

BILL ANALYSIS

Senate Research Center

S.B. 1320
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Over the years, the Texas Legislature has sought to remedy the existence of substandard housing and prevent additional substandard housing from being created by addressing the financial mechanism that was predominantly used to create the colonias. Due to the dire financial circumstances of many low-income people who could not qualify for traditional financing mechanisms, unscrupulous developers and land sellers preyed upon their need for affordable housing by using contracts for deeds in their land or home transactions.

Because of the consumer protections that the state has enacted in contract for deed land or home sales, many unscrupulous users of contracts-for-deed developed a new scheme to take advantage of home and land buyers. Using traditional mortgage financing, these sellers provide title to the property at closing, however they now require buyers to execute a "deed-in-lieu of foreclosure" at the closing table. This document is usually not explained to would-be buyers since, in essence, it gives title back to the seller or lender the same day the property is purchased. Additionally, this makes Texans sign-away the foreclosure rights that the legislature has provided to them over the years.

In practice, the seller-financer holds the deed-in-lieu until they decide that a buyer has defaulted. In the event of a dispute, the seller-financer has the upper hand and can simply record the deed, file an eviction case, and bypass all the foreclosure procedure and consumer homeowner protections provided by law.

S.B. 1320 amends current law relating to the execution of written instruments relating to residential real estate transactions and deeds conveying residential real estate in connection with certain transactions involving residential real estate and provides a civil penalty.

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 "residential real estate" in this chapter.

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, 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.

(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.

(d) Authorizes a purchaser or borrower who is a prevailing party in an action to void a deed under this section to recover reasonable and necessary attorney's fees.

Sec. 21.003. ACTION BY ATTORNEY GENERAL. (a) Authorizes the attorney general to bring an action on behalf of the state:

(1) for injunctive relief to require compliance with this chapter;

(2) to recover a civil penalty of \$500 for each violation of this chapter; or

(3) for both injunctive relief and to recover to the civil penalty.

(b) Entitles the attorney general to recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty, or both, under this section, including court costs and reasonable attorney's fees.

(c) Authorizes the court to make such additional order to judgments as are necessary to return to the purchaser a deed conveying residential real estate that the court finds was acquired by means of any violation of this chapter.

(d) Provides that in bringing or participating in an action under this chapter, the attorney general acts in the name of the state and does not establish an attorney-client relationship with another person, including a person to whom the attorney general requests that the court award relief.

(e) Requires that an action by the attorney general be brought not later than the fourth anniversary of the date the deed was recorded.

SECTION 2. Amends Section 121.005(a), Civil Practice and Remedies Code, as follows:

(a) Authorizes an officer to accept, as satisfactory evidence of the identity of an acknowledging person, only:

(1)-(2) Makes no changes to these subdivisions; or

(3) with respect to a deed or other instrument relating to a residential real estate transaction, a current passport issued by a foreign country.

SECTION 3. 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. Makes a nonsubstantive change.

(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 (For-Profit Corporations), Business & Commerce Code.

SECTION 4. Effective date: September 1, 2011.