

- SUBJECT:** Procedures for filing an affidavit as a release of lien on a mortgage
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 8 ayes — Deshotel, Elkins, Christian, England, Keffer, S. Miller, Orr, Quintanilla
- 0 nays
- 3 absent — Gattis, Giddings, S. Turner
- WITNESSES:** For — Jim Gosdin, Stewart Title Guaranty Co.; (*Registered, but did not testify*: Randy Lee, Stewart Title Guaranty Co.)
- Against — None
- On — Robert Carter, Texas Department of Insurance
- BACKGROUND:** Property Code, sec. 12.017 allows a title insurance company to file an affidavit that serves as a release of lien on a mortgage after the balance of the loan secured by the mortgage has been paid off. Although a mortgage holder already is required to execute a release of lien, the affidavit provides an alternate means of acquiring a release if the mortgage holder cannot or will not provide the release.
- Under current law, a title insurance company must wait 60 days after the mortgage holder or the holder's agent receives payment of the loan secured by the mortgage before filing an affidavit serving as a release of lien on a mortgage. An affidavit of this type may only be filed on real property consisting exclusively of a one-to-four family residence, including a residential unit in a condominium. The affidavit must be executed and recorded in the property records of each county in which the mortgage was recorded.
- In recent years, obtaining a release of lien has become more difficult as the business of mortgage banking moved away from traditional bank ownership of mortgages to the more removed practice of packaging multiple mortgages into complex securitized financial instruments and selling them to investors. The fragmentation of mortgage ownership and

the resulting challenges of tracking down mortgage owners has created a backlog of paid-off mortgages that have not had their liens released. Title insurance agents must now routinely keep their mortgage files open for lengthy periods of time until they can obtain a release.

DIGEST:

CSHB 3945 would remove the requirement that a title insurance company must first wait 60 days after a mortgage holder received payment for the balance of a loan secured by the mortgage before it could file an affidavit serving as a release of lien on the mortgage by the mortgage holder. The bill would also give a title insurance agent licensed under Insurance Code, ch. 2651 the same authority as a title insurance company to file an affidavit.

Additional property subject to an affidavit. CSHB 3945 would expand the types of property for which an affidavit could be filed to include real property for which the original face amount of the debt secured by a mortgage was less than \$1.5 million.

Required information in an affidavit. CSHB 3945 would repeal existing provisions that require an affidavit to contain documentary evidence that the mortgagee received payment of the loan secured by the mortgage. Instead, an affidavit would have to contain the following information:

- the name of the person filing the affidavit and the name of the title insurance company for which the person works;
- a statement that the affidavit is being made on behalf of the mortgagor or a transferee of the mortgagor;
- a description of the mortgage and the mortgaged property;
- a statement that the mortgagee had provided a payoff statement with respect to the loan secured by the mortgage; and
- a statement that payment of the loan had been made to the mortgagee.

Notice requirement. On or after the date payment on a loan secured by a mortgage had been made, a title insurance company or title insurance agent would have to notify the mortgagee at payment location that the company or agent could file an affidavit as a release of lien at any time on or after the date of the loan payment. The company or agent could not file an affidavit before providing the notice.

A mortgagee could controvert an affidavit filed by a title insurance company or agent by mailing a separate affidavit describing the mortgage and property to the company or agent within 45 days after the mortgagee received notice of the company's or agent's affidavit.

Affidavit to operate as a release of mortgage. An affidavit would operate as a release of a mortgage if the affidavit:

- was executed and recorded; and
- was not controverted by a mortgagee's separate affidavit.

Affidavit with false information. CSHB 3945 would increase the penalty for knowingly executing and recording an affidavit that contained false information from \$5,000 to \$10,000.

Use of recording fees. A title insurance company or agent that files an affidavit for a release of mortgage could use any related recording fee for the purpose of filing the affidavit.

No effect on mortgagee's obligation to provide a release of mortgage. CSHB 3945 would not affect any agreement or obligation of a mortgagee to execute and deliver a release of mortgage.

Effective date. CSHB 3945 would apply only to an affidavit filed on or after the bill's September 1, 2009 effective date.

NOTES:

The committee substitute differs from the original bill by providing that a mortgagee could file a controverting affidavit on or before the 45th day after the date the mortgagee received notice from a title insurance company or agent, rather than on or before the 30th day after that date.

The companion bill, SB 1596 by Watson, was reported favorably, as substituted, by the Senate Business and Commerce Committee on April 17.