

## **BILL ANALYSIS**

Senate Research Center

H.B. 3945  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Often, title insurance agents are unable to obtain a release of lien for a property once a mortgage is paid off. Under current law, if a mortgagee fails to execute and deliver a release of mortgage to the mortgagor or the mortgagor's designated agent within 60 days after receipt of payment of the mortgage, a title insurance company officer may, on behalf of the mortgagor or a transferee of the mortgagor, execute an affidavit and record it in the same county in which the mortgage was recorded. Some mortgagees are less responsive in handling a request for a release of lien. Title insurance agents must leave the file open for extended periods of time and spend many hours attempting to obtain the release.

The bill provides procedures whereby a title insurance agent is authorized to file an affidavit which will function as a release of lien by amending an existing procedure which presently only applies to underwriters under certain circumstances.

H.B. 3945 amends current law relating to a title insurance company affidavit as a release of lien.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 12.017(a), Property Code, by amending Subdivision (6) and adding Subdivision (7), to redefine "title insurance company" and define "authorized title insurance agent."

SECTION 2. Amends Section 12.017, Property Code, by amending Subsections (b), (c), (d), (e), (f), (g), (h), and (i) and adding Subsections (j) and (k), as follows:

(b) Provides that this section applies only to a mortgage on property other than property described by Subdivision (1) (relating to 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. Makes nonsubstantive changes.

(c) Authorizes an authorized officer of a title insurance company or an authorized title insurance agent, on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the mortgage, to execute an affidavit that complies with the requirements of this section and record the affidavit in the real property records of each county in which the mortgage was recorded. Deletes existing text authorizing an authorized officer of a title insurance company, if a mortgagee fails to execute and deliver a release of mortgage to the mortgagor or the mortgagor's designated agent within 60 days after the date of receipt of payment of the mortgage by the mortgagee in accordance with a payoff statement furnished by the mortgagee or its mortgage servicer, to, on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the mortgage, execute an affidavit that complies with the requirements of this section and record the affidavit in the real property records of each county in which the mortgage was recorded.

(d) Sets forth the language of the affidavit executed under Subsection (c). Deletes existing text relating to requirements for the affidavit. Makes nonsubstantive changes.

(e) Requires that an affidavit filed under Subsection (c) or (f) include certain information. Makes nonsubstantive changes.

(f) Requires the title insurance company or authorized 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 title insurance company or authorized title insurance agent is authorized to file for record at any time the affidavit as a release of lien. Prohibits the title insurance company or authorized title insurance agent, if notice required by this section is not provided to the mortgagee, from filing for record the affidavit as a release of lien. Authorizes the mortgagee to file a separate affidavit describing the mortgage and property and controverting the affidavit by the title insurance company or authorized title insurance agent as a release of lien on or before the 45th day after the date the mortgagee receives the notice if the mortgagee mails a copy of the mortgagee's affidavit to the title insurance company or authorized title insurance agent within that 45-day period. Deletes existing text requiring the affiant to attach to the affidavit a photostatic copy, certified as a true copy of the original document, of the documentary evidence that payment has been received by the mortgagee, including the mortgagee's endorsement of a negotiated check if paid by check and the payoff statement.

(g) Provides that an affidavit under Subsection (c), rather than an affidavit that is executed and recorded as provided by this section, operates as a release of the mortgage described in the affidavit if the affidavit, as provided by this section, is executed; is recorded; and is not controverted by a separate affidavit by the mortgagee in accordance with the requirements of Subsection (f).

(h) Requires the county clerk to index an affidavit filed under this section in the names of the original mortgagee and the last assignee of the mortgage appearing of record as the grantors and in the name of the mortgagor as grantee. Makes a nonsubstantive change.

(i) Provides that a person who knowingly causes an affidavit with false information to be executed and recorded under this section is liable for the penalties for filing a false affidavit, including the penalties for commission of offenses under Section 37.02 (Perjury) of the Penal Code, rather than including the penalties for commission of offenses under Section 37.02 of the Penal Code, and to a party injured by the affidavit for actual damages or \$5,000, whichever is greater. Provides that a person who negligently causes an affidavit with false information to be executed and recorded under this section is liable to a party injured by the affidavit for actual damages.

(j) Authorizes a title insurance company or authorized title insurance agent that, at any time after payment of the mortgage, files for record an affidavit executed under Subsection (c) to use any recording fee collected for the recording of a release of the mortgage for the purpose of filing the affidavit.

(k) Provides that this section does not affect any agreement or obligation of a mortgagee to execute and deliver a release of mortgage.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.