

BILL ANALYSIS

C.S.H.B. 2254
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A long-standing practice in Texas is for correction instruments to be filed in order to correct nonsubstantive errors in deeds of record. A recent court case involving foreclosure and the misuse of a correction deed has led to suggestions that certain correction instruments may be void, particularly a correction instrument pertaining to additional property. That case has created uncertainty within the real estate industry as to what can be corrected and about the validity of correction documents that have been of record for a significant period of time and on which many chains of title depend. C.S.H.B. 2254 seeks to clarify these matters by authorizing the correction of an original instrument that conveys real property by means of a correction instrument filed by a party to the transaction to reflect the document's original intent in the event of certain errors in the original document.

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. 2254 amends the Property Code to authorize a correction instrument that is in compliance with the bill's provisions relating to nonmaterial and material corrections to correct an ambiguity or error in a recorded original instrument of conveyance to transfer real property or an interest in real property, including an ambiguity or error relating to the description or extent of the interest conveyed. The bill prohibits a correction instrument from correcting an ambiguity or error in a recorded original instrument of conveyance to transfer real property or an interest in real property not originally conveyed in the instrument of conveyance for purposes of a sale of real property under a power of sale conferred by a deed of trust or other contract lien unless the conveyance otherwise complies with all requirements of those statutory provisions generally applicable to liens. The bill makes a correction instrument subject to statutory provisions governing the validity of an unrecorded instrument.

C.S.H.B. 2254 authorizes a person who has personal knowledge of facts relevant to the correction of a recorded original instrument of conveyance to execute a correction instrument to make a nonmaterial change that results from a clerical error, including a correction of an inaccurate or incorrect element in a legal description, such as a distance, angle, direction, bearing or chord, a lot, block, unit, building designation or section number, an appurtenant easement, a township name or number, a municipality, county, or state name, a range number or meridian, a certified survey map number, or a subdivision or condominium name; or an addition, correction, or clarification of a party's name, including the spelling of a name, a first or middle name or initial, a suffix, an alternate name by which a party is known, or a description of an entity as a corporation, company, or other type of organization, of a party's marital status, of the date on which the conveyance was executed, of the recording data for an instrument referenced in the correction instrument, or of a fact relating to the acknowledgment or authentication.

C.S.H.B. 2254 authorizes a person who executes a correction instrument under the bill's provisions relating to nonmaterial corrections to execute a correction instrument that provides an acknowledgment or authentication that is required and was not included in the recorded original instrument of conveyance. The bill requires a person who executes a correction instrument to disclose in the instrument the basis for the person's personal knowledge of the facts relevant to the correction of the recorded original instrument of conveyance. The bill requires a person who executes a correction instrument to record the instrument and evidence of notice, if applicable, in each county in which the original instrument of conveyance being corrected is recorded and, if the correction instrument is not signed by each party to the recorded original instrument, to send a copy of the correction instrument and notice by first class mail, e-mail, or other reasonable means to each party to the original instrument of conveyance and, if applicable, a party's heirs, successors, or assigns.

C.S.H.B. 2254 authorizes the parties to the original transaction or the parties' heirs, successors, or assigns, as applicable, in addition to nonmaterial corrections including the nonmaterial corrections described by the bill's provisions, to execute a correction instrument to make a material correction to the recorded original instrument of conveyance, including a correction to add a buyer's disclaimer of an interest in the real property that is the subject of the original instrument of conveyance; add a mortgagee's consent or subordination to a recorded document executed by the mortgagee or an heir, successor, or assign of the mortgagee; add land to a conveyance that correctly conveys other land; remove land from a conveyance that correctly conveys other land; or accurately identify a lot or unit number or letter of property owned by the grantor that was inaccurately identified as another lot or unit number or letter of property owned by the grantor in the recorded original instrument of conveyance.

C.S.H.B. 2254 requires a correction instrument under the bill's provisions relating to material corrections to be executed by each party to the recorded original instrument of conveyance the correction instrument is executed to correct or, if applicable, a party's heirs, successors, or assigns and to be recorded in each county in which the original instrument of conveyance that is being corrected is recorded.

C.S.H.B. 2254 makes a correction instrument that complies with the bill's provisions relating to nonmaterial and material corrections effective as of the effective date of the recorded original instrument of conveyance, prima facie evidence of the facts stated in the correction instrument, presumed to be true, subject to rebuttal, and notice to a subsequent buyer of the facts stated in the correction instrument. The bill authorizes a bona fide purchaser of property that is subject to a correction instrument to rely on the instrument against any person making an adverse or inconsistent claim.

C.S.H.B. 2254 makes a correction instrument recorded before September 1, 2011, that substantially complies with the bill's provisions relating to nonmaterial and martial corrections and that purports to correct a recorded original instrument of conveyance effective to the same extent as a correction instrument described by the bill's provisions unless a court of competent jurisdiction renders a final judgment determining that the correction instrument does not substantially comply with those provisions.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2254 differs from the original by authorizing a correction instrument that complies with certain provisions relating to nonmaterial and material corrections to correct an ambiguity or error in a recorded original instrument of conveyance, including an ambiguity error relating to the description or extent of the interest conveyed, whereas the original specifies that a correction

instrument may correct only an ambiguity or error in an instrument of conveyance if the ambiguity or error relates to the description or extent of the interest conveyed or resulted in the conveyance of real property or an interest in real property that the parties to the original instrument did not intend to convey or resulted in the failure to convey real property or an interest in real property that the parties to the original instrument intended to convey.

C.S.H.B. 2254 differs from the original, in a provision prohibiting a correction instrument from correcting an ambiguity or error in a recorded instrument of conveyance to transfer real property or a property interest not originally conveyed in the instrument of conveyance for purposes of a sale of real property under a power of sale, by creating an exception not included in the original for a conveyance that otherwise complies with all requirements of the statutory provisions generally applicable to liens.

C.S.H.B. 2254 differs from the original by making a correction instrument subject to statutory provisions governing the validity of an unrecorded instrument that make a conveyance void as to a creditor or to a subsequent purchaser for a valuable consideration without notice, with certain exceptions, and that make the unrecorded instrument binding on a party to the instrument, on the party's heirs, and on a subsequent purchaser who does not pay a valuable consideration or who has notice of the instrument, whereas the original achieves a similar result by including provisions with respect to the instrument's binding or voidable nature that are substantially the same as the provisions in the statute cited in the substitute.

C.S.H.B. 2254 omits a provision included in the original specifying that a correction instrument that complies with its provisions or is otherwise binding relates back and is effective as of the date of the original instrument the correction instrument is executed to correct.

C.S.H.B. 2254 contains provisions not included in the original relating to nonmaterial and material corrections of correction instruments, the effect of correction instruments, and effectiveness of correction instruments recorded before September 1, 2011.