownership to Property Upon Death

Method	Will	Estate Size	Method	Additional Restrictions	Texas Estate Code Sec
Small Estate Affidavit	No	< or = $50,000 (excluding homestead and exempt property)	File an affidavit meeting specified requirements in the probate court	This procedure maybe used only to transfer personal property or the deceased's homestead	137(a)
Unqualified Community Survivor	No	No limits	Surviving spouse executes a deed containing specified language on behalf of the marital estate	The property being sold must be community property, the surviving spouse's sale must be for the purpose of discharging a community debt, and there must be no appointed executor.	160
Affidavit of Heirship (no will)	No	No limits	File an affidavit meeting specified requirements in the real property records of the county in which the land is located or use in a court proceeding to establish heirship	This procedure may only be used if no administration of the deceased's estate is pending or expected	48 - 52A
Affidavit of Heirship (will)	Yes	No limits	File an affidavit meeting specified requirements in the real property records of the county in which the land is located and attach the will as an exhibit	This procedure is available only if the will distributes the property in the same way as if the deceased had died without a will	48 - 52A
Muniment of Title	Yes	No limits	Admit the deceased persons will to probate solely as a muniment of title	This procedure is available only if all of the deceased person's debts (other than debts secured by liens on real property) are paid; additional requirements are imposed if the will is admitted more than four years after the person's death	89A -89C
Wills Probated Out of State	Yes	No limits	File the will and a certification from the court in which the will was probated in the county where the real property is located	None	96
Transfer on Death Deed	N/A	No limits	File Affidavit of Death in property records where TODD recorded	Beneficiary takes property subject to debts of the estate of transferor and must survive transferor at least 120 hours	114

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Transferring Property Owned by a Minor

A person under the age of 18, also called a "minor," may own an interest in real property. Because a minor cannot legally enter into a contract for the sale of the property, other procedures must be utilized to transfer the minor's property. If a nonprofit determines that a minor owns all or an interest in property that the nonprofit wants to acquire, it is important to utilize the proper procedure for the transfer of that interest.

Sale of Minor's Interest Without Guardianship

When the net value of a minor's interest in the property is $100,000 or less, any parent (natural or adoptive) or managing conservator of the child may apply to the probate court for an order authorizing the parent or conservator to sell the minor's interest without first being appointed guardian of the minor's estate.

The following requirements apply:

- Sale of the minor's interest must be for cash;
- A minimum of five days must elapse between the filing of the application with the probate court and the entry of the court's order; and
- The court must specifically determine that the sale is in the best interests of the minor.

After closing the sale, the minor's net proceeds from the sale must be deposited in the registry of the probate court, and withdrawal of the funds is subject to the court's approval.

Distribution of Minor's Interest to a Custodian

If a minor inherits an interest in real estate worth less than $10,000 as part of a person's estate that is in a probate administration, the independent executor or administrator of the estate may transfer the interest to a custodian of the minor under the Texas Uniform Transfers to Minors Act. This procedure provides a way to avoid the burdens of a probate administration and may allow a custodian to later sell the minor's interest without judicial supervision or approval.

If the value of the minor's interest in the real estate exceeds $10,000, however, any transfer of real estate from the estate of the deceased to the custodian for the minor must be authorized by the probate court. The custodian has the power and authority to sell and convey the real property on behalf of the minor under the Uniform Transfer to Minors Act. The deed from the executor or administrator of the estate must identify the grantee as follows: "(C*ustodian's name*), as Custodian for (*minor's name*) under the Texas Uniform Transfers to Minors Act . . . ." Note that for purposes of the Texas Uniform Transfers to Minors Act, a "minor" means an individual who is younger than 21 years of age.

Transferring Property Owned by Incapacitated or Missing Persons

If a nonprofit determines that an incapacitated or missing person owns all or part of an interest in property that the nonprofit wants to acquire, it is important to utilize the proper procedure for the transfer of that interest.

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Sale of Homestead by Spouse

A homestead is the property designated by the owner as his primary residence. Usually, in order to sell all or part of a marital homestead, both spouses must execute the deed. One exception to this rule is when the homestead is community property and one spouse has been declared incompetent by a court. When that happens the other spouse has an automatic power to sell the property without court authorization or supervision.

Absent a court order declaring the spouse incompetent, the other spouse may sell the homestead without joinder of the other spouse only with court approval, and then only in certain situations. If one spouse has become incapacitated, disappeared, or has permanently abandoned the homestead, the other spouse may file a sworn petition in a court of the county where the property is located seeking an order authorizing her to sell the homestead without the joinder of the other spouse. The homestead must have been acquired either during the marriage of the spouses and qualify as their community property or be the separate property of the applicant spouse. The petition cannot be filed until 60 days after the non-participating spouse has been medically determined to be incompetent, has disappeared, or has permanently abandoned the homestead. Notice and a hearing are required, and the court may require the appointment of an attorney ad litem for the incompetent or absent spouse. In its order, the court may impose restrictions or conditions on the competent spouse, including a requirement that a bond be posted, that the proceeds of sale be paid into the registry of the court, and that any subsequent disbursements be approved by the court. This procedure avoids the cost and complexity of a formal extended guardianship of the spouse's estate.

Sale of an Adult Ward's Interest in Property

A judicially-appointed guardian of an adult ward (an incompetent or incapacitated adult) can apply to the probate court for an order authorizing her to sell the ward's property. The guardian does not need to be appointed as guardian of the ward's estate. In order to use this procedure, the net value of the ward's interest in the property cannot exceed $100,000. A sale conducted pursuant to a court order under this process is final and cannot be reversed later by the ward if he regains capacity. If the ward's interest in the property exceeds $100,000, the judicially-appointed guardian of the ward's estate must apply to the probate court for an order authorizing her to sell the ward's property.

Transferring Ownership After Divorce

If a nonprofit wants to acquire property which is owned by a party who is divorced, the nonprofit should confirm that the former spouse's interests in the property are properly terminated in the real estate records.

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As part of a divorce settlement or decree, community property is sometimes awarded to only one spouse. When this happens, the spouse who is not awarded the property ("the divested spouse") must transfer his interest in the property to the other spouse ("the recipient spouse"). Evidence of the transfer of complete ownership must be filed in the real estate records of the county where the real property is located. If the transfer is not recorded in the real estate records, the creditors of the divested spouse can make claims against the property, and the recipient spouse will not be able to convey or encumber the property.

Usually, the divorce decree will direct the divested spouse to execute a deed to the recipient spouse. When such a deed is filed, nothing further is required to establish the recipient spouse's full ownership of the property.

If the divested spouse refuses to provide the deed (or if the deed becomes lost prior to being filed for record and cannot be readily replaced), a certified copy of the divorce decree can be filed in the real estate records in lieu of the deed. The decree must clearly divest one spouse and award the property to the recipient spouse and include a sufficient legal description of the property. If the decree lacks a sufficient legal description, but the recipient spouse has remained in possession of the property, personally or through tenants, and has paid the taxes for a post-divorce period of at least ten years, a certified copy of the divorce decree can be attached as an exhibit to an affidavit that clarifies the property description and includes facts that establish title against the divested spouse.

Clearing Title Defects and Disputes Through Litigation

Depending on the nature of a title defect in property that a nonprofit wants to acquire, a lawsuit may need to be filed by an attorney to clear title to the property. Some causes of action to clear title to real property are described below.

Partition

If a nonprofit determines that the property in question is owned by cotenants, and the nonprofit cannot reach a voluntary agreement with every cotenant to sell their interests, a lawsuit can be filed on behalf of individual cotenants against the remaining cotenants for "partition in kind" of the property. A lawsuit of this nature also may include claims to recover for waste, for an accounting, or to determine adverse claims. A court will partition the property into separate parcels unless the property cannot be equitably partitioned. Partition, for example, will not work for small urban lots or where the number of co-owners is so large that a division of the property would result in parcels too small to be useful for development. In the event a partition in kind cannot be accomplished equitably, the court will order the property sold and for the proceeds from the sale to be split among the owners based on their percentage interests in the property. In 2017, Texas adopted The Uniformed Partition of Heirs Property Act, adding chapter 23A to the Texas Property Code.

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Example of Partition

One way a partition action could work for a nonprofit developer is as follows: A nonprofit identifies a parcel of land that it wants to purchase and discovers there are three co-owners of the property, each of whom has a one-third interest in the property. Only two of the co-owners can be located. Both are willing to sell the property. The other co-owner cannot be located or is unwilling to sell his interest. The entire interest in the property cannot be sold to the nonprofit unless all three co-owners sign over a deed. To allow for a sale of everyone's interest in the property, the two co-owners who want to sell their interest could file a partition lawsuit in court. If the property is large enough and can otherwise be divided, the court will physically divide the property among the three co-owners. The two co-owners who want to sell their interests can then sell their parcels to the nonprofit. If the property is not amenable to a partition in kind, the court will order a sale of the property.

Trespass to Try Title

A trespass to try title lawsuit may be appropriate when a nonprofit is interested in purchasing property that is occupied by a party who does not have legal authority for possession. A trespass to try title lawsuit is an action to recover possession of land unlawfully withheld from an owner with the right to immediate possession. Section 22.001 of the Texas Property Code provides that "a trespass to try title action is the method of determining title to lands, tenements, or other real property." A plaintiff in a trespass to try title action must recover on the strength of his own title and not on the weakness of the defendant's title. Examples of when an action in trespass to try title can be brought include: (a) adjacent landowners dispute their boundary; (b) a landowner seeks to compel a tenant to vacate premises after the party's lease has terminated; (c) a landlord seeks cancellation of a rental contract after notice of default; and (d) parties claim conflicting rights of possession to real property.

Adverse Possession

Adverse possession is a means of acquiring title to property through possession for a period of time. While the law permits ownership to arise from adverse possession, the requirements are strict and specifically described in Sections 16.021-16.034 of the Texas Civil Practice and Remedies Code. These limitations statutes provide an avenue to clear title for those claiming ownership by adverse possession.

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The person claiming title by adverse possession has the burden of proving all necessary elements. In addition to the distinct requirements of each adverse possession statute, a claimant must prove the following elements: First, the possession must be continuous, actual, and obvious for the designated statutory period. Second, the possession and use must be the appropriation of real property under a claim of right that is inconsistent with, and hostile to, the claim of another. Third, the possession must be peaceful. Fourth, the owner of the property must have actual or implied knowledge of the adverse possessor's claim. For example, fencing of another's land is not generally sufficient notice unless the adverse possessor actually occupies or uses the land.

The laws of adverse possession do not apply to real property that has been inherited by different children and who own the property together. There is a big difference between notice of an adverse claim of a stranger living on the property with that of another relative. It is not uncommon for one of the children to live in the old house or farm the land with (or without) the acceptance of the other family members. Payment of taxes by co-owners also does not constitute an adverse claim or notice of an adverse claim since it is presumed that one co-owner acts for the benefit of all the co-owners.

There are different statutes limiting the time in which a lawsuit must be filed to recover property held by an adverse possessor. Each of these statutes have varying requirements before a claim of ownership or recovery of property may be asserted. These statutes are described generally below.

> Three-Year Statute [Section 16.024 of the Texas Civil Practice & Remedies Code]. The three-year statute is applicable in suits of trespass to try title. A person must file a lawsuit to recover real property held by another who has exercised peaceable (undisturbed) and adverse possession of the land for a period of at least three years under a recorded deed which extends from the occupant back to the original grant of land and has only minor defects.
>
> Five-Year Statute [Section 16.025 of the Texas Civil Practice & Remedies Code]. To qualify under this statute, the adverse possessor must have exercised peaceable and adverse possession of the land, through actual use, for a period of at least five years under a recorded deed. The adverse possessor is required to have paid all taxes assessed against the land for five consecutive years without delinquency. If a debtor named in an abstract of judgment, which is filed in the real estate records, conveys property to a bona fide purchaser who thereafter occupies it as his residence and otherwise meets the requirements of the three- and five-year limitation statutes, the judgment lien is then extinguished as to the property.
>
> Ten-Year Statute [Section 16.026 of the Texas Civil Practice & Remedies Code]. To qualify under this statute, the adverse possessor must have exercised peaceable and adverse possession of the land, through actual use, for a period of at least ten years. If the adverse possessor has no deed, only 160 acres can be claimed under this statute,

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but if there is a deed, the adverse possessor may claim the boundaries described in the deed. The ten-year period is extended for any period when the true owner of the land is either a minor or incapacitated.

Twenty-Five-Year Record Title Statute [Section 16.028 of the Texas Civil Practice & Remedies Code]. To qualify under this statute, the adverse possessor must have maintained peaceable and adverse possession of the property for a period of at least 25 years, while acting in good faith under a recorded deed or other recorded document, whether valid or invalid, which purports to convey title to the adverse possessor. Unlike other limitations-title statutes, a claim of title under this statute will continue without interruption even during a period of the legal incapacity of the true owner of the property.

Twenty-Five-Year "Dominion" Statute [Section 16.029 of the Texas Civil Practice & Remedies Code]. This provision is the closest one to allowing "squatter's rights." Even if an adverse possessor does not have a deed conveying the property, she may qualify under this statute by demonstrating that, for a continuous period of at least 25 years, the adverse possessor has openly exercised control over the property and has paid all taxes assessed against it without delinquency. A claim of title under this statute can be defeated by showing that a record-owner has either exercised control over the property or has paid assessed taxes for one or more years during the same twenty-five-year period.

Quiet Title Action

The purpose of a lawsuit to quiet title is to remove any claims or encumbrances that cast a shadow or cloud on the validity of a person's title to real property. A quiet title suit is distinguishable from an action in trespass to try title. An action in trespass to try title is statutory and accords a legal remedy, while a suit to quiet title accords an equitable remedy. Unlike a trespass to try title action where the plaintiff is seeking a determination of ownership rights and to obtain possession of land, in a suit to quiet title, the plaintiff typically is already in possession and seeks relief again a person who has made claims against the plaintiff's title. The primary relief afforded in a suit to quiet title is a court order giving title to one of the parties. Except where coupled with an action for slander, a suit to quiet title will not support a recovery of money damages. Examples of claims which have been the subject of quiet title actions are: (a) a city's claim of a right-of-way easement recorded only in the city's records and referenced in a deed only as a "proposed road"; (b) a lien claimed to secure unpaid maintenance fees and filed by a homeowner's association allegedly without authority to do so; (c) a deed of trust lien allegedly created without authority of the property owner; (d) a judgment lien alleged to be unenforceable against the petitioner's homestead; and (e) a subcontractor's mechanic's lien allegedly filed without complying with the controlling statutes.

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Lawsuits Regarding Technical Title Defects in Recorded Documents

Statutes of Limitation

Technical defects in documents that have been filed in real estate records can create clouds on the title to property. Lawsuits to clear title based on defects in recorded documents must be filed within **four years** after the document is recorded. Otherwise, any claims of interest based on the defects are barred. [Section 16.033 of the Texas Civil Practice and Remedies Code.] The four-year statute of limitations does not apply to property transferred by forged documents or where fraudulent conveyances are involved, but does apply to claims based on the following defects in recorded documents:

- Not signed by proper officer. One of the parties to the recorded document was a corporation or partnership, but the document was not executed or lacks evidence of authorization to execute the document by the proper officer (corporation), partner (general or limited partnership), or manager or member (limited liability company).

- No corporate seal. The recorded document lacks a corporate seal and was executed by a corporation that had not dispensed by prior resolution with use of the corporate seal on real estate documents.

- Not a legal entity. Although the recorded document was otherwise properly executed, the corporation, limited partnership, or limited liability company had already lost its legal existence through dissolution, expiration, or involuntary forfeiture of its charter.

- Lack of trustee authority. The recorded document was executed by a trustee, but the real estate record lacks evidence of the trustee's authority or any corroboration of facts stated in the document which asserted the trustee's authority.

