

SENATE AMENDMENTS

2nd Printing

By: Gallego

H.B. No. 3479

A BILL TO BE ENTITLED

AN ACT

relating to filing of instruments conveying real property in certain counties.

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

SECTION 1. Chapter 11, Property Code, is amended by adding Section 11.0041 to read as follows:

Sec. 11.0041. REVIEW OF CERTAIN INSTRUMENTS IN CERTAIN COUNTIES. (a) This section applies only to a county clerk of a county:

(1) some part of which is on the international border of this state and which has a population of less than 15,000; or

(2) in which a colonia self-help center established under Section 2306.582, Government Code, is located or which is served by a colonia self-help center in another county.

(b) A county clerk, before filing an instrument conveying real property, may send the instrument to the county attorney for review under this section. The county attorney shall promptly:

(1) review the instrument to determine whether it meets the requirements prescribed by law for an instrument that is required to be recorded; and

(2) return the instrument to the county clerk with a statement of the county attorney's determination under Subdivision (1).

(c) Notwithstanding Section 11.004(a), a county clerk is

1 not required to file an instrument that the county attorney has
2 determined the clerk is not required to file.

3 SECTION 2. The change in law made by this Act applies only
4 to an instrument delivered to a county clerk on or after the
5 effective date of this Act. An instrument delivered to a county
6 clerk before the effective date of this Act is governed by the law
7 in effect immediately before the effective date of this Act, and
8 that law is continued in effect for that purpose.

9 SECTION 3. This Act takes effect September 1, 2009.

ADOPTED

MAY 27 2009

Atay Spaw
Secretary of the Senate

By: Gallego

H.B. No. 3479

Substitute the following for H.B. No. 3479:

By: *[Signature]*

C.S.H.B. No. 3479

A BILL TO BE ENTITLED

1 AN ACT
2 relating to filing of instruments conveying real property in
3 certain counties.

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

5 SECTION 1. Chapter 11, Property Code, is amended by adding
6 Section 11.0041 to read as follows:

7 Sec. 11.0041. REVIEW OF CERTAIN INSTRUMENTS IN CERTAIN
8 COUNTIES. (a) This section applies only to the county clerk of a
9 county:

10 (1) that:

11 (A) is located on the international border; and

12 (B) has a population of less than 15,000;

13 (2) in which a colonia self-help center established
14 under Section 2306.582, Government Code, is located; or

15 (3) that is served by a colonia self-help center
16 described by Subdivision (2) in another county.

17 (b) Before accepting an instrument conveying real property
18 for filing, the county clerk may send the instrument to the county
19 attorney for review under this section. Not later than one business
20 day after the date the county attorney receives an instrument under
21 this subsection, the county attorney shall:

22 (1) review the instrument to determine whether the
23 platting requirements prescribed by Sections 232.023, 232.025, and
24 232.031, Local Government Code, have been satisfied; and

1 (2) return the instrument to the county clerk with a
2 statement of the county attorney's determination under Subdivision
3 (1).

4 (c) Notwithstanding Section 11.004(a), the county clerk
5 shall immediately notify the party that presented the instrument
6 for recording that:

7 (1) the clerk is referring the instrument to the
8 county attorney for review;

9 (2) the instrument will not be immediately recorded;
10 and

11 (3) the clerk is not required to file an instrument the
12 county attorney determines the clerk is not required to file.

13 SECTION 2. The change in law made by this Act applies only
14 to an instrument delivered to a county clerk on or after the
15 effective date of this Act. An instrument delivered to a county
16 clerk before the effective date of this Act is governed by the law
17 in effect immediately before the effective date of this Act, and
18 that law is continued in effect for that purpose.

19 SECTION 3. This Act takes effect September 1, 2009.

ADOPTED

MAY 27 2009

Antony Spaul
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Royce W. N.*

1 Amend C.S.H.B. 3479 (senate committee printing) by adding
2 the following SECTIONS and renumbering subsequent SECTIONS
3 accordingly:

4 SECTION ____ . Section 209.010, Property Code, is amended by
5 amending Subsections (a) and (b) and adding Subsections (b-1)
6 and (b-2) to read as follows:

7 (a) A property owners' association that conducts a
8 foreclosure sale of an owner's lot must send to the lot owner
9 and to each lienholder of record, not later than the 30th day
10 after the date of the foreclosure sale, a written notice stating
11 the date and time the sale occurred and informing the lot owner
12 and each lienholder of record of the ~~owner's~~ right of the lot
13 owner and lienholder to redeem the property under Section
14 209.011.

