

SUBJECT: Format requirements for real property instruments

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 5 ayes — Brimer, Dukes, Elkins, Janek, Woolley
2 nays — Rhodes, Solomons
2 absent — Corte, Giddings

SENATE VOTE: On final passage, April 29 — voice vote

WITNESSES: For — Dana DeBeauvoir, County and District Clerks Association of Texas
Against — John Cook, Real Estate Information Providers

DIGEST: CSSB 1195 would establish standards for real property instruments recorded with a county clerk's office.

The bill would set out paper size and margin requirements and would require that the instrument include the name and address of the person filing it and, if applicable, the title company; the title of the instrument; the names of the grantor and grantee; and a description of the property.

Any instrument — other than a deed, deed of trust mortgage, release, assignment, water district notice, notice of restrictions, option, easement, or lease — presented for recording would have to provide the required information or include a cover sheet setting out the information. The cover sheet could not be prepared by a title insurance company employee other than an attorney.

Failure to comply with the requirements would result in a penalty filing fee equal to \$25 or an amount equal to the statutory recording fee, whichever was less.

CSSB 1195 would take effect January 1, 1998.

**SUPPORTERS
SAY:**

County clerks are required to record an ever-increasing number of legal instruments. To save space and paper, several counties have instituted electronic filing by scanning records into an electronic information system. Whether using such a system or simply using filing cabinets, clerks would greatly benefit from standardization of forms, as would anyone who must perform searches of such documents, particularly title companies.

The penalty fee charged for incorrect filings would be the same as under current law but would be limited to a maximum fee of \$25. The penalty would be justified; if a document is not filed in the manner required, the clerk must often perform special filings to include these forms or, in certain cases, must re-execute the form in a proper format.

**OPPONENTS
SAY:**

While standardizing documents is a legitimate goal, charging as much as \$25 extra for a document because it did not meet the precise specifications of margins and text layout would be trap for unsophisticated parties who were unaware of these specifications or who simply failed to comply through no fault of their own. A very small fee might be warranted if the clerk legitimately had to spend extra time processing the document. However, unless a filer demonstrated a continuing disregard for filing procedures, a \$25 fee would be excessive. The amount of the fee could prompt clerks to seek out variances in forms that they would have otherwise ignored in order to increase the amount of fees collected.

NOTES:

The committee substitute specified that the penalty fee charged would be the lesser of the statutory recording fee or \$25, rather than the greater of the two amounts. It also added information that could be included in the margins of a document without incurring a penalty.