- Defective acknowledgment. The recorded document appears to have been recorded with a legally defective acknowledgment, such as when the acknowledgment is made in an individual capacity rather than a representative capacity.

- Implied vendor's lien. On its face, a deed indicates that, without retention or creation of any express lien or mortgage, the complete sales price was not paid at closing, raising the possibility of an implied vendor's lien against the property.

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Rescission

Rescission is the appropriate vehicle to undo a transaction for a person who has been induced to execute and deliver a title document through fraud, mistake, incapacity, or duress. Although a successful action to rescind a document may have the effect of quieting or clearing title to the property (insofar as the title is clouded or affected by that document), a rescission requires compliance with certain rules of law, such as a rule requiring the return of any payment received, and is subject to the four-year statute of limitations running from the date the complaining party knew or should have known that grounds to rescind existed.

Reformation

When a party to a title instrument contends that the document does not set out the true terms of the transaction, the party may file a lawsuit seeking reformation of the document. The court will enter a judgment reforming the document on proof of the terms of the actual, intended agreement, coupled with proof that the written instrument is in error due to mutual mistake or a unilateral mistake accompanied by the adversary's inequitable conduct. If the reformation elevates one party's title over an interest or right claimed by the other party, the party that filed the lawsuit should join the reformation plea with a suit to quiet title, seeking a declaration that the other party's claim is invalid in view of the reformed title. Generally, recording the attested copy of a judgment reforming a title document may be all that is required to clear or quiet the title to the property. The four-year statute of limitations and the discovery rule ordinarily apply to a suit for reformation.

Recordation of Judgment

In a lawsuit involving real estate, a court sometimes enters an order or judgment transferring title to another person, but the prior owner may be unavailable or unwilling to execute an actual deed. In this situation, the title may be transferred by filing a certified copy of the judgment in the real estate records of the county where the property is located. The filed judgment has the same effect as a recorded deed.

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Summary of Litigation Methods for Transferring Ownership to Real Property

Litigation Action	When Used	Additional Requirements
Partition	Any co-owner can file against the other co-owners to divide the property or force a sale of the property if the property cannot be divided equitably	
Trespass to Try Title	Property occupied by a party who is not a legal owner; suit brought by party with right to immediate possession	
Adverse Possession	Continuous, actual and obvious possession for designated statutory period	Claim of right to land must be consistent with other owners' claims; possession must be peaceful; owner must have actual or implied knowledge of adverse possessor's claim; other requirements
Quiet Title Action	To remove cloud on title, e.g., a dispute about a lien filed against a homestead	
Rescission	Deed was executed as a result of fraud, mistake, incapacity, or duress	Requires return of payment received and other requirements
Reformation	Title document doesn't set out true terms of the transaction as a result of mutual mistake or unilateral mistake and inequitable conduct by the other party	Join with suit to quiet title if elevates party's title over another party's title
Recordation of Judgment	Court enters order transferring title but prior owner is unavailable or unwilling to execute deed; certified copy of judgment recorded in real estate records	

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Chapter Three: Forced Sale by Nonprofit of a Co-Owner's Interest

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Chapter Three: Forced Sale by a Nonprofit of a Co-Owner's Interest

Overview

As discussed earlier, each person who inherits a possessory interest in property is a co-owner. Each co-owner is obligated to pay 100% of the ad valorem taxes assessed against a property. Moreover, the co-owners who pay the taxes are entitled to reimbursement from the other co-owners in proportion to each owner's interest. If a co-owner has failed to reimburse his share of taxes ("delinquent co-owner") paid by another co-owner ("paying co-owner") for any three years out of a five-year period, the paying co-owner may file a lawsuit in district court, called a "forced sale" lawsuit. If the paying co-owner meets the other requirements of the statute, the court will order the delinquent co-owner to sell his undivided interest in the property to the paying co-owner. The paying co-owner must pay the delinquent co-owner the latter's share of the fair market value, less the amount of the taxes owed by the delinquent co-owner. The court may also order the delinquent co-owner to execute and deliver a deed to the plaintiff.

To utilize this statute, the property involved cannot be the delinquent co-owner's homestead. A forced sale lawsuit can still be filed even if the whereabouts or the identity of a delinquent co-owner is unknown. In these circumstances, the unknown or unlocated co-owner must be given notice of the lawsuit through publication of a notice in a newspaper.

Effective September 1, 2001, Section 29.002 of the Texas Property Code expanded the use of this procedure for certain Texas 501(c)(3) nonprofit corporations. To be eligible, a nonprofit must:

- be incorporated in Texas for at least one year;
- have a corporate purpose of developing affordable housing stated in the articles of incorporation;
- have at least one-fourth of its board of directors residing in the county in which the property is located; and
- be engaged primarily in the building, repair, rental, or sale of housing for low-income individuals or families.

Process to Force Sale of the Property

A nonprofit must be able to locate at least one co-owner of the property who is willing to sell his interest in the property to the nonprofit. After the nonprofit purchases the co-owner's interest, the nonprofit must follow these steps:

- Pay the other owners' share of taxes for at least two out of the next three years as the taxes come due.

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- After payment of the taxes, send a demand for reimbursement of the taxes to the other owners via certified mail.
- For owners whose address or identity is unknown, the nonprofit must publish a demand for reimbursement in a newspaper in the county where the property is located once a week, for four consecutive weeks.
- If none of the owners reimburse the nonprofit within 30 days of the last-published demand for reimbursement, the nonprofit must file a lawsuit to obtain an order of forced sale, requiring the other owners to sell their interest in the land to the nonprofit for fair market value. A judicial order forcing the sale has the effect of establishing the nonprofit as sole owner of the land. However, it does not wipe out any liens on the property, such as tax liens or health and safety liens. The nonprofit is still responsible for paying off and obtaining releases of these liens—although the cost of paying off the liens will be considered when calculating the fair market value of the property.

Length of the Process

The total process takes at least two and half years. A nonprofit must wait at least two years to pay the taxes as they come due and before sending a demand for reimbursement, and then an additional 30 days following the demand. After the lawsuit is filed, the process can take several months or longer, depending on the circumstances. While the process takes a long time, the only other remedy that is generally available to nonprofits when a co-owner cannot be located or is unwilling to sell is to wait for the taxing entities to foreclose on the property, which can take even longer and provides the nonprofit with no guarantee of being able to purchase the property at the tax sale.

Costs of Using the Forced Sale Statute

In addition to the cost of purchasing the property from any co-owners willing to sell their interests in the property, the nonprofit is responsible for paying the property taxes for the next two out of three years. However, as discussed below, the other co-owners' share of taxes will be deducted from the price of the property paid through the forced sale. The nonprofit is responsible for the following costs (which will total roughly $2,500-$3,000):

- lawsuit filing and service fee (this will vary depending on the number of heirs);
- publication of the demand in local newspaper;
- an attorney ad litem to represent the interests of any lost and unknown heirs (whose fee will be set by the court); and
- an appraiser (who may be willing to serve at no cost as a community service).

Before transferring complete ownership of the property to the nonprofit, the court will also require that the nonprofit pay to the other co-owners: (i) the value of the co-owners' fair market value interest in the property (which should take into account the cost of paying off any outstanding liens on the property) minus (ii) the co-owners' share of the taxes on the property. If the taxes have

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remained unpaid for many years and exceed the fair market value of the property, the other co-owners will not be due any money. While the nonprofit, prior to filing the lawsuit, must pay two years of future taxes as they come due, back taxes on the property generally should not be paid by the nonprofit until it has completed the statutory process. One exception to this would be if the taxing entity is threatening to foreclose on the property.

Risks Involved

After a nonprofit holds onto the property for two years and pays the taxes as they come due, a long-lost heir could resurface and reimburse the nonprofit for the heir's share of the taxes. The long-lost heir could then refuse to sell his interest in the property, in which case the nonprofit would have to file a partition action. It is also possible that the nonprofit could inadvertently fail to comply with the technical procedures under the new law, resulting in uninsurable title to the property. To limit this risk, a nonprofit should work closely with a title company and attorney throughout the above process. The nonprofit's final goal should be to obtain title to the property that a title insurance company will insure, particularly when the nonprofit intends to construct improvements on the property. Working closely with a title company throughout this process will help ensure that this goal is attained.

Example of Nonprofit Using the Forced Sale Statute

Nonprofit ABC locates a vacant lot in the ABC neighborhood. On the internet, the nonprofit looks up the tax records for the property and finds out that there are $3,000 in back taxes that have not been paid on the property and a $3,000 demolition lien. The property is appraised at $10,000. The tax records list the owner of the property as Jane Smith. The nonprofit contacts Ms. Smith and finds out that Ms. Smith inherited the property from her mother, who died without a will. Ms. Smith's brother, Ron Smith, also inherited the property. Ms. Smith is willing to sell her interest in the property, but her brother moved across the country years ago and cannot be located.

Nonprofit ABC decides to utilize the forced sale statute with the assistance of a local title company and volunteer attorney. The nonprofit purchases Ms. Smith's interest for $1,000. The nonprofit pays the taxes on the property in the amount of $250 a year for the next two years as they come due. The nonprofit then publishes a demand for reimbursement to Ron Smith and any unknown heirs in the local newspaper once a week, for four consecutive weeks. Thirty days after the last demand for reimbursement is published, Nonprofit ABC's volunteer attorney files a forced sale lawsuit. The court appoints an attorney ad litem to represent the brother and any unknown heirs. The court also appoints an appraiser who appraises the brother's interest at $1000, taking into account the demolition lien, back taxes, and the brother's fractionated interest in the property. The court then enters a order requiring transfer of ownership to the nonprofit and requiring the nonprofit to enter $750 ($1000 for the brother's

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interest minus $250 for the brother's share of taxes paid by the nonprofit) into the registry of the court in the event the lost brother comes forward to collect his interest. Nonprofit ABC then pays off the $3,000 in back taxes and the $3,000 demolition lien. The nonprofit then finally has clear title to the property and can move forward with its plans to build affordable housing on the lot. In total, it took two and half years, and the nonprofit incurred expenses of $10,750 to utilize the forced sale statute ($6,000 for the back taxes and liens + $750 to the brother + $500 for taxes + $1,000 to Ms. Smith + $2,500 for court costs, publication and other costs associated with the lawsuit). (Note: this is purely a hypothetical example; the outcomes of a specific forced sale lawsuit will depend on the facts in that particular case.)

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Chapter Four: Tax Foreclosure Sales

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Chapter Four: Tax Foreclosure Sales

Overview of Tax Foreclosure Process

Statutory Tax Lien

On January 1st of each year, a tax lien automatically attaches to real property. The lien secures all ad valorem taxes, penalties, and the interest imposed by each taxing entity covering the area where the property lies. Ad valorem taxes become delinquent (and subject to foreclosure) if not paid before February 1st of the following year.

Tax Foreclosure Suit

A suit for tax foreclosure may be brought by a taxing entity at any time after its tax has become delinquent. The taxing entity bringing a tax foreclosure suit must join as defendants all other taxing entities that also have delinquent tax claims against any part of the property. In addition to all taxing entities, the suit should name all other lienholders against the property as defendants. The taxing entity must notify every owner of the tax delinquent property of the lawsuit. If either the identity or whereabouts of an owner are unknown, the unknown owner may be notified by publication of the notification in a newspaper.

Penalties and interest are charged against properties with delinquent taxes. Once a lawsuit is filed, court costs are also added. Sometimes a nonprofit can work with the taxing entities to initiate lawsuits against tax-delinquent properties in an area the nonprofit would like to develop.

A judgment issued by the court will contain an order that directs sale of the property to satisfy the amount of judgment granted for delinquent taxes. If any defendant (such as a mortgage company) fails to assert a claim for payment after notice of the lawsuit, its lien will be extinguished by the judgment entered in the suit.

Tax Foreclosure Sales

Public Auction

Any taxing entity that obtains a judgment for delinquent taxes in the foreclosure suit and wants to sell the property must apply to the district clerk for an order of sale. The order of sale should direct the appropriate officer (sheriff or constable) to sell the property at a public auction to satisfy the tax judgment. The officer must then send the appropriate notice of tax sale to each named defendant in the judgment and must advertise the sale in a newspaper published in the county where the sale will take place. If no newspaper is available, posting of notice at three public places—one of which must be the county courthouse—is a permissible substitute.

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By law, these sales are held on the first Tuesday of every month, usually on the courthouse steps. By statute, the minimum opening bid at the public auction must be at least the lesser of either the total value of the property or the taxes, penalties, and foreclosure costs owed or the market value of the property. Some taxing entities, however, will not sell the property for less than the taxes, penalties, and costs owed, even if the costs exceed the value of the property. At the sale, if no bid is received from the public which equals or exceeds the minimum bid, the officer must automatically bid the property off to the taxing entity that initiated the foreclosure. This property is sometimes called "struck off" property. The officer will then transfer the property by deed to the appropriate taxing entity to hold the property for itself and in trust for the other taxing entities who were party to the suit.

One benefit of the tax foreclosure process is that it should wipe the slate clean for the property by clearing the claims of known and unknown owners of the property. There are many cons to the process as well, however. For example, a taxing jurisdiction may make a mistake by failing to provide notice of the foreclosure action to a co-owner, resulting in clouded title. In many areas, nonprofits may have difficulty purchasing property at public auctions because for-profit developers are able to outbid them. Another con is that the redemption period (discussed further below) precludes someone from obtaining title insurance for at least six months on non-homestead tax foreclosed property and two years for homestead property. A nonprofit that purchases tax foreclosed property also needs to know that the nonprofit takes the property "as is"—subject to any environmental hazards, flood plain issues, and other problems that might make the property ill-suited for development. As a result, prior to purchasing property at a tax sale, the nonprofit needs to research the property to make sure it is appropriate for development.

Tax Sale Deed

The officer conducting a tax sale must prepare and deliver a tax sale deed to the tax sale purchaser or, in the event of struck off property (property which was not purchased at the tax sale), to the taxing entity that initiated the foreclosure. The tax sale deed transfers "good and perfect title," including the right of use and possession. The transfer is subject to the foreclosed owner's statutory right of redemption and to any restrictive covenants running with the land that were recorded prior to January 1st of the year in which the earliest foreclosed tax lien arose. However, some title companies will choose not to insure tax sale property, especially if the title company suspects that the former owners or lien holders were given inadequate notice of the tax suit. A nonprofit should work with a title company before attempting to purchase any tax foreclosed property.

Texas Urban Land Bank Demonstration Act

The Texas Urban Land Bank Demonstration Act ("the Act") is a landmark piece of legislation for addressing the problem of abandoned land in Texas inner cities and for turning the land into safe, decent, affordable housing. The Act, Chapter 379c of the Local Government Code, provides a mechanism for nonprofit housing developers to avoid competing with for-profit developers for tax-foreclosed properties. The Act was created as a pilot program in the City of Dallas in 2003, with the idea that if the program proves successful, the program could be expanded to other Texas cities.

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Here is how the Act works: The Act creates a special foreclosure process for vacant lots with tax liens that exceed the tax appraiser's value of the property to bypass the regular public auction process. The sheriff or constable can sell the eligible properties directly to a city-created land bank without public bidding. Qualified community-based housing nonprofits have a right of first refusal to access these properties for affordable housing. A certain percentage of the properties must be targeted towards lower-income families.

To become qualified, a nonprofit must have built at least three single-family homes or duplexes or one multifamily residential dwelling of four or more units within the preceding two-year period and within the organization's designated geographical boundaries of operation. The nonprofit must also have built or rehabilitated units (within the preceding two-year period) within a one-half mile radius of the offered parcel.

