

- SUBJECT:** Determination of title to real property through declaratory judgment.
- COMMITTEE:** Judiciary — favorable, without amendment
- VOTE:** 6 ayes — Hartnett, Alonzo, R. Cook, Gonzales, Goolsby, Hughes
0 nays
3 absent — Homer, Hopson, Krusee
- WITNESSES:** For — John Rothermel, Stewart Title Guaranty Company; (*Registered, but did not testify*: Robert Doggett, Texas Low Income Housing Information Service; Guy Herman)
Against — None
- BACKGROUND:** Property Code, sec. 22.001 provides that a trespass-to-try-title action is the method of determining title to lands, tenements or other real property.

Under Civil Practices and Remedies Code, ch. 37, the Uniform Declaratory Judgments Act, sec. 37.004 allows an interested or affected person to obtain a declaratory judgment from a court concerning any question of construction or validity regarding any type of statute, municipal ordinance, contract, or franchise. A contract may be construed before or after there has been a breach.
- DIGEST:** HB 1787 would amend Civil Practices and Remedies Code, sec. 37.004 to add that a person could obtain a declaratory judgment for determination of title to lands, tenements, or other real property, notwithstanding Property Code, sec. 22.001 limiting the method for making such determinations to trespass-to-try-title actions.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS
SAY:

HB 1787 would simplify determining titles to land and other real property by providing for the use of declaratory judgment actions in such cases. The Texas Supreme Court, in *Martin v. Amerman*, 133 S.W. 3d. 262 (Tex. 2004), held that trespass-to-try-title actions are the exclusive method for determining title to lands, tenements and other real property. However, trespass-to-try-title actions often require expensive and detailed pleading and proof and can lead to legal problems for less experienced filers. The trespass-to-try-title statute is antiquated, dating from the 1800s, and contains many legal pitfalls even for the experienced attorney. By authorizing use of declaratory judgments in these cases, HB 1787 would allow another alternative.

To lessen any potential negative effects of the strict pleading and proof requirements in trespass-to-try-title actions, the Texas Supreme Court has relaxed the action's formal proof requirements when the sole dispute between the parties involves a boundary location. Because of court dicta from a 1999 case, practitioners have been using declaratory judgments for title disputes involving a boundary's location. HB 1787 would clarify that parties could decide all title disputes as either a trespass-to-try-title action or as a declaratory judgment, whichever was more appropriate.

OPPONENTS
SAY:

HB 1787 would reduce the usefulness of a cause of action that works to protect possessory rights to land. The recent Texas Supreme Court decision interpreted current law as requiring trespass-to-try-title actions as the method to resolve title disputes. Historically, through statute, Texas law has protected those in possession. Trespass-to-try title actions are the best method of adjudicating rival claims to land titles and the right of possession of land where the plaintiff is not in peaceable possession of the property.

Title companies use the trespass-to-try-title action frequently, showing that it is not outdated or unwieldy. The cause of action demands sophisticated understanding because possessory rights to land should not be taken away easily or due to a lack of resources. The trespass-to-try-title action is not overly complicated, but is a precise, all-inclusive cause of action to preempt many problems that may arise in a title dispute. A plaintiff trying to dispossess a person in actual, peaceable possession of property, possibly even a homestead, should have to prove sufficient title to bring the lawsuit. The trespass-to-try-title action also aims to include all persons with a claim to title, thereby promoting judicial efficiency and avoiding inconsistent results.

One area where declaratory judgments could be appropriate is boundary disputes because of the more relaxed proof requirements. However, HB 1787 would go further than needed by reversing the 2004 Supreme Court case, *Martin v. Amerman*, and would make declaratory judgments the preferred method that litigants would resolve most title disputes. Declaratory judgments are ad-hoc and often require more discovery, which could create more expense for the parties and inherently benefit the party with more resources. Declaratory judgments are easier to file and actually create more litigation because they only declare rights, but do not enforce them. The litigant would be required to file a forcible entry and detainer suit if title were determined by the declaratory judgment to be wrongfully held.

Attorneys fees can be awarded in a declaratory judgment case and sometimes end up driving the case, which would obscure the title dispute. This bill should exempt attorneys fees if the true purpose is to simplify title disputes.

NOTES:

The companion bill, SB 1030 by Watson, was reported favorably, without amendment, by the Senate State Affairs Committee on April 2.