

SUBJECT: Amending statute of repose of defective instrument affecting real property

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Leach, Farrar, Y. Davis, Julie Johnson, Krause, Meyer, Neave, Smith, White

0 nays

WITNESSES: For — John Rothermel; (*Registered, but did not testify*: Meredyth Fowler, Independent Bankers Association of Texas; Randy Lee, Stewart Title Guaranty Company; Shea Place, Texas Land Title Association; John Fleming, Texas Mortgage Bankers Association)

Against — None

BACKGROUND: Civil Practice and Remedies Code sec. 16.033 requires an individual with a right of action for the recovery of real property conveyed by instruments with certain defects to bring suit no later than two years after the instrument was filed for record with the county clerk. An instrument with a ministerial defect, omission, or informality in the certificate of acknowledgement that has been filed for longer than two years is considered to be lawfully recorded and to be notice of the existence of the instrument on and after the date the instrument is filed.

Some have suggested that the current two-year statute of repose for a technical defect in an instrument conveying real property could be too long and that the law should be amended to reflect current trends toward immediate repose to reflect the increasing speed of real estate transactions.

DIGEST: CSHB 1176 would limit to six months the length of time a defective instrument affecting real property was required to be filed for record before the instrument was considered lawfully recorded and to be notice of the existence of the instrument on and after the date the instrument was filed. The bill also would remove the specification that a defect be a ministerial defect.

The bill would remove the following from being considered defects for the purposes of Civil Practice and Remedies Code sec. 16.033:

- acknowledgement of the instrument in an individual, rather than a representative or official, capacity; and
- failure of the record or instrument to show an acknowledgment or jurat that complied with applicable law.

The bill would take effect September 1, 2019, and would apply only to an instrument filed for record on or after that date.