

1-1 By: Wray (Senate Sponsor - Hughes) H.B. No. 1833  
1-2 (In the Senate - Received from the House May 6, 2019;  
1-3 May 6, 2019, read first time and referred to Committee on Business  
1-4 & Commerce; May 20, 2019, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
1-6 May 20, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 1833 By: Nichols

1-19 A BILL TO BE ENTITLED  
1-20 AN ACT

1-21 relating to the authority to transfer real property in the name of  
1-22 an entity.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Chapter 12, Property Code, is amended by adding  
1-25 Section 12.019 to read as follows:

1-26 Sec. 12.019. AFFIDAVIT OF AUTHORITY TO TRANSFER. (a) In  
1-27 this section, "domestic entity," "foreign entity," "jurisdiction  
1-28 of formation," and "nonprofit entity" have the meanings assigned by  
1-29 Section 1.002, Business Organizations Code.

1-30 (b) This section does not apply to:

1-31 (1) a domestic nonprofit entity or a foreign entity  
1-32 that is:

1-33 (A) exempt from federal taxation under Section  
1-34 501(a), Internal Revenue Code of 1986, by being listed as an exempt  
1-35 entity under Section 501(c)(3) of that code; or

1-36 (B) described by Section 170(c)(1) or (2),  
1-37 Internal Revenue Code of 1986; or

1-38 (2) a transaction involving the transfer of an estate  
1-39 or interest in real property in an amount that exceeds \$1 million.

1-40 (c) A domestic entity or foreign entity may execute and  
1-41 record an affidavit identifying one or more individuals with  
1-42 authority to transfer on behalf of the entity an estate or interest  
1-43 in real property in the name of the entity if the entity is:

1-44 (1) a limited liability company, a limited  
1-45 partnership, or a professional entity as defined by Section  
1-46 301.003, Business Organizations Code; and

1-47 (2) active or in good standing under the laws of the  
1-48 entity's jurisdiction of formation.

1-49 (d) An estate or interest in real property in the name of a  
1-50 domestic entity or foreign entity may be transferred on behalf of  
1-51 the entity by one or more individuals identified as authorized to do  
1-52 so in an affidavit described by Subsection (c).

1-53 (e) Subject to Subsection (f), an affidavit described by  
1-54 Subsection (c) must:

1-55 (1) be executed under penalty of perjury by an  
1-56 individual who swears that the individual:

1-57 (A) is at least 18 years of age;

1-58 (B) is authorized to execute and deliver the  
1-59 affidavit on behalf of the entity;

1-60 (C) is fully competent to execute the affidavit;

2-1 and

2-2 (D) understands that:

2-3 (i) third parties will rely on the  
2-4 truthfulness of the statements made in the affidavit; and

2-5 (ii) the affidavit is made under penalty of  
2-6 perjury; and

2-7 (2) state:

2-8 (A) the name of the domestic entity or foreign  
2-9 entity that holds title to the real property and that the entity is  
2-10 active or in good standing under the laws of the entity's  
2-11 jurisdiction of formation;

2-12 (B) the address, including street address, of the  
2-13 domestic entity's or foreign entity's principal place of business  
2-14 in this state or, if the entity does not have a principal place of  
2-15 business in this state, the address of the entity's principal place  
2-16 of business in the state or country that is the entity's  
2-17 jurisdiction of formation;

2-18 (C) the legal description of the real property an  
2-19 estate or interest in which is to be transferred and specify the  
2-20 nature of the transfer authorized; and

2-21 (D) the name and title of one or more individuals  
2-22 authorized to transfer on the entity's behalf an estate or interest  
2-23 in the real property described in the affidavit.

2-24 (f) An individual is authorized to execute an affidavit  
2-25 described by Subsection (c) on behalf of a domestic entity that  
2-26 files a franchise tax public information report under Section  
2-27 171.203, Tax Code, if, on the date the affidavit is executed, the  
2-28 individual:

2-29 (1) in the case of a limited liability company, is a  
2-30 manager or member of the limited liability company;

2-31 (2) in the case of a limited partnership, is a general  
2-32 partner of the limited partnership; or

2-33 (3) in the case of a professional entity, is a director  
2-34 or officer of the applicable professional entity.

2-35 (g) Except as provided by Subsection (h), the individual  
2-36 executing an affidavit described by Subsection (c) may not be the  
2-37 individual identified in the affidavit as authorized to transfer an  
2-38 estate or interest in the real property described in the affidavit.

