

BILL ANALYSIS

C.S.H.B. 3945
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Title insurance agents are often unable to obtain a release of lien from a mortgage company after payoff of the mortgage. This problem is especially prevalent in urban areas because larger national banks are less responsive and do not provide a release of lien on request. The banks are required to provide the release of lien, but obtaining this release has become more difficult due to the evolution of modern mortgage banking and the increased complexity of packaged securitization of mortgages. Title insurance agents must leave the file of a mortgage open for extended periods of time, and agents spend many hours attempting to obtain this release.

C.S.H.B. 3945 sets forth procedures for a title insurance agent to file an affidavit that will function as a release of lien.

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. 3945 amends the Property Code to remove the requirement that a mortgagee must fail to execute and deliver a release of mortgage to the mortgagor or the mortgagor's designated agent in accordance with a payoff statement furnished by the mortgagee or its mortgage servicer before an authorized officer of a title insurance company is authorized to execute an affidavit as release of lien and record the affidavit in the applicable real property records on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the mortgage. The bill authorizes a title insurance agent to execute such an affidavit and extends application of provisions authorizing an affidavit to be filed as a release of lien to property other than property consisting exclusively of a one-to-four-family residence if the original face amount of the indebtedness secured by the mortgage on the property is less than \$1.5 million.

C.S.H.B. 3945 replaces provisions that describe the information that is required to be stated in an affidavit as release of lien with the specific language to which such an affidavit is required to substantially conform, including the information in the removed provisions and a statement that the mortgage relates to property consisting exclusively of a one-to-four-family residence, which may include a residential unit in a condominium regime, or to other property for which the original face amount of the indebtedness secured by the mortgage on the property is less than \$1.5 million. The bill also requires the affidavit form to include a statement that the affidavit constitutes a full and final release of the mortgage from the property. The bill clarifies that the affidavit operates as a release of the mortgage described in the affidavit only if the affidavit is executed and recorded and is not controverted by a separate affidavit by the mortgagee.

C.S.H.B. 3945 removes provisions requiring an affidavit to state certain evidence that the mortgagee has received payment of the loan secured by the mortgage in accordance with the payoff statement, that more than 60 days have elapsed since the date payment was received, that

the title insurance company or its agent has given the mortgagee the required notice of its intention to execute and record an affidavit, and that the mortgagee has not responded in writing to the notification. The bill removes provisions requiring the affiant to attach to the affidavit a copy of the documentary evidence that the payment has been received by the mortgagee and of the payoff statement.

C.S.H.B. 3945 requires the title insurance company or title insurance agent, on or after the date of the payment to which the affidavit relates, to notify the mortgagee at the location to which the payment is sent that the company or agent may file for record at any time the affidavit as a release of lien. The bill prohibits the title insurance company or title insurance agent from filing for record the affidavit as a release of lien if the required notice is not provided to the mortgagee. The bill authorizes the mortgagee, on or before the 45th day after the date the mortgagee receives the notice, to file a separate affidavit describing the mortgage and property and controverting the affidavit by the title insurance company or title insurance agent as a release of lien if the mortgagee mails a copy of the mortgagee's affidavit to the title insurance company or title insurance agent within that 45-day period.

C.S.H.B. 3945 increases from \$5,000 to \$10,000 the penalty for which a person who knowingly causes an affidavit with false information to be executed and recorded is liable to a party injured by the affidavit. The bill authorizes a title insurance company or title insurance agent that, at any time after payment of the mortgage, files for record an affidavit as release of lien to use any recording fee collected for the recording of a release of the mortgage for the purpose of filing the affidavit. The bill establishes that provisions relating to a title insurance company affidavit as release of lien do not affect any agreement or obligation of a mortgagee to execute and deliver a release of mortgage. The bill defines "title insurance agent" and clarifies the definition of "title insurance company."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3945 differs from the original by requiring a title insurance company or title insurance agent to notify the mortgagee on or after the date of the payment to which the affidavit relates, rather than after payment is made to the mortgagee. The substitute adds to that requirement a specification not in the original that the notice must be provided at the location to which the payment is sent. The substitute adds a provision not in the original prohibiting the title insurance company or title insurance agent from filing for record the affidavit as a release of lien if the required notice is not provided to the mortgagee. The substitute, in the provision authorizing a mortgagee to file a separate affidavit controverting the affidavit by the title insurance company or title insurance agent, requires the mortgagee's affidavit to be filed on or before the 45th day after the date the mortgagee receives the notice, rather than on or before the 30th day after that date as in the original. The substitute removes language in the original that requires an affidavit operating as a release of the mortgage described in the affidavit to correctly recite the facts stated in the affidavit. The substitute differs from the original, in provisions detailing the specific language to which an affidavit as release of lien is required to substantially conform, by referring to payment delivered in the amount and time and to the location required by the payoff statement, whereas the original refers to payment in accordance with that statement.