

# Texas

## Fraudulent Documents Substitute Trustee Filed Public Records Notice of Assignments Filed Public Record

HEARING BEFORE THE  
SUBCOMMITTEE ON COURTS, THE INTERNET,  
AND INTELLECTUAL PROPERTY  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED NINTH CONGRESS  
SECOND SESSION  
ON  
H.R. 1458  
March 9, 2006  
Serial No. 109-89

Prepared Statement of Malcolm L. Morris

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*A notarization in and of itself neither validates a document nor speaks to the truthfulness or accuracy of its contents. The notarization serves a different function, viz, verifying that a document signer is who he or she purports to be and has willingly signed the document.*

### TEXAS LOCAL GOVERNMENT CODE

#### CHAPTER 192 - INSTRUMENTS TO BE RECORDED BY COUNTIES

§ 192.001. GENERAL ITEMS. **The county clerk shall record each deed, mortgage, or other instrument that is required or permitted by law to be recorded.**

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 192.007. RECORDS OF RELEASES AND OTHER ACTIONS. (a) **To release, transfer, assign, or take another action relating to an instrument that is filed, registered, or recorded in the office of the county clerk, a person must file, register,**

**or record another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded.**

(b) An entry, including a marginal entry, may not be made on a previously made record or index to indicate the new action.

Added by Acts 1989, 71st Leg., ch. 1248, § 53, eff. Sept. 1, 1989.

**PENAL CODE**  
**TITLE 7 - OFFENSES AGAINST PROPERTY**  
**CHAPTER 32 - FRAUD**

**Sec. 32.45 - MISAPPLICATION OF FIDUCIARY PROPERTY OR  
PROPERTY OF FINANCIAL INSTITUTION**

(a) *For purposes of this section:*

(1) *"Fiduciary" includes:*

(A) *a trustee, guardian, administrator, executor, conservator, and receiver;*

(B) *an attorney in fact or agent appointed under a durable power of attorney as provided by Chapter XII, Texas Probate Code;*

(C) *any other person acting in a fiduciary capacity, but not a commercial bailee unless the commercial bailee is a party in a motor fuel sales agreement with a distributor or supplier, as those terms are defined by Section 153.001, Tax Code; and*

(D) *an officer, manager, employee, or agent carrying on fiduciary functions on behalf of a fiduciary.*

(2) *"Misapply" means deal with property contrary to:*

(A) *an agreement under which the fiduciary holds the property; or*

(B) *a law prescribing the custody or disposition of the property.*

(b) *A person commits an offense if he intentionally, knowingly, or recklessly misapplies property he holds as a fiduciary or property of a financial institution in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the property is held.*

(c) *An offense under this section is:*

*(1) a Class C misdemeanor if the value of the property misapplied is less than \$20;*

*(2) a Class B misdemeanor if the value of the property misapplied is \$20 or more but less than \$500;*

*(3) a Class A misdemeanor if the value of the property misapplied is \$500 or more but less than \$1,500;*

*(4) a state jail felony if the value of the property misapplied is \$1,500 or more but less than \$20,000;*

*(5) a felony of the third degree if the value of the property misapplied is \$20,000 or more but less than \$100,000;*

*(6) a felony of the second degree if the value of the property misapplied is \$100,000 or more but less than \$200,000; or*

*(7) a felony of the first degree if the value of the property misapplied is \$200,000 or more.*

*(d) An offense described for purposes of punishment by Subsections (c)(1)-(6) is increased to the next higher category of offense if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by*

*(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.*

*Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 565, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1036, Sec. 14, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1047, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.137, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 257, Sec. 14, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 432, Sec. 3, eff. Sept. 1, 2003.*

*Amended by:*

*Acts 2005, 79th Leg., Ch. 728, Sec. 23.001(77), eff. September 1, 2005.*

## **Sec. 32.46 - SECURING EXECUTION OF DOCUMENT BY DECEPTION**

***(a) A person commits an offense if, with intent to defraud or harm any person, he, by deception:***

**(1) causes another to sign or execute any document affecting property or service or the pecuniary interest of any person; or**

*(2) causes or induces a public servant to file or record any purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of:*

*(A) a purported court that is not expressly created or established under the constitution or the laws of this state or of the United States;*

*(B) a purported judicial entity that is not expressly created or established under the constitution or laws of this state or of the United States; or*

*(C) a purported judicial officer of a purported court or purported judicial entity described by Paragraph (A) or (B).*

*(b) An offense under Subsection (a)(1) is a:*

*(1) Class C misdemeanor if the value of the property, service, or pecuniary interest is less than \$20;*

*(2) Class B misdemeanor if the value of the property, service, or pecuniary interest is \$20 or more but less than \$500;*

*(3) Class A misdemeanor if the value of the property, service, or pecuniary interest is \$500 or more but less than \$1,500;*