To be eligible for the special foreclosure process, properties must be vacant with at least six consecutive years of delinquent property taxes, and have a market value less than the total of court costs, sales costs, and tax and non-tax liens on the property. The municipality must adopt an annual Urban Land Bank Demonstration Program Plan governing the disposition of the property, and a public hearing must first be held on the plan. The Plan must include:

- a list of all the parcels of real property that may become eligible for sale to the land bank during the upcoming year;
- a list of community housing development organizations eligible to participate in the "right of first refusal" for acquisition and development of real property sold to the land bank;
- the municipality's plan for affordable housing development on the parcels of real property; and
- the sources and amounts of funding anticipated to be available from the municipality for subsidies for development of affordable housing in the municipality.

Implementation of the Act requires an interlocal agreement among the taxing jurisdictions and city council approval of a land bank entity to acquire, hold and sell properties under the Act. Information on the Dallas program is available at www.dallascityhall.com/dallas/eng/html/land_bank_program.html.

Redemption Periods

Owners of foreclosed property have a certain time period in which they have an absolute right to buy back the tax foreclosed property. The process of buying back the property is called redemption. The length of time that a foreclosed owner has to redeem the property depends on the type of property involved:

- **Residential Homestead:** on or before the second anniversary of the date on which the tax sale deed was filed in the real estate records.

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- **Land Designated for Agricultural Use:** on or before the second anniversary of the date on which the tax sale deed was filed in the real estate records.
- **All Other Real Property:** 180th day (basically, 6 months) following the date on which the tax sale deed was filed in the real estate records.

In order to redeem property, the foreclosed owner must pay the costs of the foreclosure plus a premium.

- **Costs:** In all cases, to obtain redemption of the property, the foreclosed owner must pay the bid-amount credited at the tax sale, plus the fee to record the tax deed and any amounts advanced by the purchaser for subsequent taxes or costs associated with the property.
- **Premium:** If the purchaser was a private person or entity, the foreclosed owner must also pay a redemption premium, which is an additional 25% of the costs if redemption occurs within one year, or an additional 50% if redemption occurs within two years (for homestead and agricultural property). The premium is not assessed when the property is bid off to the taxing entity, as long as the property is redeemed by the foreclosed owner prior to resale by the taxing entity.

There are two different ways of establishing title to a property that has been redeemed:

- **Voluntary Redemption:** If a tax sale purchaser other than a taxing entity agrees to accept the amount offered in redemption by the foreclosed owner, the tax sale purchaser must give evidence of redemption by executing a quitclaim deed to the foreclosed owner.
- **Involuntary Redemption:** If a tax sale purchaser (other than a taxing entity) cannot be located in the county where the property is located, is not a resident of the county, or refuses to accept the amount offered in redemption, the foreclosed owner may deposit the redemption payment with the County Tax Assessor-Collector, and the receipt from the Tax Assessor-Collector functions as a redemption certificate.

Statutes of Limitation

A nonprofit that purchases property at a tax sale auction needs to also be aware of the statutes of limitations for challenging property tax foreclosure lawsuits. A title insurance company will usually insure property subject to the expiration of the statute of limitations. The statutes of limitations are statutes that limit the time period when someone may file an action to recover property from a tax sale purchaser as a result of an improper foreclosure action. For example, if the former owner claims he did not get proper notice of the tax sale, the former owner has a limited period in which to file a lawsuit to try and get the property back. After the statute of limitations has passed, the purchaser and the purchaser's successors-in-interest have full title to the property, precluding all other claims. [Section 33.54(c) of the Texas Tax Code.] Once the time period set out in the statute of limitations has elapsed, the person who acquires the property for value and in reliance on the tax sale is entitled to *conclusively* presume that the tax sale was valid. The purchaser holds the title free and clear of the

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right, title, and interest of *any* person or entity that arose before the sale —subject only to an unexpired right of redemption and any restrictive covenants recorded prior to inception of the earliest foreclosed tax lien. [Section 34.08(b) of the Texas Tax Code.]

The applicable limitations period depends on the type of property:

- **Residential homestead or property designated for agricultural use:** two years following the date on which the deed to the tax sale purchaser was filed in the real estate records (this corresponds with the classes of property receiving a two-year redemption period);
- **All other real property, except property deeded to a taxing entity:** one year following the date on which the deed to the tax sale purchase was filed in the real estate records;
- **All property received and re-sold by a taxing entity:** one year following the date of the resale;
- **As to any person not subject to the foregoing limitations periods (e.g., a prior owner who was not served with citation in the tax suit and who pays taxes on the property following the tax sale):** two years after the person's cause of action arose. *Warning: Lack of notice of the tax foreclosure suit is a common problem. A title company can usually identify whether all necessary parties received notice.*

Summary Seizures

As an alternative to foreclosing tax delinquent property by filing lawsuits, municipalities have the authority to institute summary seizures of the property in certain cases. [Section 33.91 of the Texas Tax Code.] While this may seem like an attractive shortcut for cities with considerable abandoned and distressed lots, title companies may not insure property acquired in this fashion.

To execute a summary seizure, the city tax collector applies to a court for a tax warrant authorizing the seizure of the property with prior notice to the owners of the property. The court will issue a warrant if the tax collector can show by affidavit that: (1) the property has been abandoned, unused and vacant for at least one year; and (2) the taxes on the property have been delinquent for each of the preceding five years or three years if there is a lien on the property in favor of the city for the cost of remedying a health or safety hazard.

The court must also determine that summary seizure and sale, as opposed to the traditional judicial foreclosure, is in the best interest of the taxing entities. The seizure will satisfy this test if the amount of the back taxes, penalties, and costs to foreclose exceed the anticipated sale proceeds (e.g., where the outstanding taxes exceed the market value of the property). Once the warrant is issued, the municipality is authorized to conduct a public sale of the property, preceded by an advertised notice of sale. A county tax collector has similar powers under Section 33.911 of the Texas Tax Code.

The same "minimum opening bid" rule generally applies at the sale of seized property as in the case of judicially foreclosed property, but with an important exception: If no bids for the standard mini-

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mum amount are received from the general public at the auction, the sheriff or constable may, alternately, sell the property for an amount less than the minimum opening bid to certain "charitable housing" organizations. [Sections 34.01(o) and 11.181 of the Texas Tax Code.] A qualified charitable housing organization is one whose exclusive purpose is to build or repair housing primarily with volunteer labor and to sell the same without profit to individuals who satisfy the organization's low-income or other eligibility requirements. The officer conducting the sale of seized property does not have to obtain the consent or approval of the taxing entities in order to make such a sale to the charitable housing organization. Moreover, the officer's determination of the bid amount appears to be conclusive.

Because of concerns with whether these seizures are constitutional, a title company may refuse to insure properties acquired through a summary seizure. Nonprofits should check with a title company to determine whether the company would insure property acquired by this method.

Taxing Entity's Resale

When, in the absence of a sufficient bid at the public auction, property is "struck off" to the taxing entity, the taxing entity can proceed to resell the property. Resold property remains subject to any unexpired right of redemption in favor of the prior owner as well as the statute of limitations. Resale can occur by means of another public auction conducted by the appropriate officer, and, at such a sale, the taxing entity may accept any price.

Private Sales

The taxing entity that holds the struck off property may also dispose of the property by private sale. Under Section 34.05(i) of the Texas Tax Code, the taxing entity must sell the property for the same minimum bid required at the original public auction, unless it has obtained unanimous consent from the other taxing entities. In other words, unless there is unanimous consent of all of the taxing entities (including junior college districts, hospital districts, and any other entities with taxing authority over the property), tax-foreclosed property that is struck off must be sold via private sale for at least the lesser of the market value or outstanding tax judgment. Generally, the taxing entities will enter into an interlocal agreement to express their unanimous consent, as well as the terms and conditions of their consent. Included in the Appendix to this Guide is a sample interlocal agreement that can be used to set up a program whereby the taxing entities agree to sell struck off property for a nominal charge to nonprofits for the development of affordable housing. This sample agreement is based on an interlocal agreement being considered in the City of Austin.

Struck off Property for Affordable Housing

Section 253.010 of the Local Government Code

A municipality may, by City Council action, authorize the manner of sale to dispose of any properties acquired by the city. Under this provision, a city may adopt an ordinance that allows nonprofits to purchase via private sale and for less than the market value any "struck off" property and other property

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acquired by a municipality, without having to go through the public auction process. To be eligible, a nonprofit organization must fall into either of two categories:

- a nonprofit organization that develops low-income housing as a primary activity to promote community-based revitalization of areas within the municipality; or
- a Texas 501(c)(3) nonprofit corporation that has been incorporated for at least one year, has a corporate purpose of developing affordable housing, draws at least 25% of its Board of Directors from residents of the municipality, and engages primarily in construction, repair, rental, or sale of low-income housing.

A municipality operating under this section may by ordinance determine the individuals and families who qualify as low-income individuals and families based on the area median income.

Section 253.011 of the Local Government Code

In a municipality with a population of 1.9 million or less, a municipality may transfer real property or an interest in real property without complying with the notice and bidding requirements of Section 272.001(a) or other law to a 501(c)(3) nonprofit organization. If the real property to be transferred lies outside the municipality's corporate limits and outside the county where 80 percent of the municipality's residents reside, the municipality must obtain the consent of the county commissioners court of the county where the real property is located. The instrument transferring the property must include a provision that:

- requires the nonprofit organization to use the property in a manner that primarily promotes a public purpose of the municipality; and
- indicates that ownership of the property automatically reverts to the municipality if the nonprofit organization at any time fails to use the property in that manner.

Section 34.051 of the Texas Tax Code

Section 34.051 of the Texas Tax Code provides yet another mechanism for taxing jurisdictions to resell "struck off" property for less than the minimum bid amount. As of 2004, this provision is used by the taxing entities in Houston for urban development.

To utilize this provision, the taxing entities must enter into an interlocal agreement regarding the resale of the property. The property can be sold without a minimum bid, but must be used for a purpose consistent with the municipality's urban redevelopment plans. The deed of conveyance of any tax foreclosed property resold pursuant to this section must refer to or set forth the applicable terms of the urban redevelopment plan. Any such interlocal agreement among the taxing entities should include the following:

- a general statement and goals of the municipality's urban redevelopment plans;
- a statement that the interlocal agreement concerns only tax foreclosed property that is either vacant or distressed and has a tax delinquency of six or more years;

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- a statement that the properties will be used only for a purpose consistent with an urban redevelopment plan that is primarily aimed at providing housing for families of low or moderate income;
- a statement that the principal goal of the interlocal agreement is to provide an efficient mechanism for returning deteriorated or unproductive properties to the tax rolls, enhancing the value of ownership to the surrounding properties, and improving the safety and quality of life in deteriorating neighborhoods; and
- a provision that all properties are sold subject to any right of redemption.

An action attacking the validity of a sale of property pursuant to this section must be instituted before the one year anniversary of the sale and then only after the payment into the registry of the court of an amount equal to all taxes, penalties, interest, costs, and post-judgment interest of all judgments on which the original foreclosure sale was based.

Post-Foreclosure Options

Option	Summary of How Option Works	Pros for Nonprofits	Cons for Nonprofits
Resale by Taxing Entity	Public auction; no minimum bid	No conditions on use of property	Must compete with other bidders
Private Sales	Private sale to a nonprofit or for profit entity must meet minimum bid unless consent from all taxing entities	Ability to purchase property for less than minimum bid	Depends on which conditions are imposed on use of property; can be difficult to obtain consent of all taxing entities
Section 253.010	Property owned by the municipality can be sold to certain nonprofit housing organizations for less than minimum bid	Ability to purchase property for less than minimum bid	Only applies to property acquired by the municipality
Section 253.011	Municipalities with population greater than 1.9 million; property owned by the municipality can be sold without bidding process to 501(c)(3) nonprofits for public purpose	Ability to purchase property for less than minimum bid; no public bidding process	Only applies to property acquried by the municipality
Resale for Urban Development	Interlocal agreement among taxing entities allows for city to sell vacant or distressed property without public bid for purpose consistent with urban development plan	Limited restrictions on use of property	Can be difficult to obtain consent of all taxing entities; statute does not limit sale to nonprofits, which can result in competition with for-profit developers depending on terms of the interlocal agreement

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Title Company Requirements for Tax Foreclosed Properties

Title companies will issue a title policy on tax foreclosed properties if the properties meet certain requirements. Before issuing a title policy on non-homestead tax foreclosed property, the title examiners will generally verify the following:

- the owners and lienholders were all personally served in the tax suit;
- the property is not agricultural;
- the property was not the prior owner's homestead
- the prior owner does not live within one acre around the subject tract; and
- the tax deed was recorded at least six months ago.

Title examiners must also verify the following:

- no one is in possession of the land;
- how the former owners and lienholders were served; and
- that the order of foreclosure was filed at least 45 days ago and there is no appeal or motion for new trial.

If the owners and lienholders were not personally served, title examiners must verify the following:

- an attorney ad litem was appointed to represent the owners and lienholders;
- the former owners and lienholders could not be found and personally served;
- if noticed by publication, the attorney for the taxing authority filed an affidavit that the defendant could not be found after diligent inquiry;
- if noticed by posting, the attorney for the taxing authority filed an affidavit stating that publication could not be had for the maximum fee provided by Rule 117a;
- an affidavit of publication or posting is in the file; and
- a release of lien was executed for any creditor not personally served.

There are additional requirements for agriculture and homestead properties. Nonprofits should verify the requirements for a title company to insure any property the nonprofit is interested in purchasing at a tax sale.

How to Research Posted Properties

For information on how to research properties posted for foreclosure, see the Buyer's Guide posted on the Travis County Tax Assessor's web page, located at www.co.travis.tx.us/tax_assessor/foreclosure/tax_buyer_guide.asp.

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Chapter Five: Creative Approaches to Clearing Title

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Chapter Five: Creative Approaches to Clearing Title

Nuisance Abatement

Nuisance laws date back to the Middle Ages. These laws can provide a self-help remedy to fix an irritating neighborhood problem. Under the Texas nuisance abatement statutes, Chapter 343 of the Texas Health and Safety Code, property or structures that are unsafe or create unsanitary or unsightly conditions may be considered a public nuisance. These statutes apply to unincorporated areas of a county. Cities typically have their own nuisance ordinances–also known as health and safety codes–that also address noxious uses on property, such as illegal dumping and dilapidated structures used for criminal activity. These ordinances and nuisance abatement statutes may provide nonprofits with a mechanism for acquiring abandoned or dilapidated property while also serving as a method for clearing title to the property.

Under nuisance abatement laws, the county commissioner's court or city first provides notice to the owner or occupant of the property to end or abate the nuisance. If the responsible party does not abate the nuisance, the county or city may then assess a fine for the cost of the abatement and file a lien in the real estate records in the county where the property is located. If the lien remains unpaid, the lien may then be foreclosed pursuant to a court order, subject to previously filed mortgage liens. Once the lien is foreclosed, the property may be sold at public auction. Nonprofits can assist county and city officials by identifying nuisance properties that could be foreclosed under these laws.

Section 214.003 of the Local Government Code authorizes a city to appoint a nonprofit organization that rehabilitates residential housing as a receiver of dilapidated property. The nonprofit can then petition the court for a sale of the property. A court may then order a sale of the property and give the purchaser clear title. Other states have added laws to allow a nonprofit to bring suit directly to foreclose on some properties. In Maryland, for example, the law allows a nonprofit association to file a drug nuisance abatement suit against property being used for drug crimes.

Forfeiture of Contraband

Under Texas laws, money and property gained through certain types of criminal activity are subject to asset forfeiture. For nonprofit developers, these statutes may provide a mechanism to obtain clear title to property being used by drug dealers or gangs.

