

SUBJECT: Requiring that secondary loan documents be prepared by attorney direction

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 6 ayes — Marchant, Carona, Elkins, Gutierrez, Hudson, Patterson
0 nays
3 absent — Giddings, Grusendorf, Romo

SENATE VOTE: On final passage, May 1 — voice vote (Galloway, Rosson, Sibley recorded nay)

WITNESSES: None

BACKGROUND: Article 5069-5 VACS authorizes a financial institution to charge interest on secondary mortgage loans for improvements to real property, commonly called home improvement loans. Such loans are considered valid under the Texas Constitution Art. 16, sec. 50, which essentially prohibits second mortgages against homesteads.

DIGEST: CSSB 804 would require a document prepared in connection with a secondary mortgage loan that affects title to real property to be prepared under the direction of an attorney licensed to practice in Texas. Any such documents would have to contain a notice identifying the attorney or law firm that prepared the document and advising the signer to consult with an attorney if they have any questions regarding the terms or conditions of the instrument. The notice would also inform the signer that the instrument affects their ownership rights in their home.

This bill would take effect on September 1, 1995 and would only apply to a document executed on or after that date.

SUPPORTERS SAY: Whenever a document that affects title to real property is executed in Texas, it must be prepared by an attorney. This restriction does not apply to out-of-state lenders who are making home improvement loans to Texans because they are not regulated by Texas law. CSSB 804 would simply

require an attorney licensed in Texas to oversee the preparation of documents for home improvement loans.

The bill would also require that a clear statement be printed upon the instrument informing a borrower that this loan could affect the ownership of their house. Many people who take out home improvement loans are not told, or are told in a very roundabout way, that by failing to pay such a loan, they could lose their home.

The legislation is not intended to provide more legal fees for these loans nor is it done to discourage out-of-state lenders from making loans in Texas. All this bill would do is help to protect Texas homeowners from the danger of losing their homes because of the unscrupulous practices of some out-of-state lenders.

OPPONENTS
SAY:

This bill represents yet another way for attorneys to make some money from any type of transaction. It would mostly affect out-of-state lenders and require them to hire a Texas attorney to sign off on the preparation of a standardized document.

There would be no added protection for Texas borrowers added by this act; it would merely require them to be informed of the Texas law firm that was paid to sign these documents.

NOTES:

The committee substitute changed the requirement that the secondary mortgage loan document had to have been prepared by a Texas attorney to one that was prepared *under the direction* of a Texas attorney. It would also not require the notice given on the document to list the address and telephone number of the lawyer or law firm that prepared the document or give a time when a person at that firm may be contacted about the document.