*(4) state jail felony if the value of the property, service, or pecuniary interest is \$1,500 or more but less than \$20,000;*

*(5) felony of the third degree if the value of the property, service, or pecuniary interest is \$20,000 or more but less than \$100,000;*

*(6) felony of the second degree if the value of the property, service, or pecuniary interest is \$100,000 or more but less than \$200,000; or*

*(7) felony of the first degree if the value of the property, service, or pecuniary interest is \$200,000 or more.*

*(c) An offense under Subsection (a)(2) is a state jail felony.*

*(c-1) An offense described for purposes of punishment by Subsections (b)(1)-(6) and (c) is increased to the next higher category of offense if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04 or involves the state Medicaid program.*

*(d) In this section, "deception" has the meaning assigned by Section 31.01.*

*(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.*

*Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 189, Sec. 2, eff. May 21, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.138, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 257, Sec. 15, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 432, Sec. 4, eff. Sept. 1, 2003.*

*Amended by: Acts 2007, 80th Leg., R.S., Ch. 127, Sec. 4, eff. September 1, 2007.*

### **Sec. 32.47 - FRAUDULENT DESTRUCTION, REMOVAL, OR CONCEALMENT OF WRITING**

***(a) A person commits an offense if, with intent to defraud or harm another, he destroys, removes, conceals, alters, substitutes, or otherwise impairs the verity, legibility, or availability of a writing, other than a governmental record.***

***(b) For purposes of this section, "writing" includes:***

- (1) printing or any other method of recording information;***
- (2) money, coins, tokens, stamps, seals, credit cards, badges, trademarks;***
- (3) symbols of value, right, privilege, or identification; and***
- (4) universal product codes, labels, price tags, or markings on goods.***

***(c) Except as provided in Subsection (d), an offense under this section is a Class A misdemeanor.***

***(d) An offense under this section is a state jail felony if the writing:***

- (1) is a will or codicil of another, whether or not the maker is alive or dead and whether or not it has been admitted to probate; or***
- (2) is a deed, mortgage, deed of trust, security instrument, security agreement, or other writing for which the law provides public recording or filing, whether or not the writing has been acknowledged.***

*Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 21, Sec. 1, eff. Sept. 1, 2001.*

## **Texas Property Code**

### **§ 51.0075 - AUTHORITY OF TRUSTEE OR SUBSTITUTE TRUSTEE**

*(a) A trustee or substitute trustee may set reasonable conditions for conducting the public sale if the conditions are announced before bidding is opened for the first sale of the day held by the trustee or substitute trustee.*

*(b) A trustee or substitute trustee is not a debt collector.*

*(c) Notwithstanding any agreement to the contrary, a mortgagee may appoint or may authorize a mortgage servicer to appoint a substitute trustee or substitute trustees to succeed to all title, powers, and duties of the original trustee. A mortgagee or mortgage servicer may make an appointment or authorization under this subsection by power of attorney, corporate resolution, or other written instrument.*

*(d) A mortgage servicer may authorize an attorney to appoint a substitute trustee or substitute trustees on behalf of a mortgagee under Subsection (c).*

*(e) The name and a street address for a trustee or substitute trustees shall be disclosed on the notice required by Section 51.002(b).*

*Added by Acts 2003, 78th Leg., ch. 554, § 1, eff. Jan. 1, 2004.  
Amended by Acts 2005, 79th Leg., ch. 1231, § 1, eff. Sept. 1, 2005.*

## **BUSINESS AND COMMERCE CODE TITLE 1 - UNIFORM COMMERCIAL CODE CHAPTER 9 - SECURED TRANSACTIONS**

### **Sec. 9.310 - WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY**

*(a) Except as otherwise provided in Subsection (b) and Section 9.312(b), a financing statement must be filed to perfect all security interests and agricultural liens.*

*(b) The filing of a financing statement is not necessary to perfect a security interest:*

*(1) that is perfected under Section 9.308(d), (e), (f), or (g);*

*(2) that is perfected under Section 9.309 when it attaches;*

*(3) in property subject to a statute, regulation, or treaty described in Section 9.311(a);*

*(4) in goods in possession of a bailee that is perfected under Section 9.312(d)(1) or (2);*

*(5) in certificated securities, documents, goods, or instruments which is perfected without filing, control or possession under Section 9.312(e), (f), or (g);*

*(6) in collateral in the secured party's possession under Section 9.313;*

*(7) in a certificated security that is perfected by delivery of the security certificate to the secured party under Section 9.313;*

*(8) in deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights that is perfected by control under Section 9.314;*

*(9) in proceeds that is perfected under Section 9.315;*

*(10) that is perfected under Section 9.316; or*

*(11) in oil or gas production or their proceeds under Section 9.343.*

*(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this Chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.*

*Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.*

*Amended by: Acts 2005, 79th Leg., Ch. [122](#), Sec. 24, eff. September 1, 2005.*