

BILL ANALYSIS

Senate Research Center
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H.B. 4063
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Land Title Association (TLTA) asserts a memorandum of contract is used to put subsequent purchasers on constructive notice of the buyer's equitable title and ensure that the seller does not try to sell to another buyer. TLTA reports that sellers are often unaware that this notice has been filed and the issues surrounding the contract may be stale. What's more, TLTA reports instances in which the filer of the notice will extract payment unrelated to the terms of the contract to "simply go away," using the memorandum of contract as a form of "greenmail" to take advantage of the seller's duress in a property sale transaction.

H.B. 4063 would address this issue by setting out requirements for filing a memorandum of contract concerning residential property that is not signed by the property owner, including a requirement to notify the owner of the filing, and establishing procedures through which an owner may file an affidavit for the release of the memorandum.

H.B. 4063 amends current law relating to the filing and release of record of a unilateral memorandum of contract concerning residential 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 Chapter 12, Property Code, by adding Section 12.020, as follows:

Sec. 12.020. FILING AND RELEASE OF UNILATERAL MEMORANDUM OF CONTRACT CONCERNING RESIDENTIAL PROPERTY. (a) Defines "residential property" and "unilateral memorandum of contract."

(b) Requires a person who files for recording a unilateral memorandum of contract concerning residential property to:

(1) provide to the county clerk the person's mailing address and a certificate of mailing that substantially complies with Subsection (h) for recording with the unilateral memorandum of contract; and

(2) not later than the date the person files the memorandum with the county clerk, send a copy of the filed memorandum and a letter notifying the owner of the property of the filing of the memorandum by registered or certified mail, return receipt requested, to the address of the property and any mailing address shown for the owner on the filed memorandum, in the real property records for the property, or in the records of the relevant appraisal district with respect to the property.

(c) Authorizes an owner of residential property who receives a letter described by Subsection (b) or otherwise has notice of a recorded unilateral memorandum of contract concerning the property to file for recording in the real property records

of the county in which the property is located an affidavit that substantially complies with Subsection (i) and a certificate of mailing that substantially complies with Subsection (j).

(d) Requires an owner of residential property who files an affidavit under Subsection (c) to send a copy of the filed affidavit and a letter notifying the person who filed the unilateral memorandum of contract of the filing of the affidavit. Requires that the letter and the copy of the affidavit be sent by registered or certified mail, return receipt requested, to the address provided to the county clerk by the person who filed the memorandum and the address of any other person referenced in the memorandum other than the property owner.

(e) Provides that, subject to Subsection (f) and except as provided by Subsection (g):

(1) an affidavit filed under Subsection (c) serves as a release of record of a contract, option, or right asserted to exist by the unilateral memorandum of contract referenced in the affidavit; and

(2) after the affidavit is recorded:

(A) the memorandum and any information derived or that could be derived from the memorandum does not:

(i) constitute constructive or actual notice of any contract, option, or right concerning the residential property that is asserted to exist by the memorandum;

(ii) create any duty of inquiry in a person with respect to the residential property described in the memorandum; or

(iii) affect the validity of a conveyance to a purchaser for value or of a mortgage to a lender for value;

(B) a contract, option, or right asserted to exist by the memorandum is not enforceable against a purchaser or lender described by Paragraph (A)(iii), regardless of whether the purchaser or lender knew of the memorandum; and

(C) an interest in the residential property is authorized to be transferred or encumbered free of all interests asserted in the memorandum.

(f) Provides that, if an owner of residential property has filed an affidavit and certificate of mailing under Subsection (c) and a contradicting affidavit is not filed under Subsection (g):

(1) a bona fide purchaser or a mortgagee for value or a successor or assign of a bona fide purchaser or mortgagee for value is authorized to rely conclusively on the affidavit filed by the owner under Subsection (c) on and after the 45th day after the date the certificate of mailing was recorded; and

(2) the sole remedy available in an action brought to enforce a person's rights asserted under the unilateral memorandum of contract referenced in the affidavit is money damages.

(g) Provides that an affidavit filed under Subsection (c) does not serve as a release of record of a contract, option, or right asserted to exist by a unilateral memorandum of contract filed for recording under this section with respect to a

purchaser or mortgagee of the residential property that acquires the purchaser's or mortgagee's interest from the owner if, not later than the 45th day after the date a certificate of mailing was recorded under Subsection (c), the person who filed the memorandum files for recording in the real property records of the county in which the residential property is located a contradicting affidavit asserting that the affidavit or certificate of mailing filed by the owner under Subsection (c) is untrue or another reason exists as to why the memorandum serves as a valid notice of record of a contract for the purchase of an interest in residential property, for an option to purchase an interest in the property, for a right of first refusal or first offer to purchase an interest in the property, or for a right to match any offer to purchase an interest in the property.

(h) Requires that a certificate of mailing filed under Subsection (b) be in substantially a certain form. Sets forth the language required to be included in the certificate.

(i) Requires that an affidavit filed under Subsection (c) be in substantially a certain form. Sets forth the language required to be included in the affidavit.

(j) Requires that a certificate of mailing filed under Subsection (c) be in substantially a certain form. Sets forth the language required to be included in the certificate.

(k) Provides that, if a unilateral memorandum of contract filed for recording on or after September 1, 2025, does not comply with Subsection (b):

(1) the memorandum and any information derived or that could be derived from the memorandum does not:

(A) constitute constructive or actual notice of any contract, option, or right concerning the residential property that is asserted to exist by the memorandum;

(B) create any duty of inquiry in a person with respect to the residential property described in the memorandum; or

(C) affect the validity of a conveyance to a purchaser for value or of a mortgage to a lender for value;

(2) a contract, option, or right asserted to exist by the memorandum is not enforceable against a purchaser or lender described by Subdivision (1)(C), regardless of whether the purchaser or lender knew of the memorandum;

(3) an interest in the residential property is authorized to be transferred or encumbered free of all interests asserted in the memorandum; and

(4) the sole remedy available in an action brought to enforce a person's rights asserted under the unilateral memorandum of contract referenced in the affidavit is money damages.

SECTION 2. Effective date: September 1, 2025.