

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3116
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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 the buyer 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 from the homeowner back to the seller or lender the same day the property is purchased. The seller-financer can then hold the deed-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.

C.S.H.B. 3116 amends current law relating to the execution of deeds conveying residential real estate in connection with certain transactions involving residential real estate.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2, Business & Commerce Code, by adding Chapter 21, as follows:

CHAPTER 21. EXECUTION OF DEEDS IN CERTAIN TRANSACTIONS INVOLVING RESIDENTIAL REAL ESTATE

Sec. 21.001. DEFINITION. Defines, in this chapter, "residential real estate."

Sec. 21.002. PROHIBITION OF EXECUTION OF DEEDS CONVEYING RESIDENTIAL REAL ESTATE IN CERTAIN TRANSACTIONS. (a) Prohibits 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 from, before or at the time of the conveyance of the residential real estate to the purchaser or the extension of credit to the borrower, 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.

(b) Provides that a deed executed in violation of this section 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. Provides 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 this section.

(c) Requires a purchaser or borrower to bring an action to void a deed executed in violation of this section not later than the fourth anniversary of the date the deed was recorded.

Sec. 21.003. CIVIL ACTION FOR DAMAGES. Provides that a person who violates Section 21.002 is liable to the purchaser or borrower for:

- (1) actual damages;
- (2) exemplary damages in an amount equal to or greater than \$5,000 and not more than three times the amount of actual damages;
- (3) court costs; and
- (4) reasonable attorney's fees.

SECTION 2. Amends Section 24.004, Property Code, as follows:

Sec. 24.004. New heading: JURISDICTION; DISMISSAL. (a) Creates this subsection from existing text. Provides that except as provided by Subsection (b), a justice court in the precinct in which the real property is located has jurisdiction in eviction suits.

(b) Provides that a justice court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and is required to dismiss the suit if the defendant files a sworn statement alleging the suit is based on a deed executed in violation of Chapter 21, Business & Commerce Code.

SECTION 3. Effective date: September 1, 2011.