

BILL ANALYSIS

C.S.H.B. 3059
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, the definition of the term "builder" is broad and can potentially include a lender who forecloses on a partially completed home. It is unclear whether subsidiaries and affiliates of financial institutions may be considered builders. The proposed legislation addresses the ambiguity of this term and clarifies that the builder who is completing a home that was begun by a different builder should not be required to warrant the home.

C.S.H.B. 3059 ensures that the term "builder" does not inadvertently include a federally insured financial institution or a subsidiary or affiliate of the institution, a guarantor or co-maker of a note, or a person who builds only one home in a 12-month period by excluding those individuals and entities from the meaning of the term "builder." The bill clarifies that the exemption of certain warranties of a mortgagee or a beneficiary who later sells a property from requirements relating to the notice of non-applicability does not apply if the property was partially completed at the time of acquisition and was subsequently completed. The bill provides that a builder who completes a partially completed house that was acquired by a mortgagee or beneficiary after a foreclosure sale is not subject to provisions relating to state-sponsored inspection.

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. 3059 amends the Finance Code to provide that a subsidiary or affiliate of a federally insured financial institution, in addition to a federally insured financial institution, is not a builder for purposes of residential construction liability and the provisions of the Texas Residential Construction Commission Act.

C.S.H.B. 3059 amends the Property Code to exclude from the meaning of the term "builder" a person who constructs or makes improvements to not more than one home in a 12-month period or who guarantees or co-makes a construction loan and is not otherwise a builder under the existing definition. The bill excludes a federally insured financial institution or a subsidiary or affiliate of the institution from the meaning of the term "builder." The bill requires a person who guarantees or co-makes a construction loan and is not otherwise a builder and a federally insured financial institution or a subsidiary or affiliate of the institution to give the purchaser of a residential real property exempt from the Texas Residential Construction Commission Act a written notice of nonapplicability of certain warranties and building and performance standards.

C.S.H.B. 3059 specifies that an exemption of a transfer by a mortgagee or a beneficiary who has acquired land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure, or has acquired land by a deed in lieu of foreclosure, from provisions requiring the disclosure of the absence of certain warranties does not apply if the property was a partially completed home and was subsequently completed.

C.S.H.B. 3059 exempts a builder that completes construction of a partially completed home owned by a mortgagee or a beneficiary under a deed of trust who acquired the partially completed home at a sale conducted under a power of sale under a deed of trust or a court-ordered foreclosure, or by a deed in lieu of foreclosure, from compliance with provisions relating to state-sponsored inspection and the dispute resolution process, and statutory warranty and building and performance standards.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3059 adds a provision not in the original specifying that the exemption of a transfer of a residential real property by certain mortgagees or beneficiaries from provisions requiring the disclosure of the absence of certain warranties and building and performance standards does not apply to a property that was partially completed at the time of acquisition and was subsequently completed. The substitute adds a provision not in the original exempting a builder that completes construction of a partially completed home owned by certain mortgagees or beneficiaries from compliance with provisions relating to state-sponsored inspection and the dispute resolution process, and statutory warranty and building and performance standards. The substitute adds a provision not in the original requiring a person who guarantees or co-makes a construction loan and is not a builder and a federally insured financial institution or a subsidiary or affiliate to provide a purchaser of a residential real property a written notice of nonapplicability of certain warranties and building and performance standards.