

BILL ANALYSIS

Senate Research Center
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S.B. 1496
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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 non-substantive 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 clarifies that instruments that convey real property can be corrected by the parties to the transaction to reflect the original intent in the event of an error in the original document. In addition, in the case of non-substantive or scrivener's errors, a person with knowledge under appropriate circumstances may make corrections to an original instrument of conveyance.

S.B. 1496 gives the parties to the instrument the ability to correct the instrument to reflect the original intent. S.B. 1496 also provides specific steps required by a person with knowledge to correct a scrivener's error, including the requirement to provide notice to the parties to the instrument.

As proposed, S.B. 1496 amends current law relating to 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 Section 5.027, as follows:

Sec. 5.027. CORRECTION INSTRUMENTS. (a) Authorizes a correction instrument, except as provided by Subsection (b), to correct only an ambiguity or error in an instrument of conveyance to transfer real property or an interest in real property if the ambiguity or error:

- (1) relates to the description of or extent of the interest conveyed; or
- (2) resulted in the conveyance of real property or an interest in real property that the parties to the original instrument did not intend to convey, or the failure to convey real property or an interest in real property that the parties to the original instrument intended to convey.

(b) Prohibits a correction instrument from correcting an ambiguity or error in an 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).

(c) Requires that a correction instrument be:

(1) executed by each party to the original instrument the correction instrument is executed to correct; and

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

(d) Provides that a correction instrument that does not comply with this section is:

(1) binding on a party to the instrument and the party's heirs, and a subsequent purchaser who does not pay a valuable consideration for the real property or an interest in the real property, or has notice of the correction instrument; and

(2) void as to a creditor or to a subsequent purchaser who pays a valuable consideration for the real property or an interest in the real property, and does not have notice of the correction instrument.

(e) Provides that a correction instrument that complies with this section or is otherwise binding relates back and is effective as of the date of the original instrument the correction instrument is executed to correct.

SECTION 2. Makes application of the changes in law made by this Act to a correction instrument, prospective.

SECTION 3. Effective date: September 1, 2011.