

## **BILL ANALYSIS**

C.S.H.B. 2403  
By: Darby  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recently, one or more programs were devised and marketed that have the effect of chilling the sale of real property in Texas. These programs are marketed on the theory that a person selling property is entitled to the increase in the value of the property over time and for an excessively long period. The programs sell language for an owner of property to record in the public records a restrictive covenant that provides that all future owners will pay to the current owner imposing the covenant and to a third party providing the language to the owner a percentage of the sales price. The restrictive covenant typically runs for a period of 99 years.

These programs have a chilling effect on the sale of real property for several reasons. Over time, as the property changes hands, a number of 10% "profit recovery" payments would eliminate all of the increases in value to the successive owners removing the incentive to sell and the incentive to buy property encumbered by the covenants. Additionally, the burden on a seller or his representatives to find each of the persons placing the covenants on the property would be enormous over a 99 year term. And, one would reasonably expect that the companies selling these programs would be out of business within a 99 year period. Thus, the time and effort expended to attempt to locate the various owners, their successors and heirs as well as the successors, heirs or assigns of the shareholders of a now-defunct corporation would be enormous.

These types of programs, while creative, fly in the face of long-standing concepts of landownership. While restrictive covenants are frequently used to ensure the orderly development of lands, like residential subdivisions, they have never been used to prevent future owners from benefiting from the full increase value accruing during their ownership of the property. These programs will diminish the value of the property over an extended period and could ultimately make some properties almost impossible to sell.

One of the sales pitches for one program explains that a person who plants a tree in his yard should share in the increase in value as successive owners maintain the tree. This is just contrary to the spirit of Texas.

C.S.H.B. 2403 provides that such provisions are void.

### **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**

C.S.H.B. 2403 adds a new section 5.016 Property Code that provides that restrictive covenants that impose an obligation to pay a fee in connection with the future transfer of property or imposing a lien to secure the payment of such a fee are void and unenforceable. The bill provides that the change in law made by this Act applies prospectively to a transfer of property that occurs on or after the effective date of this Act.

### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

C.S.H.B. 2403 80(R)

## **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute differs from the original in that it clearly states that a covenant running with the land that violates Section 5.016, Property Code, as added by this Act (new section), or a lien purporting to secure a right under a deed restriction or other covenant running with the land that violates the new section is void and unenforceable. The substitute deletes language referring to any other contract provision that violates the new section being void and unenforceable. The substitute clarifies that for purposes of the new section, a transfer of real property includes a conveyance or other transfer of an interest or estate in real property.