

Chapter 553 of the Government Code – Disclosure Requirement

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Chapter 553 of the Government Code provides that a “[a] public servant who has a legal or equitable interest in property that is to be acquired with public funds shall file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation.” TEX. GOV’T CODE § 553.002(a).

Public Servant

Chapter 553’s affidavit requirement applies to a “public servant,” which is defined to mean a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as: (1) a candidate for nomination or election to public office; or (2) an officer of government. *Id.* § 553.001(2).

Public Funds

The term “public funds” is defined to “include[] only funds collected by or through a government.” *Id.* § 553.001(1). The language of Chapter 553 suggests that a public servant is required to disclose his/her interest in property even when the property is to be acquired by a separate governmental entity with which the public servant is not affiliated. We are not aware of a case or attorney general opinion that addresses this issue. Thus, a public servant or official subject to Chapter 553 should consult his/her private legal counsel regarding the application of Chapter 553 in this scenario.

Type of Property

Chapter 553 is not, by its language, limited to real property interests. Thus, if a public servant has a legal or equitable interest in any real (e.g., land) or personal (e.g., a vehicle) property acquired with public funds, and has actual notice of the acquisition or intended acquisition of the property, the public servant should file a Chapter 553 affidavit. *Id.* § 553.002.

Affidavit

A Chapter 553 affidavit has to be filed within ten days before the date on which the property is to be acquired by purchase or condemnation. *Id.* § 553.002(a). The affidavit is filed with the county clerk of the county in which the public servant resides as well as the county clerk of each county in which the property is located. *Id.* § 553.002(c).

The affidavit must include: (1) the name of the public servant; (2) the public servant’s office, public title, or job designation; (3) a full description of the property; (4) a full description of the nature, type, and amount of interest in the property, including the percentage of ownership interest; (5) the date the public servant acquired an interest in the property; (6) the following verification: “I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code;” and (7) an

acknowledgement of the same type required for recording a deed in the deed records of the county. *Id.* § 553.002(b).

An affidavit example is available at: http://www.tml.org/legal_topics/legal_ethics.asp.

Enforcement

A person who violates Section 533.002 of the Government Code by failing to file the required affidavit is presumed to have committed a Class A misdemeanor offense if the person had actual notice of the acquisition or intended acquisition of the legal or equitable interest in the property. TEX. GOV'T CODE § 553.003. A Class A misdemeanor is punishable by a fine and/or confinement.