

BILL ANALYSIS

Senate Research Center

S.B. 648
By: West
Business & Commerce
7/22/2025
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Title theft is a serious and increasingly common form of identity fraud that specifically targets property ownership. This type of theft, along with title theft of personal property, occurs when an individual or group successfully forges or steals your property deed, allowing them to transfer the ownership of your property into their name without your knowledge or consent.

Once they gain control of your deed, these criminals may attempt to exploit your property in various ways. For instance, they might take out loans against your home equity, effectively borrowing money that you are responsible for repaying. In other cases, they could try to rent out your home to unsuspecting tenants or even sell the property altogether, pocketing the profits for themselves. The risk of title theft can go unnoticed until it is too late.

To create a document that seems legitimate, the bad actor must bypass title and escrow companies because they understand the legal requirements of such instruments and can more easily spot fraudulent or illegal activities.

Title 3, Chapter 12 of the Property Code currently stipulates that various instruments linked to real property can be officially recorded. This includes vital documents such as deeds, mortgages, and other legal instruments that affect property titles. The primary purpose of these recordings is to provide public notice of any interests or claims regarding the property, thereby safeguarding the rights of bona fide purchasers while maintaining the integrity and stability of property titles. However, the existing legislation mandates that only the county clerk is authorized to oversee the accurate and lawful recording of these property instruments, placing the responsibility solely on this one official entity. This restriction raises concerns about the efficiency and accessibility of the recording process.

S.B. 648 makes three important changes to strengthen the existing law. First, it requires that any instrument conveying real property not be recorded unless an attorney, title agent, title company, or escrow company that offers closing, settlement, or similar transaction service related to the transfer of real property files the instrument for recording. These professionals provide crucial services related to the closing, settlement, or other transactions that involve the transfer of real property. By mandating that these instruments are filed for recording only by licensed entities, the process ensures that all legal and procedural standards are met, thereby protecting the rights of all parties involved in the transaction and maintaining the integrity of public records.

Second, if an individual other than the grantor files the instrument for recording, the following requirements must be met: (1) The instrument must be signed by the grantor. (2) Both the grantor and the grantee must acknowledge or swear to the instrument in the presence of two or more credible subscribing witnesses. (3) The grantor, grantee, and each subscribing witness must acknowledge or swear to the instrument before and have it certified by an officer authorized to take acknowledgments or oaths, as applicable. By ensuring compliance with these requirements, the integrity and legality of the recorded instrument will be upheld, thus safeguarding the interests of all parties involved in the transaction.

Third, an affidavit of heirship cannot be recorded unless it is (1) signed by the person making the affidavit, (2) acknowledged or sworn to by the person making the affidavit, and each heir named in the affidavit in the presence of two credible subscribing witnesses; and (3) acknowledged or sworn to by the person making the affidavit, each heir named in the affidavit, and each

subscribing witness before and certified by an officer authorized to take acknowledgments or oaths, as applicable. These measures will enhance the state's ability to act as gatekeepers against the increasing criminal tendency to outpace our legal system, providing clerks with the common sense capacity to deter thieves.

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

S.B. 648 amends current law relating to recording requirements for certain instruments concerning 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 Section 203.002, Estates Code, as follows:

Sec. 203.002. FORM OF AFFIDAVIT CONCERNING IDENTITY OF HEIRS. Amends the authorized form of an affidavit of facts concerning the identity of a decedent's heirs to include a second option for the signing of the affidavit for the purpose of Section 12.001(b-1), Property Code.

SECTION 2. Amends Section 12.001, Property Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Prohibits an instrument conveying real property from being recorded unless:

(1) if the instrument is filed for recording by an attorney, title agent, title company, or escrow company that provides only closing, settlement, or other comparable transaction services in connection with the transfer of real property, a public utility, a governmental entity, or a person acting on behalf of the attorney, agent, company, utility, or entity, the instrument is signed by the grantor and acknowledged or sworn to by the grantor before and certified by an officer authorized to take acknowledgments or oaths, as applicable; and

(2) if the instrument is filed for recording by an individual other than a person described by Subdivision (1), the instrument is signed by the grantor, acknowledged or sworn to by the grantor in the presence of two or more credible subscribing witnesses, and acknowledged or sworn to by the grantor and each subscribing witness before and certified by an officer authorized to take acknowledgments or oaths, as applicable.

Makes nonsubstantive changes to this subsection.

(b-1) Prohibits an affidavit of heirship concerning heirship to real property that is filed for recording by a person described by Subsection (b)(2) from being recorded unless it is:

(1) signed by the individual making the affidavit;

(2) acknowledged or sworn to by the individual making the affidavit in the presence of two credible subscribing witnesses;

(3) acknowledged or sworn to by the individual making the affidavit and each subscribing witness before and certified by an officer authorized to take acknowledgment or oaths, as applicable; and

(4) acknowledged or sworn to by each living heir to real property named in the affidavit that is not under a legal disability before and certified by an officer authorized to take acknowledgements or oaths, as applicable.

SECTION 3. Effective date: upon passage or September 1, 2025.