

BILL ANALYSIS

C.S.H.B. 4063

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Trade, Workforce & Economic Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to the Texas Land Title Association (TLTA), 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. TLTA also 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. C.S.H.B. 4063 seeks to 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.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

C.S.H.B. 4063 amends the Property Code to require a person who files for recording a unilateral memorandum of contract concerning residential property to do the following:

- provide to the county clerk the person's mailing address and a certificate of mailing of notice of a filed unilateral memorandum of contract, which must substantially comply with the form for such certificates set out by the bill, for recording with the unilateral memorandum of contract; and
- not later than the date the person files that memorandum with the county clerk, send a copy of the filed memorandum and a letter notifying the property owner of the filing by registered or certified mail, with return receipt requested, to the following addresses:
 - 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.

The bill authorizes an owner of residential property who receives such a letter or otherwise has notice of a recorded unilateral memorandum of contract concerning the property to file an affidavit for release of the memorandum and a certificate of mailing of the affidavit for recording in the real property records of the county in which the property is located. The bill sets out the forms for the affidavit and the certificate of mailing and requires each document filed to be substantially compliant with the applicable forms set out by the bill. The bill defines the following:

- "residential property" as the real property and existing improvements for a single-family house, duplex, triplex, or quadruplex or a unit in a multiunit structure used for residential purposes in which title to the individual units is transferred to the owners under a condominium system; and
- "unilateral memorandum of contract" as a written document that is signed only by a person who is not an owner of the residential property and asserts that the person has entered into a contract with an owner of residential property for the purchase of an interest in the 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, and does not include a deed or a document granting a right of first refusal pursuant to a condominium declaration.

C.S.H.B. 4063 requires a residential property owner who files such an affidavit to send a copy of that affidavit and a letter notifying the person who filed the unilateral memorandum of contract of the filing of the affidavit. The bill requires the letter and the copy of the affidavit to be sent by registered or certified mail, with 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.

The bill establishes that the affidavit 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 makes the following applicable after the affidavit is recorded:

- the memorandum and any information derived or that could be derived from the memorandum does not:
 - constitute constructive or actual notice of any contract, option, or right concerning the residential property that is asserted to exist by the memorandum;
 - create any duty of inquiry in a person with respect to the residential property described in the memorandum; or
 - affect the validity of a conveyance to a purchaser for value or of a mortgage to a lender for value;
- a contract, option, or right asserted to exist by the memorandum is not enforceable against such a purchaser or lender, regardless of whether the purchaser or lender knew of the memorandum; and
- an interest in the residential property may be transferred or encumbered free of all interests asserted in the memorandum.

A filed affidavit 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 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 of the affidavit that substantially complies with the specified form was recorded in the real property records of the applicable county, the person who filed the memorandum files for recording in those records a contradicting affidavit asserting the following:

- the affidavit or certificate of mailing filed by the owner 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.

C.S.H.B. 4063 makes the following applicable if a residential property owner has filed an affidavit and certificate of mailing of the affidavit that substantially complies with the forms set out by the bill and a contradicting affidavit is not filed:

- a bona fide purchaser or a mortgagee for value or a successor or assign of a bona fide purchaser or mortgagee for value may rely conclusively on the affidavit filed by the owner on and after the 45th day after the date the certificate of mailing was recorded; and

- 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.

C.S.H.B. 4063 establishes the following if a unilateral memorandum of contract concerning residential property filed for recording on or after September 1, 2025, does not comply with the requirements described under the bill's provisions for a person who files for recording such a memorandum:

- the memorandum and any information derived or that could be derived from the memorandum does not:
 - constitute constructive or actual notice of any contract, option, or right concerning the residential property that is asserted to exist by the memorandum;
 - create any duty of inquiry in a person with respect to the residential property described in the memorandum; or
 - affect the validity of a conveyance to a purchaser for value or of a mortgage to a lender for value;
- a contract, option, or right asserted to exist by the memorandum is not enforceable against such a purchaser or lender, regardless of whether the purchaser or lender knew of the memorandum;
- an interest in the residential property may be transferred or encumbered free of all interests asserted in the memorandum; and
- 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.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4063 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The introduced and the substitute differ with respect to the definition of "unilateral memorandum of contract" in the following ways:

- the substitute establishes that the signatory of the document is a person who is not an owner of the residential property and that the person with whom the signatory asserts they have entered into a contract is an owner of residential property, whereas the introduced established that those parties are a person who is not an owner of the real property and an owner of real property, respectively; and
- the substitute expands the types of applicable contracts to include a contract for the purchase of an interest in the property and a contract for a right to match any offer to purchase an interest in the property, which were not in the introduced.

The substitute makes related changes to the prescribed affidavit and certificate of mailing forms.

While both the introduced and the substitute authorize an owner of residential property who receives a letter notifying the property owner of the filing of a unilateral memorandum of contract to file an affidavit for the release of the memorandum and the related certificate of mailing for recording in the real property records of the county in which the property is located, the substitute also applies that authorization to an owner of residential property who otherwise has notice of a recorded unilateral memorandum of contract concerning the property.

The substitute includes a record of a contract among the records for which a filed affidavit serves as a release, except when a qualifying contradicting affidavit is filed, whereas the introduced did not include such a record. The substitute also revises the introduced version's description of the contradicting affidavit's contents to reflect the changes to the definition of "unilateral memorandum of understanding" regarding the applicable types of contract.