

BILL ANALYSIS

Senate Research Center

S.B. 1496
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

It has been the practice in Texas that correction instruments may be filed in order to correct certain nonsubstantive errors. The Texas Supreme Court in *Myrad Properties, Inc. v. LaSalle Bank Nationale Association*, included language in the opinion which could suggest that certain correction instruments may be void. This is particularly so if additional property is included with the correction instrument. The *Myrad* decision thus created uncertainty within the real estate industry as to the validity of correction documents.

S.B. 1496 amends current law relating to the scope and validity of correction instruments in the conveyance of real property.

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 Subchapter B, Chapter 5, Property Code, by adding Sections 5.027, 5.028, 5.029, 5.030, and 5.031 as follows:

Sec. 5.027. CORRECTION INSTRUMENTS: GENERALLY. (a) Authorizes a correction instrument that complies with Section 5.028 or 5.029 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 that relates to the description of or extent of the interest conveyed.

(b) 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 under Chapter 51 (Provisions Generally Applicable to Liens) unless the conveyance otherwise complies with all requirements of Chapter 51.

(c) Provides that a correction instrument is subject to Section 13.001 (Validity of Unrecorded Instrument).

Sec. 5.028. CORRECTION INSTRUMENTS: NONMATERIAL CORRECTIONS. (a) 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:

(1) 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

(2) 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; a party's marital status; the date on which the conveyance was executed; the recording data for an instrument referenced in the correction instrument; or a fact relating to the acknowledgement or authentication.

(b) Authorizes a person who executes a correction instrument under this section to execute a correction instrument that provides an acknowledgement or authentication that is required and was not included in the recorded original instrument of conveyance.

(c) Requires a person who executes a correction instrument under this section 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.

(d) Requires a person who executes a correction under this section to:

(1) record the instrument and evidence of notice as provided by Subdivision (2), if applicable, in each county in which the original instrument of conveyance being corrected is recorded; and

(2) if the correction instrument is not signed by each party to the recorded original instrument, 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.

Sec. 5.029. CORRECTION INSTRUMENTS: MATERIAL CORRECTIONS. (a) Authorizes the parties to the original transaction or the parties' heirs, successors, or assigns, as applicable, in addition to nonmaterial corrections, including the corrections described by Section 5.028, to execute a correction instrument to make a material correction to the recorded original instrument of conveyance, including a correction to:

(1) add a buyer's disclaimer of an interest in the real property that is the subject of the original instrument of conveyance; a mortgagee's consent or subordination to a recorded document executed by the mortgagee or an heir, successor, or assign of the mortgagee; or land to a conveyance that correctly conveys other land;

(2) remove land from a conveyance that correctly conveys other land; or

(3) 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.

(b) Requires that a correction instrument under this section be:

(1) 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

(2) recorded in each county in which the original instrument of conveyance that is being corrected is recorded.

Sec. 5.030. CORRECTION INSTRUMENT: EFFECT. (a) Provides that a correction instrument that complies with Section 5.028 or 5.029 is:

- (1) effective as of the effective date of the recorded original instrument of conveyance;
- (2) prima facie evidence of the facts stated in the correction instrument;
- (3) presumed to be true;
- (4) subject to rebuttal; and
- (5) notice to a subsequent buyer of the facts stated in the correction instrument.

(b) 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.

Sec. 5.031. CORRECTION INSTRUMENTS RECORDED BEFORE SEPTEMBER 1, 2011. Provides that a correction instrument recorded before September 1, 2011, that substantially complies with Section 5.028 or 5.029 and that purports to correct a recorded original instrument of conveyance is effective to the same extent as provided by Section 5.030 unless a court of competent jurisdiction renders a final judgment determining that the correction instrument does not substantially comply with Section 5.028 or 5.029.

SECTION 2. Effective date: September 1, 2011.