

BILL ANALYSIS

S.B. 1496
By: Uresti
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A long-standing practice in Texas is for a correction instrument to be filed in order to correct nonsubstantive errors in deeds of record. A Texas court recently considered a case involving foreclosure and the misuse of a correction deed and, in its opinion, seemed to suggest that certain correction instruments may be void, particularly a correction instrument pertaining to additional property. That court decision has created an uncertainty within the real estate industry as to what can be corrected and as to the validity of certain correction documents. S.B. 1496 seeks to address this uncertainty by amending statutory provisions relating to the scope and validity of correction instruments in the conveyance of real property.

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. 1496 amends the Property Code to authorize a correction instrument that is in compliance with the bill's provisions relating to nonmaterial and material corrections 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 relating to the description or extent of the interest conveyed. The bill 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 conferred by a deed of trust or other contract lien unless the conveyance otherwise complies with all requirements of those statutory provisions generally applicable to liens. The bill makes a correction instrument subject to statutory provisions governing the validity of an unrecorded instrument.

S.B. 1496 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 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 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, of a party's marital status, of the date on which the conveyance was executed, of the recording data for an instrument referenced in the correction instrument, or of a fact relating to the acknowledgment or authentication.

S.B. 1496 authorizes a person who executes a correction instrument under the bill's provisions relating to nonmaterial corrections to execute a correction instrument that provides an

acknowledgment or authentication that is required and was not included in the recorded original instrument of conveyance. The bill requires a person who executes a correction instrument 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. The bill requires a person who executes a correction instrument to record the instrument and evidence of notice, if applicable, in each county in which the original instrument of conveyance being corrected is recorded and, if the correction instrument is not signed by each party to the recorded original instrument, to 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.

S.B. 1496 authorizes the parties to the original transaction or the parties' heirs, successors, or assigns, as applicable, in addition to nonmaterial corrections including the nonmaterial corrections described by the bill's provisions, to execute a correction instrument to make a material correction to the recorded original instrument of conveyance, including a correction to add a buyer's disclaimer of an interest in the real property that is the subject of the original instrument of conveyance; add a mortgagee's consent or subordination to a recorded document executed by the mortgagee or an heir, successor, or assign of the mortgagee; add land to a conveyance that correctly conveys other land; remove land from a conveyance that correctly conveys other land; or 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.

S.B. 1496 requires a correction instrument under the bill's provisions relating to material corrections to be 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 to be recorded in each county in which the original instrument of conveyance that is being corrected is recorded.

S.B. 1496 makes a correction instrument that complies with the bill's provisions relating to nonmaterial and material corrections effective as of the effective date of the recorded original instrument of conveyance, prima facie evidence of the facts stated in the correction instrument, presumed to be true, subject to rebuttal, and notice to a subsequent buyer of the facts stated in the correction instrument. The bill 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.

S.B. 1496 makes a correction instrument recorded before September 1, 2011, that substantially complies with the bill's provisions relating to nonmaterial and marital corrections and that purports to correct a recorded original instrument of conveyance effective to the same extent as a correction instrument described by the bill's provisions unless a court of competent jurisdiction renders a final judgment determining that the correction instrument does not substantially comply with those provisions.

EFFECTIVE DATE

September 1, 2011.