These statutes, found in Chapter 59 of the Texas Code of Criminal Procedure, permit a felony prosecutor or city attorney to obtain real property used in the commission of or acquired with the proceeds from the commission of certain crimes. The Civil Enforcement Section of the Attorney General of Texas works with local officials to obtain court orders to shut down the illegal activity on these properties. Three days after filing notice of the seizure and intent to forfeit the property, the government attorney must file a lis pendens (notice of a pending legal procedure involving the property) in the real estate records in the county where the property is located. A final judgement of

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forfeiture will transfer title to the real property to the state (subject to prior valid liens against the property or other interests in the property as of the date of the filing of the lis pendens).

The property may then be transferred according to an agreement between state and local law enforcement officials or, if there is no agreement, sold at public auction 75 days after the final judgement of forfeiture.

In some situations, nonprofits may be eligible to receive the funds obtained from the sale of forfeited property. If there is an agreement between the state and local law enforcement agencies and the governing body of a local political subdivision, the funds may be used for:

- nonprofit programs for the prevention of drug abuse;
- licensed nonprofit chemical dependency treatment facilities; or
- nonprofit drug and alcohol treatment programs.

At this time, the law does not provide for the funds to be used for affordable housing. In order for the funds to be used for this purpose, there must be an amendment to this statute.

Drug Forfeitures

The federal government has a "Weed and Seed" program administered by the Department of Justice that also allows for the seizure of property used in illicit activity. Through the program, a federal agency transfers real property to public or nonprofit groups interested in the cultivation of economic opportunity. The program is designed to root out criminal activity from distressed or disadvantaged neighborhoods and promote their revitalization through the cultivation of legitimate economic opportunity. This law may allow nonprofit groups to obtain property that might continue to be a blight on the neighborhood and that otherwise could not be sold because of clouded title. For more information on this program, see www.ojp.usdoj.gov/ccdo.

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Chapter Six: Liens

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VI. Chapter Six: Liens

Overview of Liens

A lien is a claim against property which secures a debt, obligation, or duty. Liens can arise in many ways such as part of a court judgment or settlement, through a contractual provision (usually in connection with a purchase money or improvement loan), by failure to pay when work is done or materials are furnished to property, by failure to pay a general creditor, or by failure to pay ad valorem (property) or income taxes. If an owner whose real property is encumbered by a lien fails to meet her obligations, the lienholder (the owner and holder of the debt and lien) can, after complying with applicable legal requirements, seize the property, foreclose and sell it, and apply proceeds from the sale to satisfy the debt or obligation.

Typically, if a person is entitled to a lien against real property, the person will record the document evidencing the lien and indebtedness in the real estate records of the county where the real property is located in order to perfect the lien, to put the public on notice of the claim, and to establish the priority of the claim in relation to other liens. Certain liens in favor of governmental entities, which are discussed below, may arise automatically without the necessity of filing a lien instrument in the deed records.

If a nonprofit wants to acquire property which is subject to a lien, it must first determine who is the current lienholder. The nonprofit should first determine if the indebtedness or obligations secured by the lien have been paid, and if not, if the lien is enforceable (e.g., if the statute of limitations has expired to enforce the lien or if the lien is wrongfully filed against homestead property). If the lien is enforceable, in order to obtain clear title to the subject real property, the obligations secured by the lien must be paid or otherwise discharged or settled and a release of the lien obtained and recorded. Typically, liens are satisfied from the proceeds of the sale. The process of determining the existence of a lien, the identity of the current lien holder, and the amount necessary to discharge the lien is often a joint effort of the seller, buyer, title company, and attorneys involved with the sale of real property.

The following is a summary of common liens and some suggested methods for removal of the liens from real property.

Mortgage or Vendor's Lien

A mortgage or vendor's lien is a common form of lien by which a lender (usually a bank or mortgage company) secures repayment of the lender's loan against the value of the property. The debt secured by the lien typically must be paid when the property is sold.

If a nonprofit is interested in acquiring a property for development which is subject to a mortgage or vendor's lien, the nonprofit or seller should negotiate a discharge or release of the lien with the lender. Otherwise, the nonprofit will acquire title to the property subject to the lien and will be responsible

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for payment of the debt secured by the lien or risk losing the property to foreclosure. An analysis of the status of any outstanding liens against the property should be made and the liens discharged or released in conjunction with the acquisition of the property. If it is determined that the debt secured by a lien against a one-to-four family residence has been paid, but the lender has failed to deliver a release, the title company may file an affidavit in lieu of a release. If it is determined that the lien is unenforceable due to a statute of limitations problem or other defect, a title insurance company may under certain circumstances "insure around" the lien or, in other words, issue a title policy without invoking an exception to the lien.

Property (Ad Valorem) Tax Lien

As discussed earlier, on January 1st of each year, a lien for ad valorem taxes automatically attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the property, whether or not the taxes are due in the year the lien attaches. By statute, the lien arises automatically and exists in favor of each taxing unit having power to tax the property, without the necessity of the taxing units filing liens in the county real property records. Property taxes are the personal liability of the owner of the property on January 1st of the year in which the tax is imposed. Taxes are generally due on receipt of the tax bill and delinquent if not paid before February 1st of the year following the year in which the taxes are imposed.

The usual method to remove a property tax lien from title to the property is to pay the taxes. Most units of local government will enter into alternative payment plans that allow nonprofit developers to structure repayment of the taxes over time. Some government entities will transfer tax foreclosed properties to nonprofits for development for less than outstanding taxes if all taxing entities consent.

Federal Tax Lien

When the Internal Revenue Service (IRS) determines that an individual or business entity is delinquent in paying income or other federal taxes, a delinquency notice and a demand for payment is sent which is due within ten days. If the taxes due are not paid within ten days, a lien is automatically effective against property of the taxpayer as of the assessment date. Notice of the lien is filed by the IRS in the real estate records in the county where real property owned by the taxpayer is located. If the property is sold without discharge or release of the lien, the subsequent owner must pay the past due taxes and obtain a release from the IRS or risk losing the property for non-payment of taxes.

As with past due ad valorem taxes, the usual method to obtain a discharge or release of a federal tax lien is to pay the past due taxes unless the statute of limitations applicable to the lien has expired or the lien is otherwise defective or unenforceable. If the tax lien has expired or is otherwise defective or unenforceable, a title company working with a nonprofit which wants to acquire the property may agree to issue an owner's title policy without reference to the lien; however, it may be necessary to obtain a judicial determination that the lien is unenforceable through a declaratory judgment or similar action.

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If a nonprofit wants to acquire a property which has been foreclosed on in the past, care should be taken to verify that the IRS was given timely written notice of the foreclosure proceedings. Otherwise, the property will remain subject to the federal tax lien.

State and Local Governmental Liens and Assessments

Various governmental entities have statutory rights to assess property owners and file liens against properties for nonpayment of taxes or other assessments. These rights are described generally below. If a nonprofit wants to acquire a property which is subject to one or more of these types of liens, it should always inquire if the governmental entity which holds the lien has any special programs or exemptions for nonprofits intending to develop the properties for charitable purposes which may enable the nonprofit to obtain a release of the lien for less than the face value of the indebtedness secured by the lien. The City of Dallas, for example, has offered a program for nonprofit housing organizations whereby health and safety liens are released if the property is used for affordable housing.

General State Tax Liens

Each county clerk maintains a State Tax Liens record or book in which notices of state tax liens filed by the Comptroller of Public Accounts are maintained. A lien attaches to the taxpayer's non-exempt property for taxes due to the state such as sales taxes, excise and use taxes, franchise taxes and gross receipt taxes. Releases or discharges of the liens must be negotiated with the Comptroller of Public Accounts.

Municipal Liens

Cities have the power under certain circumstances to assess property owners and to file the liens against properties, including: (i) paving liens; (ii) weed liens; (iii) dangerous structure liens; (iv) utility liens; (v) plumbing and sewer liens; (vi) swimming pool liens; and (vii) clean-up liens. The requirements and limitations of each of the types of liens is determined by applicable statutes, as well as the priority of the liens in relation to other liens of record such as tax liens and mortgage liens. For example, a city has the right under the dangerous structure statutes to request that the owner of an unsafe, open or abandoned structure restore the structure to a safe condition. If the owner, mortgagee, or lienholder does not remove or repair such buildings, the city may do the necessary work. The city then has a lien against the property to which the buildings were attached in the amount of the expenses. If the city gives all appropriate notices to each mortgagee and lienholder as required by statute, the lien is a privileged lien subordinate only to tax liens. Such a lien can be removed or released by either paying the demolition costs if the structure was demolished or, if it was not demolished, by making the building safe and passing an appropriate inspection. Since this type of municipal lien would be subordinate to a tax lien, a foreclosure of a prior tax lien would extinguish or terminate the lien.

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County Liens

Counties may adopt procedures to abate various conditions in unincorporated areas in the county including accumulation of open rubbish, abandoned vehicles, and appliances; unsanitary conditions likely to harbor mosquitoes; weeds; unsafe or hazardous structures; abandoned swimming pools; and fire hazards. A county may assess the cost of any abatement procedures and obtain a lien against the property to secure the assessment. The commissioners court must file a notice that contains a statement of costs, a legal description of the property, and the name of the property owner, if known. The lien attaches when it is filed in the real property records and is inferior to a previously recorded mortgage lien attached to the real property.

Public Improvement District Liens

Governmental entities have the right to form various improvement districts to carry out public improvement projects to promote the health, safety and general welfare of residents, employers, employees, and consumers in the district. The districts have the right to impose charges or assessments against property within the districts to pay for the costs of the public improvements. The assessments are secured by liens against properties within the district and are discharged when paid. Examples of such liens are: (i) Public Improvement District Liens; (ii) Municipal Management District Liens; (iii) Wind Erosion District Liens; (iv) Ground Water Conservation District Liens; (v) Water Control and Improvement District Liens; (vi) Standby Fee Liens; and (vii) Special Water Liens.

Mechanic's Lien

A mechanic's lien is a lien against real property which secures payments owed to persons or entities who perform labor or other services, furnish materials for construction, demolish buildings, or make improvements on real property. In order to perfect a lien for nonpayment of labor or materials provided, a contractor or subcontractor must provide written notices and file affidavits in the real estate records of the county in which the property is located strictly in accordance with statutory procedures set out in Chapter 53 of the Texas Property Code.

If a nonprofit wants to acquire a property that is subject to mechanic's liens, the nonprofit should carefully scrutinize the claims to determine if they were properly filed and if the statute of limitations has expired for the claims. The nonprofit should attempt to determine if there is retainage (money withheld from the primary contractor by the owner or lender to pay for lien claims) or bond coverage which might satisfy the claim. If it appears that the claim is valid, a release of the claim must be negotiated with the lien holder. The nonprofit also should be aware that in certain cases, a title company may accept an indemnity or bond to "insure around" a lien claim and issue an owner's title policy without reference to the lien claim. As with other lien claims, a judicial determination through a declaratory judgment or similar action may be necessary to determine the validity of a claim and removal of the lien from the title.

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Property Owner's Association Lien

A property owner's or homeowner's association lien is a lien to collect assessments from a property owner in a planned subdivision or condominium. The lien must be created in the declarations of covenants, conditions, and restrictions which are filed in the real estate records of the county where the subdivision or condominium is located and pertain to all properties in the subdivision or condominium complex. Each property acquired in the subdivision or complex will be subject to the declarations of covenants, conditions, and restrictions which include the lien. The types of charges subject to the lien include dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due an association.

An association's lien for assessments has priority over other liens except liens for real property taxes and governmental assessments, a lien or encumbrance filed before the declaration is recorded, a first vendor's or first deed of trust lien recorded before the date on which the assessment sought to be enforced becomes delinquent under the declarations and, unless the declaration provides otherwise, a lien for construction of improvements. The lien may be foreclosed by filing a lawsuit and obtaining a court order authorizing foreclosure or without a court order if the declarations specifically permit non-judicial foreclosure and the amount sought is not simply for fines owed. As with other liens which may appear on a title commitment or title search for a property of interest to a nonprofit, an association lien for assessments can be discharged or released by the association on payment of the amounts secured by the lien. Prior to payment of the amount secured by the lien, an analysis should be made to determine if an association's lien filed against a property is valid.

Judgment Liens

A judgment lien is a claim against the property that arises out of a lawsuit. When a court renders a judgment against a person to pay an amount of money (judgment debtor), the judgment creditor can obtain an abstract of the judgment and file it in the real estate records of any county in which the judgment creditor believes the judgment debtor owns or may own real property. The judgment lien will attach to the judgment debtor's non-exempt property in the counties where the abstract of judgment is filed. Abstracts of judgment will attach to a judgment debtor's homestead only if strict criteria are met. Properly completed and recorded abstracts of judgment are effective for ten years. If a nonprofit wants to acquire property which is subject to a judgment lien, the nonprofit or seller can pay the amount covered by the lien and obtain a release from the judgment creditor. As with other liens recorded against a property, prior to making any payments, the nonprofit should confirm that there are no defects in the abstract of judgment and that the lien is otherwise valid and enforceable.

Utility Liens

Other common liens encountered by nonprofit developers engaged in redeveloping distressed urban properties are those filed by municipal utility companies for unpaid water, gas, and electric bills. These liens may only be filed against non-homestead property and will not apply to any bills for service connected to a tenant's name after notice by the property owner to the municipality that the prop-

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erty is rental property. The lien is inferior to a previously recorded mortgage and to tax liens, but is superior to previously recorded judgment liens. After a determination of whether the utility lien is valid, a release or discharge can be obtained from the municipality on payment of the amount secured by the lien. Again, inquiries should be made with the utility company about discounts, special programs, or exemptions for nonprofit developers.

Other Liens

There are other liens that can be filed against property, such as federal estate tax liens. While these liens are beyond the scope of this manual, they can still have a significant impact on title. A nonprofit should work with a title company to address clearing any additional liens that may be disclosed following the title search.

Limitation Periods Applicable to Liens

Most (but not all) liens encumbering real property are subject to statutory limitations of action which operate to make the liens "barred" or unenforceable after the expiration of a period of time in which a claim against real property can be made. In evaluating any lien encumbering real property, the nonprofit developer should determine if the applicable statute of limitations to enforce the lien has expired, as well as determine if the lien is otherwise valid and enforceable.

Vendor's, Mortgage, and Deed of Trust Liens

Mortgage and deed of trust liens typically include a power of sale which enables the lender to foreclose on real property subject to the lien when the debt secured by the lien is not paid. In the absence of a recorded contractual extension of maturity, a power of sale permitting non-judicial foreclosure of a contractual lien against real estate becomes "barred" (void and unenforceable) four years after the debt becomes due or matures. A cause of action for judicial foreclosure of the lien or a lawsuit to collect the debt also must be filed within four years. [Sections 16.004 & 16.035(d) of the Texas Civil Practice & Remedies Code].

If a deed of trust or other lien instrument (such as a vendor's lien or warranty deed) does not, on its face, disclose the date on which the debt became due or matured and a written release cannot be readily obtained, an affidavit affirming that the debt was paid along with an attached copy of the original promissory note reflecting that its final maturity or payment date occurred more than four years in the past can be evidence that the lien is barred. As referenced above, if indebtedness secured by a one-to-four family residence has been paid and a release has not been provided, a title company can also file an affidavit as evidence that the debt has been paid and that the deed of trust lien is no longer effective. In any case, the title company involved with the acquisition of property by a nonprofit should be consulted as to the appropriate documents to file as evidence of satisfaction of the debt or bar of the lien in question.

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Federal Tax Liens Perfected by Recorded Notice

If a Notice of Federal Tax Lien was filed in the county real estate records, the federal tax lien remains enforceable for ten years following the date of the tax assessment. Refiling of the notice within thirty days following the expiration of the ten years will maintain unbroken priority of the lien from the date that the original Notice was filed. If the tax debt remains unpaid, a new Notice of Federal Tax lien can still be filed after final expiration (ten years plus thirty days) of an earlier Notice, but the newly perfected federal tax lien has priority only from its date of filing. [26 U.S.C.A. 6321-6323, 6501 & 6502.]

