

BILL ANALYSIS

C.S.H.B. 3842
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Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, situations exist where a statement of ownership and location (SOL) is not issued prior to foreclosure of the loan by the lender holding the indebtedness. These situations can include when the parties fail to return the application for SOL in a timely manner to the Texas Department of Housing and Community Affairs (TDHCA), when the SOL copy is not sent to the tax office in a timely manner, or when the homeowner refuses to sign the SOL before it is recorded in the land records.

C.S.H.B. 3842 allows the lender to file an affidavit with the TDHCA affirming that the lender financed the loan to purchase the manufactured home with the intent that it be converted to real estate and that the homeowner is not cooperating in finalizing the conversion process. C.S.H.B. 3842 authorizes TDHCA to issue the SOL and the lender is allowed to foreclose the lien and be in a position to resell the home and land. The lender must furnish proof of the foreclosure to the TDHCA.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3842 amends Subchapter E, Chapter 1201 of the Occupations Code, by adding Section 1201.2077 pertaining to the issuance of a Statement of Ownership and Location to certain lienholders without owner's consent. C.S.H.B. 3842 applies only to a manufactured home that is eligible for conversion from personal property to real property under this subchapter, that, together with the real property to which the home is attached, was intended to secure a first lien mortgage loan that has gone into default and is now subject to foreclosure, and for which the person who made the first lien mortgage loan and the borrower-owner, at the time of the making of the mortgage loan executed documents that evidenced their mutual intent for the owner-borrower to have converted the home to real property and granted a first lien on that real property, including the manufactured home, to secure that mortgage loan.

C.S.H.B. 3842 allows a holder or servicer of a mortgage loan to apply for foreclosure on a first lien of an applicable manufactured home without the consent of the borrower-owner for a new statement of ownership and location reflecting intent to convert the home from personal to real property. C.S.H.B. 3842 requires that the application must include an affidavit from the holder or servicer making the application that contains the election described by Section 1201.2055(a) of the Occupations Code. The application must state that it had been the intent of the owner-borrower to convert the manufactured home to real property and grant the maker of the mortgage loan a first lien on the manufactured home, together with the real property to which it is attached. The application must also state that the borrower-owner failed to convert the manufactured home to real property. C.S.H.B. 3842 requires that the application state that the holder of the loan advanced loan proceeds in reliance on the owner's carrying out the conversion of the manufactured home to real property and granting the holder a first lien on that manufactured home together with the owner's interest in the real property on which it is located. Finally, the application must include that the holder or servicer of the loan giving the affidavit has attempted unsuccessfully to contact the owner of the manufactured home for re-execution and delivery of the required documents for the conversion originally contemplated.

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C.S.H.B. 3842 requires that not later than the 15th working day after the date of receipt of the completed application and subject to Section 1201.2075 of the Occupations Code, the department shall issue a new statement of ownership and location reflecting that the manufactured home has been elected as real property and the mortgage loan holder or servicer who applied for the SOL may make the necessary filing and give the necessary notices to complete the process of converting the manufactured home.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 3842 amends the original to include language stating that Section 1201.2077 of the Occupations Code additionally applies to a manufactured home for which the person who made the first lien mortgage loan and the borrower-owner, at the time of the making of the mortgage loan executed documents that evidenced their mutual intent for the owner-borrower to have converted the home to real property and granted a first lien on that real property, including the manufactured home, to secure that mortgage loan.

C.S.H.B. 3842 amends the original by adding language to include a servicer of the mortgage loan or making the application. Additionally, the affidavit included in the application must also state that it had been the intent of the owner-borrower to convert the manufactured home to real property and grant the maker of the mortgage loan a first lien on the manufactured home and the real property to which it is attached, that the holder of the loan advanced loan proceeds in reliance on the owner's carrying out the conversion of the manufactured home to real property and granting the holder a first lien on that manufactured home together with the owner's interest in the real property on which it is located, and that the holder or servicer of the loan giving the affidavit has attempted unsuccessfully to contact the owner of the manufactured home for re-execution and delivery of the required documents for the conversion originally contemplated. Finally, C.S.H.B. 3842 makes certain nonsubstantive changes and also includes language that the new statement of ownership and location issued by the department shall reflect that the manufactured home has been elected as real property and the mortgage loan holder or servicer who applied for the SOL may make the necessary filing and give the necessary notices to complete the process of converting the manufactured home.