

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 207
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Rural community banks have raised concerns regarding the difficulties that rural Texans face when attempting to insure non-home equity cash-out loan liens on rural property. There have been calls to address the extreme reluctance of title insurers to insure these liens on rural property as rural borrowers and lenders face lending difficulties not faced by urban borrowers and lenders.

H.B. 207 seeks to help level the playing field between rural borrowers and lenders and their urban counterparts and give title insurers a safe harbor for insuring liens on rural property by providing a method for rural borrowers to obtain cash-out financing on rural property that is not the borrower's residence or contiguous to the borrower's residence.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 207 clarifies that if a transaction does not fall within the safe harbor or meet the requirements in the bill, a court could still find the transaction valid by applying existing case law and examining the individual facts of that case.

C.S.H.B. 207 amends current law relating to the exclusion of certain conveyances from classification as sham or pretended sales.

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 A, Chapter 41, Property Code, by adding Section 41.0022, as follows:

Sec. 41.0022. CERTAIN CONVEYANCES NOT SHAM OR PRETENDED SALES. (a) Defines "entity" and "parcel."

(b) Provides that the conveyance of a parcel not meeting the definition of an urban homestead under Section 41.002(a) (relating to requiring the homestead of a family or a single, adult person, if used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business, to consist of not more than 10 acres of land which may be in one or more contiguous lots, together with any improvements thereon) or (c) (relating to considering a homestead to be urban if, at the time the designation is made, the property meets certain guidelines) by an individual to an entity in which the individual or individual's spouse has a direct or indirect ownership interest is not a sham or pretended sale, including a pretended sale under Section 50(c) (relating to prohibiting any mortgage, trust deed, or other lien on the homestead from being valid unless it secures a debt whether such mortgage, trust deed, or other lien, is required to have been created by the owner alone, or together with his or her spouse, in case the owner is married), Article XVI (General Provisions), Texas Constitution, if:

- (1) the deed conveying the parcel is recorded at least 30 days before the entity grants a mortgage, trust deed, or other lien on the parcel;
- (2) the individual does not reside on the parcel at the time of the conveyance;
- (3) the parcel is not contiguous to the parcel on which the individual resides;
- (4) the deed conveying the parcel does not contain a condition of defeasance; and
- (5) the individual recorded contemporaneously with the deed an affidavit substantially in the form prescribed by Subsection (d).

(c) Provides that an individual executing a deed under Subsection (b) is estopped from claiming that the conveyance is a sham or pretended sale, including a pretended sale under Section 50(c), Article XVI, Texas Constitution, or the individual had not abandoned homestead rights, if any, in the parcel by executing the deed.

(d) Requires an individual grantor of the deed, at the time of recording a deed under Subsection (b), to record an affidavit containing the following:

- (1) a title caption stating "Affidavit Regarding Conveyance To An Entity";
- (2) the date of the affidavit;
- (3) a description of the deed containing the title of the deed, the date of the deed, the name and address of the individual grantor, and the name and address of the entity grantee;
- (4) a description of the parcel being conveyed to the entity;
- (5) a description of the parcel upon which the individual currently resides;
- (6) a statement that the parcel being conveyed is not contiguous to the parcel upon which the individual currently resides;
- (7) a statement that the parcel upon which the individual currently resides is not:
 - (A) located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; or
 - (B) served by police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality: electric, natural gas, sewer, storm sewer, or water;
- (8) a statement that:
 - (A) the individual is unmarried; or
 - (B) the individual is married, and including the name of the individual's spouse;
- (9) a statement that the individual or individual's spouse owns a direct or indirect interest in the entity;

(10) a statement that the individual has executed the deed conveying the parcel to the entity;

(11) a statement that the individual intends to vest title in the entity;

(12) a statement that there are no written or oral agreements regarding a defeasance of the parcel upon the passage of time or occurrence or non-occurrence of any event;

(13) a statement that the individual acknowledges that the individual will be estopped from claiming the conveyance to the entity is a sham or pretended sale, including a pretended sale under Section 50(c), Article XVI, Texas Constitution;

(14) a statement that the individual acknowledges that the individual will be estopped from claiming the individual had not abandoned homestead rights, if any, in the parcel by executing the deed;

(15) a statement that the individual understands that if the parcel is valued for ad valorem tax purposes as qualified open-space land, the entity is required to reapply in its own name by the applicable filing deadline; and

(16) a statement that the individual has had an opportunity:

(A) to review the affidavit prior to the affidavit's execution; and

(B) to consult with an attorney before the affidavit's execution, whether or not the opportunity to consult with an attorney was exercised.

(e) Requires the individual's spouse, if the individual conveying a parcel under Subsection (b) is married, to join in the execution of the deed and the affidavit described by Subsection (d).

(f) Authorizes the entity or a lender for value to conclusively rely on an affidavit described by Subsection (d).

(g) Provides that a transaction that does not meet the requirements of this section, notwithstanding any other provision of this section, is not invalid if the homestead has been abandoned or disclaimed as provided by other provisions of law.

SECTION 2. Effective date: September 1, 2023.