

AN ACT

relating to the execution of written instruments relating to residential real estate transactions and deeds conveying residential real estate in connection with certain transactions involving residential real estate; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 2, Business & Commerce Code, is amended by adding Chapter 21 to read as follows:

CHAPTER 21. EXECUTION OF DEEDS IN CERTAIN TRANSACTIONS INVOLVING RESIDENTIAL REAL ESTATE

Sec. 21.001. DEFINITION. In this chapter, "residential real estate" means real property on which a dwelling designed for occupancy for one to four families is constructed or intended to be constructed.

Sec. 21.002. PROHIBITION OF EXECUTION OF DEEDS CONVEYING RESIDENTIAL REAL ESTATE IN CERTAIN TRANSACTIONS. (a) A seller of residential real estate or a person who makes an extension of credit and takes a security interest or mortgage against residential real estate may not, before or at the time of the conveyance of the residential real estate to the purchaser or the extension of credit to the borrower, request or require the purchaser or borrower to execute and deliver to the seller or person making the extension of credit a deed conveying the residential real estate to the seller or person making the extension of credit.

1 (b) A deed executed in violation of this section is voidable
2 unless a subsequent purchaser of the residential real estate, for
3 valuable consideration, obtains an interest in the property after
4 the deed was recorded without notice of the violation, including
5 notice provided by actual possession of the property by the grantor
6 of the deed. The residential real estate continues to be subject to
7 the security interest of a creditor who, without notice of the
8 violation, granted an extension of credit to a borrower based on the
9 deed executed in violation of this section.

10 (c) A purchaser or borrower must bring an action to void a
11 deed executed in violation of this section not later than the fourth
12 anniversary of the date the deed was recorded.

13 (d) A purchaser or borrower who is a prevailing party in an
14 action to void a deed under this section may recover reasonable and
15 necessary attorney's fees.

16 Sec. 21.003. ACTION BY ATTORNEY GENERAL. (a) The attorney
17 general may bring an action on behalf of the state:

18 (1) for injunctive relief to require compliance with
19 this chapter;

20 (2) to recover a civil penalty of \$500 for each
21 violation of this chapter; or

22 (3) for both injunctive relief and to recover the
23 civil penalty.

24 (b) The attorney general is entitled to recover reasonable
25 expenses incurred in obtaining injunctive relief or a civil
26 penalty, or both, under this section, including court costs and
27 reasonable attorney's fees.

1 (c) The court may make such additional orders or judgments
2 as are necessary to return to the purchaser a deed conveying
3 residential real estate that the court finds was acquired by means
4 of any violation of this chapter.

5 (d) In bringing or participating in an action under this
6 chapter, the attorney general acts in the name of the state and does
7 not establish an attorney-client relationship with another person,
8 including a person to whom the attorney general requests that the
9 court award relief.

10 (e) An action by the attorney general must be brought not
11 later than the fourth anniversary of the date the deed was recorded.

12 SECTION 2. Subsection (a), Section 121.005, Civil Practice
13 and Remedies Code, is amended to read as follows:

14 (a) An officer may not take the acknowledgment of a written
15 instrument unless the officer knows or has satisfactory evidence
16 that the acknowledging person is the person who executed the
17 instrument and is described in it. An officer may accept, as
18 satisfactory evidence of the identity of an acknowledging person,
19 only:

20 (1) the oath of a credible witness personally known to
21 the officer; ~~[ex]~~

22 (2) a current identification card or other document
23 issued by the federal government or any state government that
24 contains the photograph and signature of the acknowledging person;
25 or

26 (3) with respect to a deed or other instrument
27 relating to a residential real estate transaction, a current

1 passport issued by a foreign country.

2 SECTION 3. Section 24.004, Property Code, is amended to
3 read as follows:

4 Sec. 24.004. JURISDICTION; DISMISSAL. (a) Except as
5 provided by Subsection (b), a [A] justice court in the precinct in
6 which the real property is located has jurisdiction in eviction
7 suits. Eviction suits include forcible entry and detainer and
8 forcible detainer suits.

9 (b) A justice court does not have jurisdiction in a forcible
10 entry and detainer or forcible detainer suit and shall dismiss the
11 suit if the defendant files a sworn statement alleging the suit is
12 based on a deed executed in violation of Chapter 21, Business &
13 Commerce Code.

14 SECTION 4. This Act takes effect September 1, 2011.

FILED
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S.B. No. 1320

David Dewhurst
President of the Senate

Joe Straus
Speaker of the House

I hereby certify that S.B. No. 1320 passed the Senate on April 28, 2011, by the following vote: Yeas 31, Nays 0; May 24, 2011, Senate refused to concur in House amendment and requested appointment of Conference Committee; May 27, 2011, House granted request of the Senate; May 29, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Patsy Spaw
Secretary of the Senate

I hereby certify that S.B. No. 1320 passed the House, with amendment, on May 20, 2011, by the following vote: Yeas 147, Nays 2, one present not voting; May 27, 2011, House granted request of the Senate for appointment of Conference Committee; May 29, 2011, House adopted Conference Committee Report by the following vote: Yeas 112, Nays 15, two present not voting.

Robert Haney
Chief Clerk of the House

Approved:

17 JUN '11
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
9:00 O'CLOCK
JUN 17 2011
John Mark
Secretary of State