To quickly ascertain whether or not a particular recorded Notice of Federal Tax Lien is still a "live" lien, simply refer to Column (e), captioned "Last Day for Refiling," in the body of the Notice. If each date listed in this column has passed, the Notice has expired as a lien against real property. Any new filing of a Notice, either prior to or after expiration of the earlier one, will appear in the real estate records as a separate federal tax lien.

Federal Estate Tax Lien

The federal lien for collection of estate tax is an "inchoate" lien—in other words, the lien is one that exists and is enforceable without any filing in the county deed records. Everyone dealing with a person's property is considered, by reason of the person's death, to be on notice of this automatic lien. The lien expires ten years from the person's date of death. [26 U.S.C.A. 6324.]

Ad Valorem Real Estate Tax Lien

The statutory lien securing payment of ad valorem real estate taxes expires twenty years after the taxes become delinquent (February 1st of the year following assessment), unless a suit for collection is pending at the time. [Sec. 33.05 of the Texas Tax Code.]

State Tax Liens

Strictly speaking, Texas law provides that a state tax lien attaches to real property owned by the taxpayer on the date it is filed and that the lien continues until the delinquent tax is paid. [Sec. 113.105 of the Texas Tax Code.] The Comptroller of Public Accounts must file suit for collection of a tax within three years after filing a lien to secure payment of the tax. [Sec. 111.202 of the Texas Tax Code.]

Judgment Liens (Non-Federal)

A non-federal judgment lien, created by filing and indexing an abstract of the judgment, expires ten years after the date on which the abstract of judgment was filed in the county real estate records (except an abstract of judgment filed to secure child-support arrearage; see below). [Sec. 52.006 Texas Property Code.]

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Judgment Liens (Federal)

If a judgment in favor of the United States was entered on or after May 29, 1981, a federal judgment lien will be enforceable for a period of 20 years following the date on which an abstract of the judgment was filed in the county real estate records and may be extended for a twenty-year period [28 U.S.C. 3201.] Federal judgments include those in favor of the United States by name, as well as those in favor of federal agencies or corporations (e.g., the Small Business Administration, the Department of Veterans Affairs, the Department of Housing and Urban Development, and the Federal Deposit Insurance Corporation when acting in its corporate capacity).

Child Support Lien

A lien for delinquent child support is effective until all arrearages including interest, any costs, and reasonable attorney's fees have been paid or the lien is otherwise released. There are two ways for a child support lien to be effective: filing of an abstract of judgment or filing of a notice of child support lien in the real property records. [Sec. 157.318 of the Texas Family Code.] A lien for delinquent child support attaches to all non-homestead real property of the delinquent parent once the notice is filed in the real property records in the county(s) where the delinquent parent owns real property.

Municipal Paving Lien

The statutory lien securing payment of a municipal assessment for street improvements is inferior only to liens for county, city, and school district ad valorem taxes. Enforcement of the municipality's assessment lien, once filed, does not expire. [Sec. 313.054 of the Texas Transportation Code.] Municipal paving liens do not attach to and cannot be foreclosed on homestead property.

Municipal Clearance and Demolition Lien

There is no expiration date for municipal liens that secure assessments for remedying health hazards (mowing weeds, removing refuse, etc.) or substandard structures. [Sec. 342.007of the Texas Health & Safety Code; Sec. 214.002 of the Texas Local government Code.]

Mechanic's Liens

If a lien affidavit is filed properly and in a timely manner, and the claim is otherwise valid, the lien holder for a claim arising from a residential construction project must initiate legal proceedings to foreclose the lien within one year after the last day the contractor may file a lien affidavit or within one year after completion, termination or abandonment of the work under the original contract under which the lien is claimed, whichever is later. The time periods for foreclosing liens on commercial properties are within two years after the last day a contractor may file the lien affidavit or within one year after completion, termination or abandonment of the work under the original contract under which the lien is claimed, whichever is later.

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Other Considerations Regarding the Enforcement of Liens

As referenced above, when a nonprofit wants to acquire a property that is subject to liens, it should first determine if the debt secured by the lien has been paid and if so, seek a release for the lien or a comparable document from the lienholder to file within the real estate records of the county where the real property is located. If it is determined that the debt secured by the lien has not been paid, the nonprofit should determine if the applicable statute of limitations has expired to enforce the lien and then work with the title company to record appropriate documents in the real estate records of the county where the property is located to establish that the lien is barred from enforcement.

If it appears that a lien is not barred from enforcement by the applicable statute of limitations, other inquiries should be made to determine if the lien is valid and enforceable. For example, it should be confirmed that the lien was filed in a timely manner and that all related procedures, including any notices to third parties, were complied with and that the form of the recorded lien is not defective. If a mechanic's lien is involved, inquiries also should be made regarding the availability of retainage or a bond to satisfy the debt.

Additionally, it should be determined if a lien in question has been filed against real property which is exempt from attachment, such as homestead property, and is therefore unenforceable against that property. If evidence of satisfaction or unenforceability of a lien claim cannot be accomplished with recorded documents, it may be necessary to file a lawsuit such as a declaratory judgment or similar action in the county where the real property is located for a judicial determination of the status of the lien.

The nonprofit should always consult with a title company when acquiring property subject to liens. The title company is not obligated to research the status of the lien or to obtain a release or other disposition of the lien, but the company will usually work with the parties to a transaction to attempt to resolve title problems such as liens. The title company can often recommend a course of action to take or document to be obtained to address a title issue such as a lien. As referenced above, depending on the circumstances, the title company may be able to file an affidavit confirming that a debt has been paid, effectively releasing the lien, or in certain cases "insure around" a lien claim. If a title company will be asked to issue an owner's title insurance policy to the nonprofit, it must approve any document intended to effect the lien release.

Easements and Licenses

Easements and licenses are rights to use someone else's land for a specified purpose. Typically, the difference between a license and an easement is the extent and duration of the interest. A license, such as a hunting license, generally involves the right to use a person's land for a limited time and is considered a contract right rather than an interest in land. A license, which is often a personal agreement between the landowner and the license holder, frequently goes unrecorded.

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By contrast, an easement grants an interest in the land itself (e.g., road access) and is often perpetual. Types of easements that exist include easements created by contracts and grants. Some of the most common types of easements are created by eminent domain (i.e., the right of the government to take private lands for a public purpose). For example, most urban lots will have a utility easement that runs across the lot. Most utility easements prohibit development of the surface above the easement. Utility easements are typically not negotiable.

Easements should be recorded in the real estate records and are usually discovered during the process of title research or from a review of a survey of the subject property. Prescriptive easements, however, may not be recorded.A prescriptive easement is similar to adverse possession in that someone acquires an easement through a use that is open and notorious, adverse, and continuous for a certain statutory period. For example, a prescriptive easement can arise where a road or path across land has been used for many years by someone who does not own the land.

Prior to purchasing property, a nonprofit should visually inspect the property and review a survey of the property, if one is available, to determine whether there are obvious uses of property by other parties that are not recorded in the real estate records and thus whether there are any prescriptive easements or licenses on the land.

In addition to easements and licenses, a lease might also exist on the property. A lease is a contractual agreement between a lessor and lessee granting the lessee possession of the property or the right to take profits from the land. For example, oil and gas leases are common in rich mineral areas. Nonprofit developers working in such areas should inquire whether there are outstanding oil and gas leases on the property.

Nonprofit developers need to understand how easements, licenses, and leases affect their potential development plans. If any of these three impede such plans, the nonprofit developer needs to determine, before purchasing the property, whether an alternative development plan is feasible or whether the easement, license, or lease can be altered or terminated. In order to terminate an easement, license, or lease, the nonprofit will need to negotiate a new agreement; this could require financial compensation.

Mineral Rights

In Texas, one person may own the surface of land and another may own subsurface rights such as mineral or gas rights. The law provides that the owner of the mineral rights has the right to utilize the surface of the property to the extent reasonably necessary to extract his minerals, oil and gas rights, or other resources of value. If the surface owner does not want a mineral rights owner to have access across his land, the surface owner must obtain a waiver of surface rights from the mineral rights owner. Nonprofit developers should review title commitments regarding the existence of any holders of mineral rights on property the nonprofit would like to acquire.

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Chapter Seven: Other Useful Resources

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Chapter Seven: Other Useful Resources

Texas Department of Insurance: Information on Title Insurance
www.tdi.texas.gov

Texas A&M Real Estate Center
www.recenter.tamu.edu

Texas Land Title Association
www.tlta.com

Texas Real Estate Commission: Forms and Rules
www.trec.texas.gov

Texas County Appraisal Districts: Appraisal Districts' Value and Ownership of Properties
www.texascad.com

First American Financial Corp: Real estate closing practices in 50 states and an underwriting manual with title insurance forms and procedures
www.firstam.com

Stewart Title Guaranty Corporation: Title insurance underwriting guide
www.vuwriter.com

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Chapter Eight: Appendix

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SIMPLE WILL

LAST WILL AND TESTAMENT

of

_____

STATE OF TEXAS

COUNTY OF _____

I, _____, a resident of the County of _____, State of Texas, being of sound mind and over eighteen years of age do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all wills and codicils heretofore made by me.

I.

A. I hereby appoint my spouse/parent/child, _____ *[insert name and address]*, as Independent Executor of this Will. If _____ does not survive me or is unable to serve, I hereby appoint my parent/child/friend _____ *[insert name and address],* as Executor of this Will.

B. I direct that no action shall be taken in any court in the administration of my estate other than the probating and recording of this Will and the return of an inventory, appraisement, and list of claims of my estate as provided by law for the independent administration of estates under Wills.

C. No Executor appointed by me shall be required to furnish any bond or other security.

II.

I direct that all my legally enforceable debts, funeral expenses, expenses of my last illness and administrative expenses, be paid as soon as practicable after my death and in the manner that my Executor deems most expedient and convenient.

III.

In the event that any property or interest in property passing under this Will, by operation of law or otherwise by reason of death, shall be encumbered by mortgage or lien, or shall be pledged to secure any obligation, whether the property or interest in property so encumbered or pledged shall be owned by me jointly or individually, it is my intention that such indebtedness shall not be charged to or paid from my estate, but that the devisee, legatee, or beneficiary receiving said property shall take it subject to all encumbrances existing at the time of my death.

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All the rest, residue, and remainder of my estate of every personal kind and nature, which I may own at the time of my death, real, personal and mixed, tangible and intangible, of whatsoever nature and wheresoever situated, I give, devise and bequeath to my spouse/partner/child/friend, _____ *[insert name]* providing he survives me.

In the event my spouse/partner/child/friend shall predecease me, I give and devise all the rest, residue and remainder of my estate to my children/siblings/friends, _____ *[insert name]*, equally, share and share alike, or to their issue, in equal shares per stirpes.

IN WITNESS WHEREOF, I, _____, hereby set my hand to this, my last Will, each page of which has been signed by me at the City of _____, State of Texas, this _____ day of _____ , 200_ , in the presence of subscribing witnesses who I have requested.

_____

Testator

This instrument, consisting of ____pages, including this page, was, on the date hereof, signed, published, and declared by _____, to be his Last Will and Testament, in our presence and in the presence of each of us and we, at the same time, at his request, in his presence and in the presence of each other, have hereunto signed our names and addresses as attesting witnesses.

_____ of _____

Witness Address

_____ of _____

Witness Address

_____ of _____

Witness Address

STATE OF TEXAS

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared _____ *[testator]*, _____ *[witness]*, _____ *[witness]*, _____ *[witness]*, known to me to be the Testator and the witnesses respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly affirmed, the Testator, _____, declared to me and to the said witnesses in my presence that said instrument is his last Will and Testament, and that he had willingly made and

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executed it as his free act and deed for the purpose expressed therein; and the said witnesses, each on his/her oath stated to me, in the presence and hearing of the said Testator that the said Testator had declared to them that said instrument is his/her last Will and Testament, and that he executed the same as such and wanted each of them to sign it as a witness: and upon their oaths each witness stated further that he did sign the same as witness in the presence of said Testator and at his request: that he at the time was eighteen years of age or over and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

_____

Testator

_____

Witness

_____

Witness

_____

Witness

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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AFFIDAVIT OF HEIRSHIP

Date: _____

Deceased: _____

Property: _____

[First] Spouse: _____

[Second Spouse:] _____

Affiant: _____

Affiant on oath swears that the following statements are true and are within the personal knowledge of Affiant:

1. My name is *[name of affiant]*, and I live at *[address]*. I am personally familiar with the family and marital history of *[name of decedent]*, and I have personal knowledge of the facts stated in this affidavit.

2. I knew Decedent from *[date]* until *[date]*. Decedent died on *[date]*. Decedent's place of death was *[place of death]*. At the time of Decedent's death, Decedent's residence was *[address]*.

3. Decedent's marital history was as follows: *[describe marital history and, if the decedent's spouse is deceased, specify the date and place of the spouse's death]*.

4. Decedent had the following children: *[specify name, birth date, name of other parent, and current address of child or date of death of child and descendants of deceased child, as applicable, for each child]*.

5. Decedent did not have or adopt any other children and did not take any other children into Decedent's home or raise any other children, except: *[specify name[s] of child[ren] or state "none"].*

6. Decedent's mother was: *[specify name, birth date, and current address or date of death of mother, as applicable]*.

7. Decedent's father was: *[specify name, birth date, and current address or date of death of father, as applicable]*.

8. Decedent had the following siblings: *[specify name, birth date, and current address or date of death of each sibling and parents of each sibling and descendants of each deceased sibling, as applicable, or state "none"]*.

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9. The following persons have knowledge regarding Decedent, the identities of Decedent's children, if any, and parents or siblings, if any: *[specify names of persons with knowledge or state "none"]*.

10. I have been asked to make this Affidavit of Heirship in order that Decedent's children may prove that they are now the owners of the property _____owned at his/her death in _____ , _____ County, _____

11. I have no financial interest in the Estate of the Decedent and I am not an heir of the Decedent or of the Decedent's Estate under the laws of descent and distribution of the State of Texas.

_____

[Name of Affiant]

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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SMALL ESTATE AFFIDAVIT WITH WILL

Before me, the undersigned authority, on this day personally appeared _____ *["Affiant"]* who, being first duly sworn, upon his/her oath states

1. My name is _____ , and I live at _____. I am personally familiar with the family and marital history of _____ *["Decedent"]*, and I have personal knowledge of the facts stated in this affidavit.

2. I knew decedent from _____ until _____. Decedent died on _____. Decedent's place of death was _____. At the time of decedent's death, decedent's residence was _____ .

3. Decedent's marital history was as follows: _____
_____
[If decedent's spouse is deceased, insert date and place of spouse's death.]

4. Decedent had the following children: _____
_____
[Include name, birth date, name of other parent, and current address of each child, and, if applicable, date of death and descendants of each child].

5. Decedent did not have or adopt any other children and did not take any other children into decedent's home or raise any other children, except: _____
[Insert name or state "none"].

6. *[Include if decedent was not survived by descendants]*. Decedent's mother was: _____ *[include name, birth date, and current address or date of death of mother, as applicable]*.

7. *[Include if decedent was not survived by descendants].* Decedent's father was: _____
[include name, birth date, and current address or date of death of father, as applicable].

8. *[Include if decedent was not survived by descendants or by either mother or father].* Decedent had the following siblings: _____ *[include name, birth date, and current address or date of death of each sibling and parents of each sibling and descendants of each deceased sibling, as applicable, or state "none"].*

9. Decedent died leaving a written will, a true and correct copy of which is attached to this Affidavit as its EXHIBIT "A".

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10. There has been no administration of decedent's estate.

