

## **BILL ANALYSIS**

C.S.H.B. 3116  
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Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Changes in Texas law have prompted some developers who have used contracts-for-deed to finance land sales to develop a new practice that takes advantage of Texas homebuyers. These sellers provide title to the property at closing and use a traditional mortgage to finance the sale but also require buyers to execute a deed-in-lieu of foreclosure at the closing table. This document, one of the many closing documents to be signed and therefore at risk of not being adequately explained to the buyer, gives title back from the homeowner to the seller or lender the same day the property is purchased. The seller-financer can then hold the deeds-in-lieu until the seller-financer decides that the buyer has defaulted. In the event of a dispute, the seller-financer has the upper hand, empowered simply to record the deed and file an eviction case without following the foreclosure procedure provided by Texas law. There is concern that this practice requires Texas homeowners to obtain counsel, bring suit, and rely on the hope that such an unfair and improper practice will be declared improper and the deed-in-lieu be considered void. C.S.H.B. 3116 seeks to make such a practice clearly unlawful, whether or not the deed-in-lieu is in fact used.

### **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. 3116 amends the Business & Commerce Code to prohibit a seller of residential real estate or a person who makes an extension of credit and takes a security interest or mortgage against residential real estate, before or at the time of the conveyance of the residential real estate to the purchaser or the extension of credit to the borrower, from requesting or requiring the purchaser or borrower to execute and deliver to the seller or person making the extension of credit a deed conveying the residential real estate to the seller or person making the extension of credit.

C.S.H.B. 3116 establishes that a deed executed in violation of this prohibition is voidable unless a subsequent purchaser of the residential real estate, for valuable consideration, obtains an interest in the property after the deed was recorded without notice of the violation, including notice provided by actual possession of the property by the grantor of the deed. The bill establishes that the residential real estate continues to be subject to the security interest of a creditor who, without notice of the violation, granted an extension of credit to a borrower based on the deed executed in violation of the prohibition. The bill requires a purchaser or a borrower to bring an action to void such a deed executed not later than the fourth anniversary of the date the deed was recorded.

C.S.H.B. 3116 makes a person who violates the prohibition against executing a deed conveying residential real property in certain transactions liable to the purchaser or borrower for actual damages; exemplary damages in an amount equal to or greater than \$5,000 and not more than

three times the amount of the actual damages, court costs, and reasonable attorney's fees.

C.S.H.B. 3116 amends the Property Code to establish that a justice court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and requires the justice court to dismiss the suit if the defendant files a sworn statement alleging the suit is based on a deed executed in violation of the prohibition against executing a deed conveying residential real property in certain transactions.

C.S.H.B. 3116 defines "residential real estate."

### **EFFECTIVE DATE**

September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3116 omits a provision included in the original expanding the definition of "false, misleading, or deceptive acts or practices" to include requesting or requiring, on or before the date on which residential real property securing a debtor's home loan under a deed of trust is conveyed to the debtor, that the debtor execute a deed conveying or purporting to convey the property to the holder of the loan in satisfaction of that debt and to include filing such a deed executed under those conditions or otherwise claiming title to the property under the deed.

C.S.H.B. 3116 contains provisions not included in the original prohibiting the execution of deeds conveying residential real property to a seller of residential real property or to a person making an extension of credit in certain transactions; making such a deed voidable except under certain circumstances; establishing that the residential real estate continues to be subject to the security interest of a creditor who, without notice of the violation, granted an extension of credit based on the executed deed; requiring a purchaser or a borrower to bring an action to void such a deed by a specified deadline; and setting out fees and damages for which a person who violates the bill's provisions is liable.

C.S.H.B. 3116 contains a provision not included in the original establishing that a justice court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and requiring the justice court to dismiss the suit if the defendant files a sworn statement alleging the suit is based on a deed executed in violation of the prohibition against executing a deed conveying residential real property in certain transactions.

C.S.H.B. 3116 contains a provision not included in the original defining "residential real estate."

C.S.H.B. 3116 differs from the original by making the bill effective September 1, 2011, whereas the original makes the bill effective on passage, or, if the bill does not receive the necessary vote, September 1, 2011.