15 (b) The notice must be sent by certified mail, return
16 receipt requested, to:

17 (1) the lot owner's last known mailing address, as
18 reflected in the records of the property owners' association;

19 (2) the address of each holder of a lien on the
20 property subject to foreclosure evidenced by the most recent
21 deed of trust filed of record in the real property records of
22 the county in which the property is located; and

1 (3) the address of each transferee or assignee of a
2 deed of trust described by Subdivision (2) who has provided
3 notice to a property owners' association of such assignment or
4 transfer. Notice provided by a transferee or assignee to a
5 property owners' association shall be in writing, shall contain
6 the mailing address of the transferee or assignee, and shall be
7 mailed by certified mail, return receipt requested, or United
8 States mail with signature confirmation to the property owners'
9 association according to the mailing address of the property
10 owners' association pursuant to the most recent management
11 certificate filed of record pursuant to Section 209.004.

12 (b-1) If a recorded instrument does not include an address
13 for the lienholder, the association does not have a duty to
14 notify the lienholder as provided by this section.

15 (b-2) For purposes of this section, the lot owner is
16 deemed to have given approval for the association to notify the
17 lienholder.

18 SECTION ____ . Subsections (b), (d), (e), (f), (g), (h),
19 (j), (k), (m), (n), and (p), Section 209.011, Property Code, are
20 amended to read as follows:

21 (b) The owner of property in a residential subdivision or
22 a lienholder of record may redeem the property from any
23 purchaser at a sale foreclosing a property owners' association's
24 assessment lien not later than the 180th day after the date the

1 association mails written notice of the sale to the owner and
2 the lienholder under Section 209.010. A lienholder of record
3 may not redeem the property as provided herein before 90 days
4 after the date the association mails written notice of the sale
5 to the lot owner and the lienholder under Section 209.010, and
6 only if the lot owner has not previously redeemed.

7 (d) To redeem property purchased by the property owners'
8 association at the foreclosure sale, the lot owner or lienholder
9 must pay to the association:

10 (1) all amounts due the association at the time of
11 the foreclosure sale;

12 (2) interest from the date of the foreclosure sale to
13 the date of redemption on all amounts owed the association at
14 the rate stated in the dedicatory instruments for delinquent
15 assessments or, if no rate is stated, at an annual interest rate
16 of 10 percent;

17 (3) costs incurred by the association in foreclosing
18 the lien and conveying the property to the [~~redeeming~~] lot
19 owner, including reasonable attorney's fees;

20 (4) any assessment levied against the property by the
21 association after the date of the foreclosure sale;

22 (5) any reasonable cost incurred by the association,
23 including mortgage payments and costs of repair, maintenance,
24 and leasing of the property; and

1 (6) the purchase price paid by the association at the
2 foreclosure sale less any amounts due the association under
3 Subdivision (1) that were satisfied out of foreclosure sale
4 proceeds.

5 (e) To redeem property purchased at the foreclosure sale
6 by a person other than the property owners' association, the lot
7 owner or lienholder:

8 (1) must pay to the association:

9 (A) all amounts due the association at the time
10 of the foreclosure sale less the foreclosure sales price
11 received by the association from the purchaser;

12 (B) interest from the date of the foreclosure
13 sale through the date of redemption on all amounts owed the
14 association at the rate stated in the dedicatory instruments for
15 delinquent assessments or, if no rate is stated, at an annual
16 interest rate of 10 percent;

17 (C) costs incurred by the association in
18 foreclosing the lien and conveying the property to the redeeming
19 lot owner, including reasonable attorney's fees;

20 (D) any unpaid assessments levied against the
21 property by the association after the date of the foreclosure
22 sale; and

23 (E) taxable costs incurred in a proceeding
24 brought under Subsection (a); and

1 (2) must pay to the person who purchased the property
2 at the foreclosure sale:

3 (A) any assessments levied against the property
4 by the association after the date of the foreclosure sale and
5 paid by the purchaser;

6 (B) the purchase price paid by the purchaser at
7 the foreclosure sale;

8 (C) the amount of the deed recording fee;

9 (D) the amount paid by the purchaser as ad
10 valorem taxes, penalties, and interest on the property after the
11 date of the foreclosure sale; and

12 (E) taxable costs incurred in a proceeding
13 brought under Subsection (a).

14 (f) If a lot owner or lienholder redeems the property
15 under this section, the purchaser of the property at foreclosure
16 shall immediately execute and deliver to the redeeming party
17 [~~owner~~] a deed transferring the property to the [~~redeeming~~] lot
18 owner. If a purchaser fails to comply with this section, the
19 lot owner or lienholder may file an [~~a cause of~~] action against
20 the purchaser and may recover reasonable attorney's fees from
21 the purchaser if the lot owner or the lienholder is the
22 prevailing party in the action.

