HOUSE
RESEARCH
ORGANIZATION bill analysis   5/11/2009

HB 3441
Kleinschmidt, Darby
(CSHB 3441 by Elkins)

SUBJECT: Validate lenders' liens for unenforceable homeowner and builder contracts

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Deshotel, Elkins, Christian, England, Giddings, Orr, Quintanilla, S. Turner

0 nays

3 absent — Gattis, Keffer, S. Miller

WITNESSES: For — (*On original version:*) (*Registered, but did not testify*: Steve Scurlock, Independent Bankers Association of Texas); (*On committee substitute:*) (*Registered, but did not testify*: Aaron Day, Allen Place, Texas Land Title Association; Randy Lee, Stewart Title Guaranty Co.)

Against — (*On committee substitute:*)Thomas Archer, Homeowners of Texas, Inc.

On — (*Registered, but did not testify*: Duane Waddill, Texas Residential Construction Commission)

BACKGROUND: Property Code, sec. 420.002 makes a contract for construction of a new home or improvement to an existing home that is subject to the registration requirements of Property Code, ch. 420 (the Texas Residential Construction Act) unenforceable against the homeowner if the builder fails to include the builder's name and certificate of registration number and a notice that the contract is subject to provisions of Property Code, ch. 420. The notice also must list the number of the Texas Residential Construction Commission (TRCC) so that the homeowner can check the status of the builder's registration.

DIGEST: CSHB 3441 would amend Property Code, sec. 460.002 to provide that a builder's failure to provide name and registration number or the required TRCC notification would not invalidate a lien on the property that would arise from the contract between the homeowner and a lending institution that provided financing for the new home construction or home improvements or for renewed or extended financing.

The bill would take effect on September 1, 2009.

SUPPORTERS
SAY:

CSHB 3441 would remedy an unintended consequence of Property Code, sec. 460.002 that could invalidate a lien from a lending institution should the contract between the homeowner and builder be unenforceable. The lien securing a loan should be preserved and not invalidated by what amounts to a technical violation of the contract between the homeowner and builder.

Other legislation pending before the Legislature would grant TRCC greater authority to regulate builders and would provide additional sanctions that would prevent builders from providing false name and registration information. Also, the homeowner has a duty to check the builder's background with TRCC and other sources.

OPPONENTS
SAY:

Better public education and enforcement efforts would eliminate the problem with builders not providing the correct information. TRCC should promulgate a standard builders' contract to ensure that all the information would be provided.

NOTES:

CSHB 3441 differs from the original in a revision to the caption of the bill.

SB 1532 by Hegar, the companion, has been referred to the Senate Business and Commerce Committee.