

Texas Lending Webinar



united by a common goal to -----

Deliver solutions that streamline your Texas closing processes to enable full compliance and efficiency

Complexities of Lending in Texas

- Community Property
- Homestead
- Unauthorized Practice of Law
- Home Equity Lending

Community Property

- Texas is a community property state
- Community property consists of the property, other than separate property, acquired by either spouse during marriage.

Tex. Fam. Code Ann. §3.002



Separate Property

- Owned or claimed by the spouse before marriage
- Property acquired by the spouse during marriage by gift, devise, or descent
- The recovery of personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

See Tex. Fam. Code Ann. §3.001

Homestead

- Homestead exemptions are a longstanding feature of Texas law
 - Protection from the claims of creditors
 - Property tax exemption
- Two types of homestead
 - Urban homestead
 - Rural homestead



Urban Homestead

- The Texas Property Code defines a homestead as not more than 10 acres of land in one or more contiguous lots, together with improvements. This definition of an urban homestead is for a family or a single adult person.
- A homestead is considered to be urban if the property is located within the limits of the municipality or its extraterritorial jurisdiction or a platted subdivision and is served by police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:

Urban Homestead

Municipal Services:

1. Electric
2. Natural gas
3. Sewer
4. Storm Sewer
5. Water

See Tex. Prop. Code Ann. § 41.002



Rural Homestead

- A rural homestead consists of not more than 200 acres in one or more parcels with improvements, for a family, or not more than 100 acres in one or more parcels, with improvements, for a single adult.

Homestead Exemption

Shields a homestead from all but certain enumerated liens:

1. Purchase money
2. Property taxes
3. Work and material used to construct improvements on the property if contracted for in writing
4. Refinancing of liens against the homestead including tax liens
5. Divorce partitions
6. Credit extensions authorized by 50(a)(6) of the TX Constitution
7. Certain reverse mortgages

The Practice of Law Includes



“[t]he preparation of a pleading or other document incident to...a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal affect of which under the facts and conclusions involved must be carefully determined”

Legal Instruments

“[t]he proper drafting of legal instruments, or even selecting the proper form of instrument, necessarily affects important legal rights, and thus is the practice of law”

Complexities Texas Lending

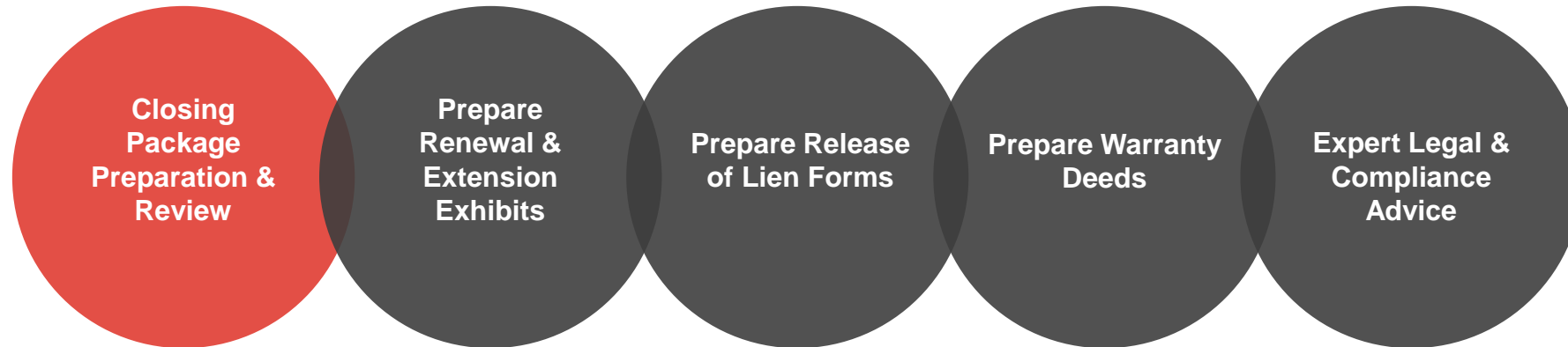
- Community Property
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 - “[p]reparation of notes, deed of trust and other instruments affecting title to real property constitutes the practice of law. Because of the complexity of the law involved, the potential for consumer abuse is great.”

Real Property



[a] person (other than an attorney licensed in this state) may not charge or receive, either directly or indirectly, any compensation for all or any part of the preparation of a legal instrument affecting title to real property, including a deed, deed of trust, note, mortgage, and transfer or release of lien.

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