

BILL ANALYSIS

S.B. 1320
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Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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 main financial mechanism used to create the colonias and targeting a practice in which developers and land sellers took advantage of low-income people who could not qualify for traditional financing mechanisms by using contracts for deeds in their land or home transactions.

The consumer protections that the state enacted in contract for deed land or home sales have prompted some developers who have used contracts-for-deed to develop a new practice that takes advantage of home and land buyers. 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.

S.B. 1320 seeks to end this practice by prohibiting the execution of deeds conveying residential real estate in connection with certain transactions involving residential real estate and making a violation of such prohibition subject to a civil action for damages.

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

S.B. 1320 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.

S.B. 1320 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.

S.B. 1320 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. The bill defines "residential real estate."

S.B. 1320 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.

EFFECTIVE DATE

September 1, 2011.