

REAL ESTATE, PROBATE AND TRUST

The probate and trust wing of the Real Estate, Probate and Trust Law (REPTL) Section of the State Bar of Texas proposed three pieces of legislation this session, all of which made it through the Legislature. The governor signed two bills in May and the third is sitting on his desk.

The governor signed H.B. 1190 on May 24. The bill cherry picks provisions of the Uniform Trust Code that the section believed should be included in the Texas Trust Code.

On May 27, the governor signed H.B. 1191, which amends sections of the probate code that deal with guardianship. H.B. 1191's provisions address transmission of documents, the authority of statutory probate courts, investigations into a ward's status, removal of a guardian, a ward's allowance, requirements for authenticating expenses and rules governing investments, according to the Senate Research Center's analysis of the House's version of the bill. The legislation is effective Sept. 1.

The Legislature passed H.B. 1186, legislation changing parts of the probate code to address administration of estates and trust, and now it's awaiting the governor's signature. H.B. 1186 deals with testamentary transfers (by will) and nontestamentary transfers (by trust or other means) of property and other benefits, as well as courts' jurisdiction over some probate matters. According to the Senate Research Center's analysis of the House's version of the bill, the legislation reverses the common-law exoneration-of-liens doctrine and voids gifts via living trust to an ex-spouse after a divorce.

Lawyers on the real estate side of the section watched a lot of bills. Mark McPherson, the real estate legislation committee chairman of REPTL and a partner in McPherson & Associates in Dallas, notes in an e-mail that the Legislature passed 383 of the 1,582 bills his committee tracked.

Wired lawyers will be pleased to note that legislators adopted the Uniform Real Property Electronic Recording Act, a product of the National Conference of Commissioners on Uniform State Laws. The new legislation, McPherson says, supersedes Texas' current electronic recording laws. He expects real estate lawyers will face a time lag between when larger urban counties adopt an electronic recording system and when smaller counties do so.

Two constitutional amendments related to real estate will be on the ballot this fall, McPherson adds. The first lets elderly homeowners draw advances under a reverse mortgage at unscheduled intervals, and the second allows the Legislature to set interest rates for commercial loans (the Texas Constitution currently caps those rates).

Any lawyers irate about clerks refusing to file their documents for failure to comply with recent privacy legislation — which mandated disclaimers on deeds telling parties they could strike certain personal information — will be pleased with new legislation prohibiting county clerks from rejecting documents solely for that reason.

Other legislation of interest, McPherson notes, includes time limits within which cities and counties must act on building permits and legislation vesting permit rights upon the filing of a permit application or development plan under certain conditions (the governor has already signed that bill, S.B. 848).

McPherson also says a range of technical trans-

portation bills passed, as did revisions to the regulation of real estate brokers, limits on the share of infrastructure costs developer's can be required to bear, limits on cities' ability to impose moratoriums on commercial property development, and some changes to landlord-tenant law.

Richard L. Spencer, a Dallas solo and chairman of the Texas College of Real Estate Attorneys, adds that the Legislature passed a bill limiting the ability of homeowners' associations to restrict political sign posting by residents. His organization introduced a uniform act to address a range of issues in the realm of common-ownership property associations; he says they pulled it this session and likely will introduce it next time around.

— ANNE K. McMILLAN