

BILL ANALYSIS

C.S.H.B. 2930
By: Lewis
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Public interests for protecting privacy often compete with the concept of open government. On one hand the fastest growing crime in the United States is identity theft. On the other hand, the prevailing philosophy in the U.S. is that the public should have, and in certain cases demands, the right of information collected by the government be open and accessible. One area that demands unfettered access to the official public record and is critical to our nation's economy is real estate. The livelihoods of lenders, appraisers, surveyors, and all real estate professionals depend upon open and timely access to the real property records maintained by the county clerk.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Section 1 amends Chapter 11 of the Property Code to create Section 11.008, CONFIDENTIAL INFORMATION IN REAL PROPERTY RECORDS.

(a) The substitute defines an "instrument" as a deed, mortgage, or deed of trust. (b) The substitute prohibits an instrument executed after January 1, 2004 transferring an interest in real property to be filed for record unless the first page informs the person of their confidentiality rights. Each deed, mortgage, or deed of trust must have a bold notice instructing an individual that they have the optional opportunity to remove their social security number or driver's license number. (c) The substitute states that failure to include a notice prior to filing does not invalidate the instrument. (d) The substitute states that a clerk may not reject an instrument presented for recording because the instrument contains or fails to contain a social security number or driver's license. Acceptance of the instrument by the county clerk presumes the requirements of this section have been met. (e) The substitute requires the county clerk to post a notice in the clerk's office stating that instruments recorded in the real property or official records on or after January 1, 2004: (1) are not required to contain a social security number and/or driver's license number; and (2) are public records available for review by the public. (f) The substitute states that all instruments recorded under this section are subject to inspection by the public. (g) The substitute protects this section from future unintended requirements of other legislation unless it is specifically mentioned in the amending legislation. The substitute denotes that once filed in the official public record in the county clerk's office, an instrument and the information in it are an open record and part of the public record. (h) The substitute states that the instrument must be filed in a manner that complies with federal law, to the extent that federal conflicts with this section.

Section 2 amends Section 13.002, EFFECT OF RECORDED INSTRUMENT, of the Property Code by adding paragraph (2) which states that an instrument that is properly recorded in the proper county is subject to inspection by the public.

EFFECTIVE DATE

If two-thirds vote is received on the bill, the Act takes effect immediately. If the bill does not receive the vote necessary for immediate effect, this Act takes effect on September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

Section 1:

Sec. 11.008(a) defines “instrument,” which was formerly defined in 11.008(g). The substitute no longer defines “home address.”

Sec. 11.008(b) The substitute changes the execution date from December 31, 2003 to January 1, 2004. This execution date is also changed in 11.008(e), and Section 3.

Sec. 11.008(b) The substitute provides the requirements of posting notice of confidentiality rights in an instrument transferring an interest in real property. Originally these requirements were addressed in 11.008(a).

Sec. 11.008(b) The substitute requires that the notice be in 12-point boldface type or 12-point uppercase letters. The original bill required 10-point.

Sec. 11.008(b) The substitute removes from the notice that a loan account number, home address, or name of any family member who is not a party to or beneficiary of the instrument may be removed.

Sec. 11.008(c) Formerly 11.008(b).

Sec. 11.008(d) The Substitute states that the county clerk may not reject an instrument presented for recording because the instrument contains or fails to contain a social security number or driver’s license number.

Sec. 11.008(d) also incorporates what was formerly 11.008(c).

Sec. 11.008(e) The substitute requires that the county clerk post a notice in the county clerk’s office concerning the instruments recorded in not just the real property records, but also the official property or official public records, or the equivalent of the real property or official public records of the county.

Sec. 11.008(e) The substitute no longer has the language that authorizes the county clerk to reject for filing any such instrument prior to the acceptance of the instrument at the office for filing.

Sec. 11.008(f) The substitute only states that all instruments recorded are subject to public inspection.

Sec. 11.008(g) The substitute separates what was formerly 11.008(f), and puts it into both 11.008(f) and (g). The substitute states in (g) that, unless this section is cited in a law after September 1, 2003, this section is the exclusive law governing the confidentiality of personal information contained in real property records.

Sec. 11.008(h) Formerly 11.008(d).

Section 2:

Sec. 13.002(2) The substitute adds all language that concerns Section 13.002, Property Code.

Section 3:

The substitute does not call for an immediate effect, and states that the Act applies only to a deed, mortgage, or deed of trust executed on or after January 1, 2004.