2-39 (h) The individual executing the affidavit described by  
2-40 Subsection (c) may be the individual identified in the affidavit as  
2-41 authorized to transfer an estate or interest in the real property  
2-42 described in the affidavit if:

2-43 (1) the entity is a limited liability company and the  
2-44 affidavit includes a representation by the affiant that the affiant  
2-45 is the sole member and manager of the limited liability company;

2-46 (2) the entity is a limited partnership and the  
2-47 affidavit includes a representation by the affiant that the affiant  
2-48 is the sole general partner of the limited partnership;

2-49 (3) the entity is a professional entity and the  
2-50 affidavit includes a representation by the affiant that the affiant  
2-51 is the sole director and officer of the applicable professional  
2-52 entity; or

2-53 (4) the most recent franchise tax public information  
2-54 report of the entity under Section 171.203, Tax Code, available on  
2-55 the date the affidavit is executed identifies only the affiant and  
2-56 no other person as an officer, director, member, manager, or  
2-57 general partner of the entity.

2-58 (i) The affidavit must be recorded with the county clerk in  
2-59 the county in which the real property is located. The county clerk  
2-60 may collect a fee for recording an affidavit under this section in  
2-61 the amount authorized for recording a transfer of real property.

2-62 (j) A person who in good faith acts in reliance on an  
2-63 affidavit that complies with this section and that contains  
2-64 transfer authority that has not been terminated under Subsection  
2-65 (n) or has not expired under Subsection (o) is not liable to any  
2-66 person for that act and may assume without inquiry the existence of  
2-67 the facts contained in the affidavit if the person does not have  
2-68 actual knowledge that any material representations contained in the  
2-69 affidavit are incorrect.

3-1 (k) A person who in good faith enters into a transaction  
3-2 involving the transfer of an estate or interest in real property  
3-3 described in an affidavit that is described by Subsection (c) and  
3-4 who relies on the affidavit, without actual knowledge that any  
3-5 material representations contained in the affidavit are incorrect,  
3-6 may enforce the transaction against the entity and the real  
3-7 property described in the affidavit as if the representations  
3-8 contained in the affidavit are correct if:

3-9 (1) the affidavit complies with this section; and  
3-10 (2) the transfer authority specified in the affidavit  
3-11 has not been terminated under Subsection (n) or has not expired  
3-12 under Subsection (o).

3-13 (l) With respect to an affidavit described by Subsection  
3-14 (c), this section does not limit the rights of an owner of an  
3-15 interest in the entity against the affiant, the entity, or any  
3-16 individual identified in the affidavit with authority to transfer  
3-17 on behalf of the entity an estate or interest in real property in  
3-18 the name of the entity.

3-19 (m) Nothing in this section:

3-20 (1) requires an individual to rely on an affidavit  
3-21 described by Subsection (c);

3-22 (2) requires an entity to deliver an affidavit that  
3-23 complies with this section in order for a transfer of an estate or  
3-24 interest in real property on behalf of the entity to take effect; or

3-25 (3) prohibits an entity from authorizing an individual  
3-26 to transfer an estate or interest in real property on behalf of the  
3-27 entity by a means other than an affidavit described by Subsection  
3-28 (c).

3-29 (n) An entity that executes and records an affidavit  
3-30 described by Subsection (c) may terminate the transfer authority  
3-31 specified in the affidavit at any time by recording a written  
3-32 termination of the authority specified in the affidavit with the  
3-33 county clerk in the county in which the real property is located.  
3-34 The written termination must be in the form of an affidavit that:

3-35 (1) satisfies the requirements of Subsection (e) other  
3-36 than Subsection (e)(2)(D);

3-37 (2) provides the recording information for the  
3-38 affidavit that specifies the transfer authority being terminated;  
3-39 and

3-40 (3) states that the authority to transfer an estate or  
3-41 interest in real property as contained in the previously recorded  
3-42 affidavit is terminated.

3-43 (o) The transfer authority contained in an affidavit that  
3-44 complies with this section and that has not been terminated as  
3-45 provided by Subsection (n) expires on the first anniversary of the  
3-46 date on which the affidavit was recorded under Subsection (i).

3-47 (p) The transfer authority or the termination of the  
3-48 transfer authority specified in an affidavit that is recorded under  
3-49 Subsection (i) or (n) is effective on the date the county clerk  
3-50 indexes the affidavit.

3-51 SECTION 2. This Act takes effect September 1, 2019.

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