11. Decedent left no debts that are unpaid, except: _____ *[insert list of debts or state "none"].*

12. There are no unpaid estate or inheritance taxes, except: _____ *[insert list of unpaid taxes or state "none"].*

13. To the best of my knowledge, decedent owned an interest in the following real property: *[insert list by legal description of real properties in which decedent owned an interest or state "none"].*

14. *[Optional: Insert additional information as appropriate, such as net value of decedent's estate.]*

_____

[Name of Affiant]

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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SMALL ESTATE AFFIDAVIT NO WILL

Before me, the undersigned authority, on this day personally appeared _____*["Affiant"] [insert name of affiant]* who, being first duly sworn, upon his/her oath states:

1. My name is _____ *[insert name of affiant]*, and I live at _____. I am personally familiar with the family and marital history of _____*["Decedent"]*, and I have personal knowledge of the facts stated in this affidavit. *[Insert address of affiant's residence].*

2. I knew decedent from _____ until _____. Decedent died on _____. Decedent's place of death was _____. At the time of decedent's death, decedent's residence was _____.

3. Decedent's marital history was as follows: _____

   _____

   [If decedent's spouse is deceased, insert date and place of spouse's death.]

4. Decedent had the following children: _____

   _____

   [Include name, birth date, name of other parent, and current address of each child, and, if applicable, date of death and descendants of each child].

5. Decedent did not have or adopt any other children and did not take any other children into decedent's home or raise any other children, except: _____ *[Insert name or state "none"].*

6. *[Include if decedent was not survived by descendants].* Decedent's mother was: _____ *[include name, birth date, and current address or date of death of mother, as applicable].*

7. *[Include if decedent was not survived by descendants].* Decedent's father was: _____ *[include name, birth date, and current address or date of death of father, as applicable].*

8. *[Include if decedent was not survived by descendants or by either mother or father].* Decedent had the following siblings: _____ *[include name, birth date, and current address or date of death of each sibling and parents of each sibling and descendants of each deceased sibling, as applicable, or state "none"].*

9. Decedent died without leaving a written will.

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10. There has been no administration of decedent's estate.

11. Decedent left no debts that are unpaid, except: _____ *[insert list of debts or state "none"].*

12. There are no unpaid estate or inheritance taxes, except: _____ *[insert list of unpaid taxes or state "none"].*

13. To the best of my knowledge, decedent owned an interest in the following real property: *[insert list by legal description of real properties in which decedent owned an interest or state "none"].*

14. *[Optional: Insert additional information as appropriate, such as net value of decedent's estate].*

_____
[Name of Affiant]

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____
Notary Public, State of Texas

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DECEDENT'S WILL PROBATED OUT-OF-STATE

PROBATE CAUSE/DOCKET NO.

IN THE ESTATE OF	§	_____ COURT OF
	§	
_____,	§	_____ COUNTY,
	§	
DECEASED	§	_____

CERTIFICATION

The undersigned is the Pending Judge of the above-captioned Court, which is the court of probate jurisdiction in and for said County and State.

Proceedings are pending or have been completed in this Court under the above-numbered cause or docket number, concerning the Estate of _____ , Deceased. Attached to this Certification are copies of the same Decedent's Will and the Order Admitting Will to Probate *[or other Order similarly establishing the Will]* as made and taken from the record of this Court in said cause. The attached document-copies have been certified or attested to by the Clerk of this Court, with the seal of this Court affixed if one is required.

I certify that the Clerk's certification or attestation appearing on or appended to the attached document-copies is in due form under the laws of this State and the rules of this Court.

This Certification is made for the purpose of qualifying the attached document-copies for local recordation in the State of Texas, in accordance with TEXAS PROBATE CODE Sections 96 through 99.

So certified, this _____ day of _____, _____.

_____

Judge Presiding

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Miscellaneous Forms to Cure Title Defects

CERTIFICATE OF RESOLUTIONS

Date: _____

Corporation: _____

Date of Adoption: *[date of meeting or of written consent]*

[I/We], the *[members/directors/secretary/[other authorized officer]]* of *[name of corporation] [the ["Corporation"]*, a Texas nonprofit corporation, certify that *[I/we]* have custody of the records of the Corporation and that *[I am/we are]* authorized to execute and deliver this certificate of resolutions on behalf of the Corporation. *[I/We]* further certify as follows:

1. The resolutions *[below/attached]* were duly adopted on the Date of Adoption. The meeting of the *[members/directors]* of the Corporation was called and held in accordance with law and the bylaws of the Corporation, and a quorum was present. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

2. The resolutions *[below/attached]* were duly adopted on the Date of Adoption. A quorum was present at the meeting of the *[members/directors]* of the Corporation, and all *[members/directors]* had signed a waiver of notice of the meeting in accordance with law and the bylaws of the Corporation. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

3. The resolutions *[below/attached]* were duly adopted as of the Date of Adoption by written consent of the *[members/directors]* of the Corporation as required by law and the bylaws of the Corporation. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

4. *[I/We]* further certify that the Corporation is duly organized and existing under the laws of the state of Texas, is qualified to do business here, and is in good standing; that no proceeding is pending for the forfeiture of the certificate of incorporation or for the dissolution, voluntary or involuntary, of the Corporation; that there is no provision of the bylaws or articles of incorporation of the Corporation limiting the powers of the *[members/directors]* of the Corporation to adopt the resolutions referred to above and that the resolutions are in conformity with the provisions of the bylaws and the articles of incorporation of the Corporation; that the undersigned is the keeper of the records and minutes of the proceedings of the Corporation; and that the following persons

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constitute all of the *[members/directors]* of the Corporation:

_____

[Name of member or director]

_____

[Name of member or director]

The undersigned hereby certifies that *[he/she]* is the duly elected and qualified president of *[name of corporation]*; that *[name]* is the duly elected and qualified *[secretary/[other officer]]* of *[name of corporation]*; that the signature above is *[name]*'s genuine signature; and that the foregoing certificate of resolutions is true and correct.

_____

[Name of president]

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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AFFIDAVIT OF MARITAL STATUS

Date: _____

Affiant: _____

Property: _____

Date of Acquisition: _____

[Affiant's Spouse:] _____

[Date of Marriage:] _____

[Affiant's Former Spouse:] _____

[Date of Marriage:] _____

[Date of [Divorce/Death]:] _____

Affiant on oath swears that the following statements are true and are within the personal knowledge of Affiant: *[Choose one of the following:]*

Affiant acquired title to the Property on the Date of Acquisition. Affiant was then unmarried and has remained unmarried continuously through the date of this affidavit.

Affiant acquired title to the Property on the Date of Acquisition, and Affiant was then unmarried. Affiant subsequently married Affiant's Spouse on the Date of Marriage, and they have remained married to each other continuously from then through the date of this affidavit.

Affiant acquired title to the Property on the Date of Acquisition. Affiant was then married to Affiant's Spouse, and they have remained married to each other continuously from then through the date of this affidavit.

Affiant acquired title to the Property on the Date of Acquisition, and Affiant was then married to Affiant's Former Spouse. They remained married to each other until they were divorced on the Date of Divorce, and Affiant acquired full title to the Property in the divorce. Affiant has not married again since the divorce.

Affiant acquired title to the Property on the Date of Acquisition, and Affiant was then

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married to Affiant's Former Spouse. They remained married to each other until they were divorced on the Date of Divorce, and Affiant acquired full title to the Property in the divorce. Affiant remained unmarried until marrying Affiant's Spouse on the Date of Marriage, and they have remained married to each other continuously from then through the date of this affidavit.

Affiant acquired title to the Property on the Date of Acquisition, and Affiant was then married to Affiant's Former Spouse. They remained married to each other until Affiant's Former Spouse died on the Date of Death, at which time Affiant acquired full title to the Property. Affiant has not married again since that time.

Affiant acquired title to the Property on the Date of Acquisition, and Affiant was then married to Affiant's Former Spouse. They remained married to each other until Affiant's Former Spouse died on the Date of Death, at which time Affiant acquired full title to the Property. Affiant remained unmarried until marrying Affiant's Spouse on the Date of Marriage, and they have remained married to each other continuously from then through the date of this affidavit.

_____

[Name of Affiant]

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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AFFIDAVIT OF IDENTITY

Date:

Affiant:

[Affiant's Other Name(s):]

Affiant on oath swears that the following statement*[s]* *[is/are]* true and *[is/are]* within the personal knowledge of Affiant:

Affiant is sometimes known by Affiant's Other Name*[s]*. Affiant and the person*[s]* indicated by Affiant's Other Name*[s]* are the same person.

Affiant is not the same person as the *[name]* named in *[specify document]*.

_____

[Name of Affiant]

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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NOT SAME PERSON AFFIDAVIT

STATE OF TEXAS §

COUNTY OF §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me, and who, after being by me duly sworn on oath stated:

1. "That my full name is _____, I reside at Street, in the City of _____, _____ County, Texas.

2. I have resided at the following addresses in the last ten years: _____
_____
_____
_____
_____ .

3. My Social Security No. is ____-___-_____.

4. I own the following described property, situated in _____County, Texas: _____
_____
_____
_____
_____ .

5. There appears on record in the Office of the County Clerk of _____ County, Texas, the Abstract of Judgment and/or Tax Liens attached hereto as Exhibit "A," consisting of _ _____ page*[s]*.

6. I am not the same person as the Judgment Debtor in any of the foregoing Abstracts of Judgment or the taxpayer in any of the Tax Liens.

7. I do not have any outstanding unpaid judgments, Federal Tax Liens or State Tax Liens appearing of record against me in _____ County, Texas.

8. I am making this statement under oath in order to induce _____ Title Insurance Company to issue its title policy covering the above described property without exception to said Abstracts of Judgment and/or Tax Liens.

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9. I agree to indemnify the Title Insurance Company and its agent against any and all loss, damage, or expense, which they may sustain or incur because said title policies are issued without making an exception for the matters listed on Exhibit "A."

_____

[Name of Affiant]

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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Miscellaneous Forms

AFFIDAVIT OF NONPRODUCTION

Date:

Oil and Gas Lease

Date:

Lessor:

Lessee:

Property:

Term of the lease: *[[number]* years/*[other term as specified in the lease]]* and as long thereafter as oil, gas, or other minerals are produced.

Owner:

[Buyer:]

[Lienholder:]

[Lessee:]

Owner on oath swears that the following statements are true and are within the personal knowledge of Owner: *[Choose the following statements as applicable]:*

Owner owns the Property. The Property *[include if applicable together with other real estate]* was subject to the Oil and Gas Lease.

No drilling operations were begun during the term of the lease. No oil, gas, or any other mineral has previously been produced from the Property during the term of the lease. No oil, gas, or other mineral is now being produced from the Property.

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Drilling operations were conducted during the term of the lease, but no oil, gas, or any other mineral has previously been produced from the Property during the term of the lease. No oil, gas, or other mineral is now being produced from the Property.

Drilling operations were conducted during the term of the lease. Oil, gas, or other minerals have previously been produced from the Property during the term of the lease, but no oil, gas, or other mineral is now being produced from the Property.

This affidavit is to establish of record that the Oil and Gas Lease expired by its terms on *[date]*.

This affidavit is made for *[Buyer to rely on in buying the Property/Lienholder to rely on in making a loan against the Property/Lessee to rely on in leasing the Property]*.

_____

[Name of Affiant]

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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BOUNDARY LINE AGREEMENT

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF §

ON THIS the _____ day of _____, _____, the undersigned have entered into the following boundary line agreement and conveyance.

WHEREAS, _____ is the owner of the following described property, to wit:

_____
_____
_____
_____ and;

WHEREAS, _____ is the owner of the following described property, to wit:

_____
_____
_____
_____ and;

WHEREAS, there appears to be a question as to the location of the mutual boundary line between the owners of the above tracts and the owners by this agreement desire to settle this dispute.

NOW, THEREFORE, for and in consideration of Ten ($10.00) Dollars and other good and valuable consideration and the further consideration of settling such dispute, the owners of the above tracts agree that the mutual boundary line between such tracts is as follows:

_____
_____
_____
_____

FURTHER, the owners of each tract of land described above do hereby grant, sell and convey to the owners of the other and adjoining tract, all right, title, and interest in and to all the property situated on such owners' side of the mutual boundary line.

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EXECUTED THIS the _____ day of _____, _____.

_____ _____

[signature of owner] *[signature of owner]*

_____ _____

[printed name of owner] *[printed name of owner]*

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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Forms for Forced Sale of a Co-Owners' Interest by Nonprofit

CAUSE NO. _____

_____	§	IN THE DISTRICT COURT
	§	
V.	§	_____ COUNTY
	§	
_____	§	
et al.	§	_____ JUDICIAL DISTRICT

PETITION UNDER SECTION 29.002 OF THE TEXAS PROPERTY CODE

TO THE HONORABLE JUDGE OF THE COURT:

Plaintiff files this Petition against the Defendants named herein pursuant to the provisions of Section 29.02 of the Texas Property Code:

1. Discovery Level: Level 2.

2. Plaintiff: _____.

3. Defendants:

(a) Name and Address Known: The persons identified by name and address on **Exhibit A** attached hereto and incorporated herein by reference for all purposes. Plaintiff requests that each Defendant identified on Exhibit A be served with citation in accordance with the requirements of Rule 106 of the Texas Rules of Civil Procedure. As to any Defendant identified on Exhibit A who resides outside this state, Plaintiff requests that such Defendant be served with process in accordance with the requirements of Rule 108 of the Texas Rules of Civil Procedure.

(b) Name Only Known: Pursuant to the authority granted in Section 17.003 of the Texas Civil Practice and Remedies Code, Plaintiff also sues the persons identified by name on **Exhibit B** attached hereto and incorporated herein by reference who own or may claim to own an interest in the Property and who reside in an unknown place or are a transient.

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Plaintiff requests that each Defendant identified on Exhibit B be served with citation by publication in accordance with the requirements of Rule 109 of the Texas Rules of Civil Procedure. This request for issuance of citation for service by publication is supported by the affidavit of Plaintiff attached hereto.

(c) Unknown Heirs: Pursuant to the authority granted in Section 17.004 of the Texas Civil Practice and Remedies Code, Plaintiff also sues the unknown heirs of the deceased person(s) named and identified on **Exhibit C** attached hereto and incorporated herein by reference who owned or may have owned an interest in the Property. Pursuant to Rule 111 of the Texas Rules of Civil Procedure, Plaintiff requests that the clerk issue citation for service by publication and that service by publication be made in accordance with the requirements of Rule 116 of the Texas Rules of Civil Procedure. This request for issuance of citation for service by publication is supported by the affidavit of Plaintiff attached hereto.

4. Property: That certain land located in the county in which this suit is filed and which is described more specifically on **Exhibit D** attached hereto and incorporated herein by reference for all purposes.

5. Jurisdiction and Venue: This Court has jurisdiction pursuant to Section 24.007 of the Texas Government Code, Article V, Section 8, of the Texas Constitution, and Section 29.002 of the Texas Property Code. Venue of this action is proper in this county because the Property is located in this county. Section 29.002, Texas Property Code; Section 15.011, Texas Civil Practice and Remedies Code.

6. The Property is owned in part by Plaintiff, a nonprofit organization that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3), Internal Revenue Code of 1986, and its subsequent amendments, and Plaintiff: (A) has been incorporated in this state for at least one year; (B) has a corporate purpose to develop affordable housing that is stated in the articles of incorporation or charter; (C) has at least one-fourth of its board of directors residing in the county in which the property is located; and (D) engages primarily in the building, repair, rental, or sale of housing for low-income individuals or families.

7. The Property is not exempt from forced sale under the Constitution or laws of this State.

8. Plaintiff owns an undivided _____ fee simple interest in the Property.

9. Plaintiff has paid each Defendant's share of ad valorem taxes imposed on the Property for two years in a three-year period.

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10. None of the Defendants has reimbursed Plaintiff for more than half of the total amount paid by Plaintiff for the taxes on each Defendant's behalf.

