

BILL ANALYSIS

S.B. 1734
By: West
Trade, Workforce & Economic Development
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that there is no clear legal process in Texas for property owners to challenge fraudulent documents that have been recorded in county real property records and that individuals have used forged or deceptive instruments to wrongfully claim title to property that, once recorded, can create confusion about ownership and interfere with legitimate property rights. The bill sponsor has also informed the committee that current law does not presume a document to be fraudulent based on a related criminal conviction and that property owners must typically engage in full civil litigation to dispute such filings. S.B. 1734 seeks to address this issue by allowing a property owner to file a motion with the district clerk to request a court determination that a recorded instrument is fraudulent, establishing a presumption of fraud if a person associated with the filing has been convicted of a related offense, and creating a judicial process for reviewing and potentially removing fraudulent filings from the property records, providing a more direct and accessible remedy for affected property owners.

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

S.B. 1734 amends the Government Code to establish that a document or instrument is presumed to be fraudulent if the document or instrument purports to convey title to or an interest in real property and either of the following conditions are met:

- a person has been convicted of an offense under Penal Code provisions relating to offenses against property or offenses against public administration for conduct with respect to the document or instrument; or
- the document or instrument is the subject of an owner's affidavit and certificate of mailing filed and recorded in accordance with the bill's provisions and a controverting affidavit was not timely filed for recording under those provisions.

S.B. 1734 authorizes an owner of real property who has reason to believe that a document or instrument purporting to convey title to or an interest in the real property and recorded in the real property records is fraudulent, subject to the bill's provisions relating to an owner's affidavit regarding purported conveyance of title or interest, to complete and file with the district clerk

of the county in which the document or instrument is recorded a motion, verified as required under the bill's provisions, to which the movant has attached the following:

- a copy of the document or instrument; and
- documentary evidence of the following:
 - a person's conviction of an offense under Penal Code provisions relating to offenses against property or offenses against public administration for conduct with respect to the document or instrument; or
 - the filing and recording of an uncontroverted owner's affidavit and certificate of mailing under the bill's provisions relating to an owner's affidavit regarding purported conveyance of title or interest.

The bill sets out the content and suggested form of the motion and requires the motion to be verified by an affidavit. The bill sets out the content and form of the affidavit.

S.B. 1734 does the following with respect to such a motion:

- authorizes the motion to be ruled on by a district judge having jurisdiction over real property matters in the county where the document or instrument described in the motion is recorded;
- authorizes the district court to rule on the motion based solely on a review of the attached document or instrument, the attached documentary evidence, and any relevant public records without hearing any testimonial evidence;
- authorizes the court's review to be made ex parte without delay or notice of any kind; and
- requires an appellate court to expedite review of a court's finding on the motion.

The bill prohibits the district clerk from collecting a filing fee for filing a motion on a fraudulent conveyance.

S.B. 1734 requires the district judge, after reviewing the attached document or instrument, the attached evidence, and any relevant public records, to enter an appropriate finding of fact and conclusion of law, which must be filed for recording and indexed in the same class of records in which the subject document or instrument was originally recorded. A copy of the finding of fact and conclusion of law must be sent, by first class mail, to the movant and to the person who filed the document or instrument for recording at the last known address of each person within seven days after the date that the finding of fact and conclusion of law is issued by the judge. The bill prohibits the county clerk from collecting a fee for filing a district judge's finding of fact and conclusion of law under these provisions and sets out the content and suggested form for a district court's finding of fact and conclusion of law.

S.B. 1734 amends the Property Code to authorize an owner of real property to file an affidavit and a certificate of mailing that substantially comply with the bill's provisions for recording in the real property records of the county in which a document or instrument purporting to convey title to or an interest in the real property was recorded. The bill requires a property owner who files such an affidavit to send a copy of the filed affidavit and a letter notifying the grantor and grantee of the purported conveyance of the filing of the affidavit by registered or certified mail, return receipt requested, to the grantor and grantee's last known addresses. The bill authorizes the grantor or grantee of the purported conveyance, not later than the 120th day after the date the certificate of mailing was filed, to file for recording a controverting affidavit in the real property records of the county in which the real property is located asserting that the affidavit or certificate of mailing filed by the property owner is untrue or another reason exists as to why the conveyance is valid. If an owner's affidavit and certificate of mailing are filed and recorded and a controverting affidavit is not filed for recording in the time provided by the bill, the property owner that filed the affidavit may bring a motion for a district court ruling under the bill's provisions. The bill sets out the content and form of the owner's affidavit and the certificate of mailing.

S.B. 1734 authorizes a bona fide purchaser or a mortgagee for value or a successor or assign of a bona fide purchaser or mortgagee for value to rely conclusively on a determination in a district

court's finding of fact and conclusion of law recorded under the bill's provisions that a document or instrument does not convey title to or an interest in the real property described in the document or instrument.

EFFECTIVE DATE

September 1, 2025.