23 (g) If, before the expiration of the redemption period,
24 the redeeming lot owner or lienholder fails to record the deed

1 from the foreclosing purchaser or fails to record an affidavit
2 stating that the lot owner or lienholder has redeemed the
3 property, the lot owner's or lienholder's right of redemption as
4 against a bona fide purchaser or lender for value expires after
5 the redemption period.

6 (h) The purchaser of the property at the foreclosure sale
7 or a person to whom the person who purchased the property at the
8 foreclosure sale transferred the property may presume
9 conclusively that the lot owner or a lienholder did not redeem
10 the property unless the lot owner or a lienholder files in the
11 real property records of the county in which the property is
12 located:

13 (1) a deed from the purchaser of the property at the
14 foreclosure sale; or

15 (2) an affidavit that:

16 (A) states that the property [~~lot owner~~] has
17 been redeemed [~~the property~~]; [and]

18 (B) contains a legal description of the
19 property; and

20 (C) includes the name and mailing address of the
21 person who redeemed the property.

22 (j) If a person other than the property owners'
23 association is the purchaser at the foreclosure sale, before
24 executing a deed transferring the property to the [~~redeeming~~]

1 lot owner, the purchaser shall obtain an affidavit from the
2 association or its authorized agent stating that all amounts
3 owed the association under Subsection (e) have been paid. The
4 association shall provide the purchaser with the affidavit not
5 later than the 10th day after the date the association receives
6 all amounts owed to the association under Subsection (e).
7 Failure of a purchaser to comply with this subsection does not
8 affect the validity of a redemption [~~by a redeeming lot owner~~].

9 (k) Property that is redeemed remains subject to all liens
10 and encumbrances on the property before foreclosure. Any lease
11 entered into by the purchaser of property at a sale foreclosing
12 an assessment lien of a property owners' association is subject
13 to the right of redemption provided by this section and the lot
14 owner's right to reoccupy the property immediately after [~~the~~]
15 redemption.

16 (m) If a lot owner or lienholder sends by certified mail,
17 return receipt requested, a written request to redeem the
18 property on or before the last day of the redemption period, the
19 lot owner's or lienholder's right of redemption is extended
20 until the 10th day after the date the association and any third
21 party foreclosure purchaser provides written notice to the
22 redeeming party [~~lot owner~~] of the amounts that must be paid to
23 redeem the property.

24 (n) After the redemption period and any extended

1 redemption period provided by Subsection (m) expires without a
2 redemption of the property, the association or third party
3 foreclosure purchaser shall record an affidavit in the real
4 property records of the county in which the property is located
5 stating that the lot owner or a lienholder did not redeem the
6 property during the redemption period or any extended redemption
7 period.

8 (p) The rights of a lot owner and a lienholder under this
9 section also apply if the sale of the lot owner's property is
10 conducted by a constable or sheriff as provided by a judgment
11 obtained by the property owners' association.

12 SECTION ____ . Sections 209.010 and 209.011, Property Code,
13 as amended by this Act, apply only to a foreclosure sale
14 conducted on or after the effective date of this Act. A
15 foreclosure sale conducted before the effective date of this Act
16 is governed by the law in effect immediately before the
17 effective date of this Act, and that law is continued in effect
18 for that purpose.

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3479 by Gallego (Relating to filing of instruments conveying real property in certain counties.), **As Passed 2nd House**

No fiscal implication to the State is anticipated.

The bill would amend the Property Code to authorize the county clerk in certain counties, before accepting an instrument conveying real property, to send the instrument to the county attorney to review. The bill would stipulate a county attorney's responsibilities if asked to review an instrument.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, DB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 22, 2009

TO: Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3479** by Gallego (Relating to filing of instruments conveying real property in certain counties.), **Committee Report 2nd House, Substituted**

No fiscal implication to the State is anticipated.

The bill would amend the Property Code to authorize the county clerk in certain counties, before accepting an instrument conveying real property, to send the instrument to the county attorney to review. The bill would stipulate a county attorney's responsibilities if asked to review an instrument.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, DB

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 21, 2009

TO: Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3479 by Gallego (Relating to filing of instruments conveying real property in certain counties.), **As Engrossed**

No fiscal implication to the State is anticipated.

The bill would amend the Property Code to authorize the county clerk in certain counties, before filing an instrument conveying real property, to send the instrument to the county attorney to review. The bill would stipulate a county attorney's responsibilities if asked to review an instrument.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, DB

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 20, 2009

TO: Honorable Garnet Coleman, Chair, House Committee on County Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3479 by Gallego (Relating to filing of instruments conveying real property in certain counties.), **As Introduced**

No fiscal implication to the State is anticipated.

The bill would amend the Property Code to authorize the county clerk in certain counties, before filing an instrument conveying real property, to send the instrument to the county attorney to review. The bill would stipulate a county attorney's responsibilities if asked to review an instrument.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, DB