11. As required by Section 29.002 of the Texas Property Code, the Property is described on Exhibit D attached.

12. The name of each known owner of the Property in addition to Plaintiff is listed on Exhibit A and Exhibit B attached hereto and incorporated herein by reference. The names of any deceased persons whose unknown heirs may own or claim to own an interest in the Property are identified on Exhibit C attached hereto and incorporated herein by reference.

13. The interest held by each known owner of the Property other than Plaintiff is listed on Exhibit A and Exhibit B attached hereto and incorporated herein by reference. The interest held by unknown heirs of any deceased persons is listed on Exhibit C attached hereto and incorporated herein by reference.

14. The total amount paid by Plaintiff for each Defendant's shares of ad valorem taxes imposed on the Property is shown on Exhibit A, Exhibit B, and Exhibit C attached hereto and incorporated herein by reference for all purposes.

15. The amount paid, if any, by any one or more of the Defendants to Plaintiff to reimburse Plaintiff for paying any Defendant's share of ad valorem taxes imposed on the Property is shown on Exhibit A, Exhibit B, and Exhibit C attached hereto and incorporated herein by reference.

16. Before the date on which this Petition was filed, Plaintiff made a demand that each Defendant reimburse Plaintiff for the amount of each such Defendant's share of ad valorem taxes imposed on the Property paid by Plaintiff; and Defendants have not reimbursed Plaintiff, if at all, more than half of the amount of money Plaintiff paid on each Defendant's behalf for each such Defendant's share of ad valorem taxes imposed on the Property.

17. As to each Defendant whose address or identity is unknown, and as authorized by Section 29.0035 of the Texas Property Code, the demand of Plaintiff for reimbursement from each such Defendant as required by Section 29.003(2) of the Texas Property Code was met by publication in a newspaper in the county in which the Property is located once each week for four consecutive weeks, with the final publication occurring not later than the 30th day before the date on which this Petition is filed. The publication contained the demand for reimbursement and: (A) a general description of the Property; (B) the legal description of the Property according to the survey of the Property, including the number

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of the lot and block or any other plat description that may be of record if the Property is located in a municipality; (C) the county in which the Property is located; (D) the interest of the Defendant; and (E) the name and address of Plaintiff.

18. Pursuant to Section 29.004 of the Texas Property Code, Plaintiff requests that, upon final hearing, the Court enter an order that divests each Defendant's interest in the Property and orders Plaintiff to pay to each Defendant an amount computed by subtracting the outstanding amount of money each such Defendant owes to Plaintiff for payment of each such Defendant's share of ad valorem taxes imposed on the Property from the fair market value of each such Defendant's interest in the Property as determined by an independent appraiser appointed by the Court. Plaintiff also requests that the Court's order also direct each Defendant to execute and deliver to Plaintiff a deed that conveys to Plaintiff each such Defendant's interest in the Property.

19. Plaintiff requests that the Court appoint an independent appraiser to determine the fair market value of each Defendant's interest in the Property.

20. Pursuant to Rule 244 of the Texas Rules of Civil Procedure, Plaintiff requests that the Court appoint an attorney ad litem to represent the interests of all Defendants served with citation by publication who do not enter an answer or appearance in this cause within the prescribed time.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendants be cited to appear and answer herein and that upon final hearing Plaintiff be awarded judgment granting all relief to which Plaintiff may be entitled against Defendants under Section 29.004 of the Texas Property Code or other applicable law, and that Plaintiff be granted such other and further relief, legal or equitable, general or special, to which Plaintiff may show itself to be justly entitled.

Respectfully submitted,

_____

[Name of Attorney]

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EXHIBIT A

Defendants Whose Names and Addresses
Are Known to Plaintiff

*

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EXHIBIT B

Defendants Whose Names Are Known to Plaintiff
But Whose Addresses Are Unknown to Plaintiff

*

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EXHIBIT C

Unknown Heirs of the Following Named Deceased Persons

*

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EXHIBIT D

Description of the Property

Street Address:

Legal Description (including county):

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AFFIDAVIT OF PLAINTIFF IN SUPPORT OF REQUEST FOR CITATION BY PUBLICATION

THE STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned Notary Public, on this date appeared before me _____, personally known to me, who being duly sworn upon oath deposed and stated as follows:

My name is _____.

My address is _____ _____.

I am over the age of 21, and I have never been convicted of a felony or any crime of moral turpitude. I am fully competent to make this affidavit. This affidavit is made upon personal knowledge. Each and every statement contained in this affidavit is true and correct.

I am the _____ of Plaintiff.

I am duly authorized and empowered to execute this affidavit on behalf of Plaintiff.

The residence and address of each Defendant listed on Exhibit B attached to the Petition under Section 29.002 of the Texas Property Code to which this affidavit is attached is unknown to Plaintiff and the undersigned affiant, and after due diligence Plaintiff and the undersigned affiant have been unable to locate the whereabouts of such Defendants listed on Exhibit B.

The names of the heirs of the deceased persons identified on Exhibit C attached to the Petition Under Section 29.002 of the Texas Property Code to which this affidavit is attached are unknown to Plaintiff and the undersigned affiant, unless such heirs are otherwise listed on Exhibit A or Exhibit B to the Petition Under Section 29.002 of the Texas Property Code to which this affidavit is attached. Plaintiff has used due diligence in an effort to determine the names of the heirs of the deceased persons identified on Exhibit C attached to the Petition Under Section 29.002 of the Texas Property Code to which this affidavit is attached.

_____
[Name of Plaintiff]

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STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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Release of Lien Forms

RELEASE OF LIEN

Date:

Holder of Note and Lien:

Holder's Mailing Address: *[include county]*

Note

Date:

Original principal amount:

Borrower:

Lender:

[Maturity date:]

Note and Lien Are Described in the Following Documents: *[include recording information]*

Property *[including any improvements]:*

Holder of Note and Lien is the owner and holder of the Note and Lien described above.

Holder of Note and Lien acknowledges payment in full of the Note and releases the Property from the Lien and from all liens held by Holder of Note and Lien, without regard to how they were created or evidenced.

For value received, Holder of Note and Lien releases the Property from the Lien.

Holder of Note and Lien expressly waives and releases all present and future rights to establish or enforce the Lien as security for payment of any future or other indebtedness.

When the context requires, singular nouns and pronouns include the plural.

_____

[Name of Holder]

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STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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PARTIAL RELEASE OF LIEN

Date:

Holder of Note and Lien:

Holder's Mailing Address: *[include county]*

Note

Date:

Original principal amount:

Borrower:

Lender:

[Maturity date:]

Note and Lien Are Described in the Following Documents: *[include recording information]*

Property *[including any improvements]* to Be Released from Lien *["Property"]*:

For value received, Holder of Note and Lien releases only the Property from the Lien and from all liens held by Holder of Note and Lien, without regard to how they were created or evidenced.

Holder of Note and Lien expressly waives and releases all present and future rights to establish or enforce the Lien as security for payment of any future or other indebtedness.

When the context requires, singular nouns and pronouns include the plural.

_____

[Name of Holder]

STATE OF TEXAS
COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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RELEASE OF JUDGMENT LIEN

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF §

THAT THE UNDERSIGNED is the legal and equitable owner and holder of that one certain Abstract of Judgment in the original principal sum of $ _____, plus attorney's fees, costs and interest, filed on _____, against _____, in favor of _____ which Judgment was entered in Cause No. _____ styled _____, in the _____ Court of _____County, Texas, creating an encumbrance against the following described property, to-wit:

_____
_____
_____
_____

for a good and valuable consideration paid to the undersigned which is hereby acknowledged.

LIENHOLDER hereby RELEASES AND DISCHARGES the above-described abstract of judgment, the said _____, and the above-described property, and all other properties owned by him from said lien and all other liens created by virtue of the above-referenced abstract of judgment.

EXECUTED this _____ day of _____, _____.

By: _____

_____

_____Name: _____

_____Title: _____

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____
Notary Public, State of Texas

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PARTIAL RELEASE OF JUDGMENT LIEN

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF §

THAT THE UNDERSIGNED is the legal and equitable owner and holder of that certain Abstract of Judgment in the original principal sum of $_____, plus interest and costs, filed for record on _____, against _____("Debtor"), in favor of _____, which Judgment was entered in Cause No. _____, filed for record under County Clerk's File No. _____ of the Official Public Records of Real Property of _____ County, Texas, creating an encumbrance against the following described property, to-wit: _____
_____
_____
_____ .

LIENHOLDER hereby RELEASES AND DISCHARGES the above-described property from said lien or liens, BUT it is expressly agreed and understood that this is a PARTIAL RELEASE and that the same shall in no way release, affect or impair said lien or liens against any other property of Debtor, including but not limited to, _____'s claim against any proceeds from the sale of the above-described property to the extent such proceeds are not exempt from execution. _____ does not acknowledge and hereby specifically disclaims that it has received any payment, in part or in full, of its Judgment against Debtor in connection with executing this Partial Release. When the context requires, singular nouns and pronouns include the plural.

EXECUTED this _____ day of _____, _____.

By: _____

_____

Name: _____

_____Title: _____

STATE OF TEXAS

COUNTY OF _____
SIGNED under oath before me on _____

_____
Notary Public, State of Texas

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RELEASE OF MECHANIC'S AND MATERIALMAN'S LIEN

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF §

WHEREAS, _____ (hereinafter called "Claimant"), filed a Mechanic's and Materialman's Lien Affidavit (hereinafter called "Affidavit"), as follows:

> Affidavit filed for record on _____, under County Clerk's File No. _____ of the Official Public Records of County, Texas, thereby giving notice of Claimant's lien claim in the amount of $ against _____ (hereinafter called "Owner"), for the furnishing of labor and materials in connection with the improvements of the Property (as hereinafter defined) pursuant to a contract between Claimant and the Owner or reputed Owner of the Property; and

WHEREAS, the real property (herein called "Property") sought to be charged with said mechanic's and materialman's lien is described in the Affidavit as follows, to-wit: _____
_____
_____
_____
_____

WHEREAS, the mechanic's and materialman's lien claim of Claimant, which is the basis of the Affidavit, has in all respects been settled and Claimant desires to release all persons liable therefore;

NOW, THEREFORE, for and in consideration of the payment in full to Claimant of all amounts due and owing Claimant for the furnishing of said labor and materials in connection with the improvements of the Property, the receipt and sufficiency of which are hereby acknowledged, Claimant does hereby (i) acknowledge and by these presents release, remise and relinquish unto Owner and Owner's successors and assigns, said mechanic's and materialman's lien claims and any and all other liens Claimant has or may have against the Property; and (ii) acknowledges said claims to be settled in full and releases from said claim Owner and any and all other persons and entities of every kind and character who may be liable therefore.

The mechanic's and materialman's lien therefore being fully satisfied, released and discharged, the County Clerk of _____ County, Texas, is hereby authorized and requested to record this Release of Mechanic's and Materialman's Lien.

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CLAIMANT:

By: _____

_____Name: _____

_____Title: _____

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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PARTIAL RELEASE OF MECHANIC'S AND MATERIALMAN'S LIEN

Date:

Claimant:

Property:

Project: *[describe project]*

Claimant filed its affidavit claiming a mechanic's and materialman's lien on the Property on *[date]*.

The lien was asserted by Claimant for its *[labor/materials/labor and materials]* generally described as *[describe, e.g., specially fabricated and installed plumbing, heating, ventilating, and air-conditioning duct work, equipment, and allied systems]* furnished for the Project located on the Property.

The described *[labor/materials/labor and materials]* were furnished by Claimant for construction of the Project under *[a contract/an agreement]* with *[name of original contractor]*, as original contractor for the Project.

An agreement has been reached for a partial release of the lien claim against the Property.

Claimant hereby releases $*[insert amount]* of its mechanic's and materialman's lien against the Property but specifically preserves the balance of its lien in the amount of $*[insert amount]*.

_____

[Name of Claimant]

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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RELEASE OF MAINTENANCE ASSESSMENT LIEN

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF §

WHEREAS, _____ (hereinafter called "Claimant"), filed a Notice of Unpaid Maintenance Assessment (hereinafter called "Affidavit"), as follows:

> Affidavit filed for record on _____, under County Clerks File No. _____ in the Office of the County Clerk of _____ County, Texas, thereby giving notice of Claimant's lien claim in the amount of $ plus interest, costs and attorney's fees, against the Owner for the unpaid maintenance assessments due to Claimant; and

WHEREAS, the real property (herein called "Property") sought to be charged with said maintenance assessment lien is described in the Affidavit as follows to-wit: _____
_____
_____
_____.

WHEREAS, the maintenance assessment lien claim of Claimant, which is the basis of the Affidavit, has in all respects been settled and Claimant desires to release all persons liable therefore;

NOW THEREFORE, for and in consideration of the payment in full to Claimant of all amounts due and owing Claimant for the maintenance assessments in connection with the improvements of the Property, the receipt and sufficiency of which are hereby acknowledged, Claimant does hereby (i) acknowledge and by these presents release, remise and relinquish unto Owner and Owner's successors and assigns, said maintenance assessment lien claims and any and all other liens Claimant has or may have against the Property; and (ii) acknowledges said claims to be settled in full and releases from said claim Owner and any and all other persons and entities from said claim and any and all other persons and entities of every kind and character who may be liable therefore.

The maintenance assessment liens therefore being fully satisfied, released and discharged, the County Clerk of _____ County, Texas, is hereby authorized and requested to record this Release of Maintenance Assessment Lien.

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STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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LIEN WAIVER

Date:

Owner:

Affiant: *[specify whether general contractor, subcontractor, or supplier]*

Affiant's Address:

Property: *[include legal description]*

Work: *[include description]*

Cutoff Date:

Payment Amount: $*[amount] [specify whether final or interim payment]*

Suppliers and Subcontractors for the Work: *[include telephone numbers]*

Affiant swears individually and on behalf of the *[contractor/subcontractor/supplier]* that the following statements are true and within the personal knowledge of Affiant:

1. All charges, except retainage, for labor performed and material furnished by Affiant through the Cutoff Date have been paid in full.

2. Affiant waives all claims against Owner or the Property that Affiant may have from furnishing labor or material through the Cutoff Date.

3. All other persons who have furnished labor or material to Affiant for the Work, through the Cutoff Date, have been paid all amounts to which they are entitled.

4. Affiant agrees to indemnify and hold Owner harmless against all liability, cost, or expense, including attorney's fees and court and other costs, from any claim or action by Affiant or any person claiming by, through, or under Affiant with respect to the representations and waivers in this document.

5. For the funding of the loan proceeds used to pay for labor and material furnished by Affiant, Affiant agrees that all mechanic's liens owned by Affiant are subordinate and inferior to the deed-of-trust lien held by the lender lending money for construction on the Property.

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6. Affiant is authorized to sign this Affidavit on behalf of and can legally bind the *[contractor/subcontractor/supplier]*.

7. All labor performed and materials supplied by the *[contractor/subcontractor/supplier]* on the project were in accordance with the plans and specifications. All labor was performed in a good and workmanlike manner.

