

SUBJECT: Conveyance of certain residential real property encumbered by a lien

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Giddings, Darby, Bohac, Castro, Martinez, Solomons

0 nays

2 present not voting — Elkins, Zedler

1 absent — Bailey

WITNESSES: For — Robert Doggett, Texas Low Income Housing Information Service
(*Registered, but did not testify*: Celeste May, Texas Bankers Association;
Steve Scurlock, IBAT – Independent Bankers Association of Texas;
Dennis Speight, Texas Watch)

Against — None

On — Allen Place, Texas Land Title Association

DIGEST: CSHB 2207 would prohibit a person from conveying an interest in residential real property that would be encumbered by a recorded lien at the time the interest was conveyed unless, on or before the seventh day before the earlier of the effective date of the conveyance or the execution of a contract, the person provided the purchaser and each lienholder a separate written disclosure statement in at least 12-point type that:

- identified the property and included the name, address, and phone number of each lienholder;
- stated the amount of the debt that was secured by each lien;
- specified the terms of any contract or law under which the debt that was secured by the lien was incurred, including the rate of interest, the periodic installments required to be paid, and the account number;
- indicated whether the lienholder had consented to the transfer of the property to the purchaser;

- specified the details of any insurance policy relating to the property including the name of the insurer and insured, the amount for which the property was insured, and the property that was insured;
- stated the amount of any property taxes that were due on the property; and
- included a required statement at the top of the disclosure related to one or more recorded liens against the property.

A violation would not invalidate a conveyance. If a contract was entered into without the seller providing the required notice, the purchaser could terminate the contract for any reason on or before the seventh day after the date the purchaser received the notice, in addition to other remedies provided by the bill or other law.

CSHB 2207 would not apply to a transfer:

- under a court order or foreclosure sale;
- by a trustee in bankruptcy;
- to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
- by a mortgagee or a beneficiary under a deed of trust who had acquired the real property at a sale conducted under a power of sale through a deed of trust or a sale under a court ordered foreclosure or had acquired the real property by a deed in lieu of foreclosure;
- by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- from one co-owner to another co-owner or co-owners;
- to a spouse or to a person or persons in the line of consanguinity of one or more of the transferors;
- between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement;
- to or from a governmental entity;
- where the purchaser obtained a title insurance policy insuring the transfer of title to the real property; or
- to a person who had purchased, conveyed, or entered into contracts to purchase or convey an interest in real property four or more times in the preceding 12 months.

A violation would not be actionable if the person required to give notice reasonably believed and took any necessary action to ensure that each lien

for which notice had not been provided would be released on or before 30 days after the date on which title to the property was transferred.

The bill would take effect January 1, 2008, and would apply only to a transfer of property that occurred or a contract entered into on or after that date.

**SUPPORTERS
SAY:**

CSHB 2207 would require that a buyer receive proper notice of lien encumbrances before entering into a sale of residential real property that did not have a title insurance policy or all recorded liens paid within 30 days after transfer of title. The bill would not prohibit these transactions, but would ensure that a seller disclosed the risk to buyers and provided more information to all parties, including the lender.

Schemes have arisen through the Internet and late-night television in which a single individual contacts borrowers facing foreclosures on their homes and convinces them to deed over their property. Usually, the profiteer cures the underlying default on the mortgage but never informs the lender about the sale and often does not file the deed granting title. The profiteer sells the home to an unsuspecting buyer, frequently lured into the purchase because of poor credit history or little money for a down payment. The buyer may have knowledge of the underlying mortgage, but is unaware that the person, even as the new buyer, has no right to contact the mortgage lender and that the mortgage lender has not approved the sale. If the profiteer collects money from the buyer but fails to pay the underlying lender, that lender can foreclose without giving notice to the new buyer. The buyer, in most cases, cannot refinance the debt because the profiteer specializes in marketing to people with poor credit histories.

Recently, this scheme has turned up with major developers. Earlier this year, an Austin television station aired an investigative report about a builder of a northwest Austin subdivision who admitted he hold liens on his entire development of about 80 homes. CSHB 2207 would address this issue by requiring notice of liens to a prospective buyer and a warning that the person might “wish to contact each lienholder for further information and discuss this matter with an attorney.” The bill specifies that it would not apply to certain transfers, including a transfer involving a trustee in a bankruptcy, from one co-owner to another, from one spouse to another, as well as other intra-family transfers.

OPPONENTS
SAY:

While the underlying intent of CSHB 2207 seems well-meaning, the provisions requiring notice could provoke unintended consequences from “due-on” sales in mortgage contracts. Lenders, particularly in situations with floating mortgage rates, could force sales that left new buyers with essentially nothing or that resulted in a foreclosure with original owners because there was no deed transfer, often only a contract for deed.