8. The *[contractor/subcontractor/supplier]* has complied with all laws in performing its duties on the project.

9. This lien waiver is made to induce *[state purpose of waiver]*.

_____

[Name of Affiant]

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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WAIVER OF SURFACE RIGHTS

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF §

WHEREAS, _____, hereinafter called "Mineral Rights Owner," is the owner of ____% interest in all of the oil, gas and other minerals in, under and that may be produced from the property *["Property"]* more particularly described on Exhibit "A," attached hereto and incorporated herein by reference; and

WHEREAS, _____, hereinafter called "Property Owner," is the owner of the property, subject to Mineral Rights Owner's oil, gas and mineral interests described above and has requested that Mineral Rights Owner waive its right to use or enter upon the surface of the Property in connection with its development of the Property for oil, gas and other minerals;

NOW, THEREFORE, Mineral Rights Owner, for and in consideration of the premises, Ten Dollars ($10.00) to it in hand paid by Property Owner, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby agree as follows:

1. In conducting operations of whatsoever nature with respect to the exploration for, exploitation of, mining and production, processing, transporting, and marketing of oil, gas and/or other minerals from the Property or in connection with the conduct of other activities associated with its ownership of the oil, gas and mineral interests in the Property, Mineral Rights Owner agrees not to use, enter upon, or occupy any portion of the surface of the Property and not to place any fixtures, equipment, buildings or structures thereon; provided, however, nothing hereby contained shall be constructed as waiving, releasing or relinquishing any right, title or interest of Mineral Rights Owner in and to the oil, gas and other minerals in and under and that may be produced from said land. Additionally, this waiver of surface rights shall not be construed as a vaiver of the right of Mineral Rights Owner to exploit, explore for, develop, mine, or produce such oil, gas and/or other minerals with wells drilled on the surface of lands other than the Property, including, but not limited to, directional wells bottomed beneath or drilled through any part (other than the surface) of the Property or by pooling its oil, gas and mineral interests with lands adjoining the Property in accordance with the laws and regulations of the State of Texas.

2. This Agreement shall be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

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3. The parties hereto agree to execute any further documents reasonably necessary or desirable to effectuate the intent of the parties hereto to waive the surface rights of Mineral Rights Owner in the manner and according to the terms set forth herein.

_____

[Mineral Rights Owner]

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

_____

[Property Owner]

STATE OF TEXAS

COUNTY OF _____

SIGNED under oath before me on _____

_____

Notary Public, State of Texas

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SAMPLE INTERLOCAL AGREEMENT FOR TAX-FORECLOSED PROPERTIES

THE STATE OF TEXAS
COUNTY OF_____

This Interlocal Agreement *[hereinafter the "Interlocal Agreement"]* is entered into between the City _____, a Texas city and municipal corporation of the State of Texas *[hereinafter "City"]*, acting by and through its governing body, the City Council of the City; _____ County, a political subdivision of the State of Texas *[hereinafter "County"]*, acting by and through its governing body, the_____ County Commissioners Court; the_____ Independent School District, *[hereinafter "ISD"]*, acting by and through its governing body, the Board of Education of the_____ Independent School District; and_____ Community College, *[hereinafter "CC"]*, acting by and through its governing body, the Board of Trustees of the_____ Community College, pursuant to the Interlocal Cooperation Act, Texas Government Code Ann. Chapter 791. The City, County, ISD, and CC are hereinafter referred to as the "Taxing Entities".

WHEREAS, there is a need for affordable housing for families with low incomes within the mutual jurisdictions of the Taxing Entities, and

WHEREAS, there are foreclosed properties within the mutual jurisdictions of the Taxing Entities with years of unpaid property taxes *[hereinafter "Tax Foreclosed Property"]* and these unproductive properties could be utilized for affordable housing; and

WHEREAS, the existence of blighted, abandoned or vacant Tax Foreclosed Property negatively impacts the tax revenues of the Taxing Entities; and

WHEREAS, a return of Tax Foreclosed Property to productivity would increase tax revenues, encourage revitalization of neighborhoods in which the Tax Foreclosed Property is located, reduce expenditures by the Taxing Entities on these properties, and provide an increased value of lots that would enhance future tax revenues for the Taxing Entities; and

WHEREAS, Section 34.01(j) of the Texas Property Tax Code provides that a property ordered sold pursuant to foreclosure of a tax lien may be bid off the taxing unit that requested the sale if sufficient bid to pay the lesser amount of the adjudged value or the amount of the judgments or liens against the property is not received; and

WHEREAS, Section 34.05 of the Texas Property Tax Code provides that a taxing unit may resell property at a private sale for an amount less than the adjudged value or the total amount of the judgments against the property with the consent of each taxing unit entitled to receive proceeds under the judgment; and

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WHEREAS, Section 253.010 of the Texas Local Government Code allows a municipality to provide for the manner in which land it acquires is sold if the land is sold to a nonprofit corporation that has been incorporated in Texas for one year, has a corporate purpose to develop affordable housing states in its articles of incorporation, bylaws, or charter, has one-fourth of its Board of Directors residing in the municipality and engages primarily in the building, repair, rental or sale of housing for low income individuals and families; and

WHEREAS, the_____ Nonprofit Corporation is a Texas, public nonprofit corporation that has been incorporated since 19__, has one of its stated purposes in its articles of incorporation to "assist persons of low and moderate income in acquiring and owning decent, safe and sanitary housing which they can afford," has a board of directors that lives within the City, and engages primarily in the building, repair, rental, or sale of housing for low-income individuals and families; and

WHEREAS, the _____ Nonprofit Corporation or a Nonprofit Corporation (hereinafter "Land Bank") that has the capacity to manage the maintenance and disposition of Tax Foreclosed Property for the purpose of creating or preserving affordable housing could serve as a Land Bank for Tax Foreclosed Properties; and

WHEREAS, the ultimate purpose of this Interlocal Agreement is to increase the pool of property that could be acquired by community-based nonprofit corporations to provide affordable housing and make the American dream of home ownership a reality for families with low incomes, increase the tax base through redevelopment of distressed properties, provide an efficient mechanism for returning deteriorated or unproductive properties to the tax rolls, enhance the value of ownership to surrounding properties and improve the safety and quality of life in deteriorating neighborhoods in the City of_____;

NOW, therefore, the Taxing Jurisdictions enter into this Interlocal Agreement as follows:

ARTICLE I.
Agreement

The Taxing Entities hereby consent and agree that each and any of the Taxing Entities that hold title to a tax foreclosed property on behalf of itself and the other Taxing Entities may convey on behalf of all of the Taxing Entities to the Land Bank any of the Tax Foreclosed Property for an amount of consideration that is less than the market value of such property and/or is less than the total amount of the judgments and assessments against such property upon written request by the Land Bank.
The Taxing Entities further agree that the Tax Foreclosed Property may be transferred to the Land Bank only for uses consistent with the City's Housing policy and only for use for affordable housing for families with low incomes as defined under regulations adopted by the U.S. Department of Housing and Urban Development. The Taxing Entities agree that the Land Bank shall implement the procedures adopted by the City of_____ (or Community Development Commission) to allow for

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the private sale of the Tax Foreclosed Property to a Qualified Nonprofit for use for affordable housing or may develop the Tax Foreclosed Property itself for affordable housing. A Qualified Nonprofit 1) is a community-based organization evidenced by at least one-third of its board made up of area residents or low income persons; 2) has a stated purpose of providing safe, decent affordable housing in its articles of incorporation, charter, or bylaws; and 3) is recognized by the Internal Revenue Service as a tax exempt organization. Any Qualified Nonprofit that is certified as a Community Housing Development Organization by the City, within whose service area is a Tax Foreclosed Property, shall have the first right of refusal over other Qualified Nonprofits and the Land Bank to acquire the property for affordable housing. The Land Bank shall report annually to the Taxing Entities regarding the Tax Foreclosed Properties acquired by the Land Bank and the status and disposition of those properties.

The Taxing Entities further agree that the County shall enter into a contract on behalf of the Taxing Entities with the Land Bank for the management and maintenance of Tax Foreclosed Property which is acquired in anticipation of the future development of affordable housing in accordance with the terms of this Interlocal Agreement and the procedures adopted by the City of_____ (or Community Development Commission). The Taxing Entities agree that such contract shall set forth the criteria under which the Land Bank would accept the transfer of the Tax Foreclosed Property and under which the Tax Foreclosed Property will be developed for affordable housing for low income persons. The Taxing Entities further agree that any sale or disposition of the Tax Foreclosed Property by the Land Bank shall include a Restrictive Covenant Running With the Land requiring the Tax Foreclosed Property to be used in a manner consistent with the purposes of this Interlocal Agreement. The Taxing Entities further agree that any proceeds from the sale or disposition of the Tax Foreclosed Property by the Land Bank may be used to cover the assessments and costs of the Land Bank for maintenance of the Tax Foreclosed Property in accordance with the procedures adopted by the City of_____ (or Community Development Commission), but in no event may the assessments and costs exceed the amount of judgment against the property.

ARTICLE II.
Term and Termination

This Interlocal Agreement shall be effective on the date of countersignatures by all parties to the Interlocal Agreement and shall continue unless terminated by any party in writing following 180 days notice to all parties.

ARTICLE III.
Insurance and Liability

The Taxing Entities are governed by the Texas Tort Claims Act, chapter 101, Texas Civil Practice and Remedies Code Ann., that sets forth certain limitations and restrictions on the types of liability and the types of insurance that can be required of government entities. Each Taxing Entity represents and warrants that it is self-insured or insured under a commercial insurance policy for all claims falling within the Texas Tort Claims Act that are applicable to each entity.

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Each party to this Interlocal Agreement agrees that it shall have no liability for the actions or omissions of an individual employed by another entity, regardless of where such individual's actions occurred. Each entity is solely responsible for the actions and/or omissions of its employees and officers.

ARTICLE VI.
Amendments

This Interlocal Agreement may be amended by the mutual agreement of the Taxing Entities in writing to be attached to and incorporated into this Interlocal Agreement.

ARTICLE VII.
Severability

If any part of this Interlocal Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices any Taxing Entity.

ARTICLE VIII.
Entire Agreement

This Interlocal Agreement embodies the entire agreement of the Taxing Entities. No other agreements, assurances, conditions, covenants (expressed or implied), or other terms of any kind, exist between the Taxing Entities regarding this Interlocal Agreement.

ARTICLE IX.
Non-Waiver

If any Taxing Entity fails to require the other to perform a term of this Interlocal Agreement, that failure does not prevent the Taxing Entity from later enforcing that term and all other terms. If any Taxing Entity waives the other's breach of a term, that waiver does not waive a later breach of this Interlocal Agreement.

ARTICLE XI.
Notices

All notices required or permitted by this Interlocal Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following the deposit in a United States Postal Service post office or receptacle with proper postage, certified mail, return receipt requested and addressed to the other Taxing Enitites at the address set out below or at such other address as the receiving entity designates by proper notice to the sending entity.

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ARTICLE XII.
Remedies Cumulative

Unless otherwise specified elsewhere in this Interlocal Agreement, the rights and remedies contained in this Interlocal Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. No Taxing Entity may terminate its duties under this Interlocal Agreement except in accordance with its provisions.

ARTICLE XIII.
Dissolution

Should the Taxing Entities decide to terminate the Interlocal Agreement, all assets, either monetary or in the form of property, which have been transferred to the Land Bank pursuant to the terms of this Interlocal Agreement, shall be allocated to each Taxing Entity based upon the total amount of taxes relinquished on all foreclosed properties by each entity.

Approved as to Form:
Mayor _____
City of _____
By: _____
[Name]
Date: _____

Judge _____
County of _____
By: _____
[Name]
Date: _____

President, Board of Trustees _____
Independent School District _____
By:_____
[Name]
Date: _____

President, Board of Trustees _____
Community College _____
By:_____
[Name]
Date: _____

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IX. Chapter Nine: Glossary

Glossary

Abstract of Title - a historical summary of all the transactions affecting a particular tract of land.

Assumption - when a new owner takes over payments on a mortgage. The original borrower may remain liable on the mortgage note. If the new owner fails to make payments on the mortgage, the original borrower may still be liable for the mortgage.

Clear Title - a marketable title free of clouds or disputed interests.

Cloud on Title - an outstanding claim or encumbrance that affects or impairs marketability of the owner's title.

Community Property - property acquired by either spouse during the couple's marriage except for property acquired by gift or inheritance.

Conveyance - transfer of title to land from one person to another by deed.

Deed - a written document by which the ownership of land is transferred from one person to another.

Defect in Title - an unresolved claim against the ownership of property that would prevent conveyance of a marketable title.

Easement - a right of use of the property of another.

Encumbrance - any right to or interest in land that affects its value. A competing or overlapping right related to real property.

Estate - all of the assets and liabilities, including real and personal property, of a deceased person prior to the distribution of the property in accordance with a will or the laws of inheritance of the state of domicile of the deceased.

Execution - completion of all acts necessary to give the document validity.

Foreclosure - legal process by which an owner of real property, and possibly other parties with interests in the property, are deprived of their interest due to failure to comply with terms and conditions of an obligation secured by a lien on the property.

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Grantee - a person who acquires an interest in land by deed, grant or other written instrument.

Grantor - a person who, by a written instrument, transfers an interest in land to another person.

Heir - one who might inherit an interest in land through a will or under the applicable laws when an individual dies without leaving a will.

Homestead - the property designated by the owner as his or her primary residence.

License - a privilege to perform an act or a series of acts of the land of another, but which does not confer any title or interest in the property. A license cannot be assigned to another.

Lien - a charge against property making it security for payment of a debt, judgment, mortgage or taxes. A lien is a type of encumbrance. Examples of liens include:

> **demolition lien:** a lien placed on property by a local municipality for the cost of demolition if the municipality was forced to remove an unsafe structure.
>
> **general lien:** a lien that is for the satisfaction of a balance due from an owner of property.
>
> **involuntary lien:** a lien that arises without the debtor's consent (as by operation of law).
>
> **judgment lien:** a lien acquired against the property of a debtor by a creditor after obtaining a favorable judgment in a lawsuit.
>
> **judicial lien:** a lien obtained by a legal or equitable process (as judgment, levy, attachment, or execution).
>
> **mechanic's lien:** a lien against a building and its site to assure priority of payment for labor or services (as in construction or design) or material.
>
> **mortgage lien:** a lien obtained by a lender (typically a bank or mortgage company).
>
> **tax lien:** a statutory lien on property for taxes due giving the taxing authority a security interest in the property.
>
> **utility lien:** a lien placed on property by utility companies for unpaid bills.

Muniment of Title - documentary evidence of title.

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Notice - the legally prescribed, formal process of informing parties with an interest in the property that action is being taken regarding the title to that property.

Power of Attorney - an instrument authorizing another to act with legal effect on one's behalf as his/her agent or attorney.

Purchase Agreement - a written document which spells out the terms and conditions for the sale of property. The buyer and the seller must sign the agreement, and any changes to the agreement, for it to be effective.

Quiet Title Action - a suit in court to remove a defect, cloud on the title, or settle a dispute regarding legal rights of the owner to a certain parcel of real estate.

Real Property - land and that which is "affixed" on it, such as buildings, driveways, fences, landscaping, etc.

Record or recording - the act of entering instruments affecting title to real property in a book of public records. Recording in this manner gives notice to the world of the facts recorded.

Survey - the process of measuring land to determine size, location, physical description, and other physical and legal characteristics. It also refers to the resulting drawing or map.

Title - the nature of the right a person has to the ownership and/or possession of real property.

Title Defect - an unresolved claim against the ownership of property that would prevent conveyance of a marketable title.

Title Insurance - insurance against loss or damage resulting from defects in the insured's title to a particular parcel of real property. The type of title insurance may differ in accordance with the nature of the title (e.g., outright ownership to title, the leasehold rights of a tenant, the rights to a lien held by a mortgage company, etc.).

Title Insurance Commitment - a report issued by a title insurance company committing the company to issue the types of policy designated in the commitment upon compliance with and satisfaction of requirements set forth in the commitment.

Title Search - an examination of public records, court decisions and other materials to disclose the current facts regarding title to real property.

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Trustee - one who holds legal title to property "in trust" for the benefit of another person and who must carry out specific duties with regard to the property.

Will - a written document, properly witnessed and in legally adequate form, providing for the distribution of property owned by the deceased.

Special thanks to Community Legal Resources for the adaptation of the Glossary.

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TEXAS CBAR

Community Building with Attorney Resources

Texas CBAR
4920 N. IH-35
Austin, Texas 78751

Tel. (512) 374-2712
(800) 369-9270, ext. 2712
Fax. (512) 447-3940

texascbar.org