

SUBJECT: Regulation of sales of manufactured housing.

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 5 ayes — Averitt, Solomons, Denny, Hopson, Menendez

1 nay — Grusendorf

3 absent — Marchant, Pitts, Wise

WITNESSES: (*On original version:*)

For — Jim Allison, County Judges & Commissioners Association of Texas; Janee Briesemeister, Consumers Union; Jim Carter, Denton County; Don Gilmore, Texas Association of Assessor Officers, Metro Group Chief Appraisers, and Texas Association of Appraisal Districts; Mary Horn, Tax Assessor/Collector Association; Monica Irvin, Godley Independent School District; William Nelson, Johnson County Public Works; Rob Orr; Troy Thompson, Johnson County Commissioner #4; *Registered but did not testify:* Snapper Carr, Texas Municipal League; Ann Graham, Texas Bankers Association; Karen Neeley, Independent Bankers Association of Texas; Eric Sandberg, Texas Savings & Community Bankers Association; (*On committee substitute:*) James Hubbard, Wise County; Donald Lee, Texas Conference of Urban Counties; *Registered but did not testify:* Paul Sugg, Texas Association of Counties

Against — Steven Rogers, Texas Manufactured Housing Association

On — John Rothermer, Stewart Title Guaranty Co.; Bill Stinson, Texas Association of Realtors; *Registered but did not testify:* Bobbie Hill, Joe A. Garcia, Monita Johnson-Henley, Texas Department of Housing and Community Affairs (TDHCA)

BACKGROUND: The Manufactured Housing Standards Act (V.A.C.S., art. 5221f) sets minimum standards for construction and installation of manufactured housing, requires registration of manufacturers and sellers of manufactured housing, and provides certain rules for those registrants and their activities.

Under Property Code, sec. 2.001(b), a manufactured home is personal property unless it is permanently attached to real property and the title or certificate of origin is surrendered and a certificate of attachment is filed in the real property records of the county in which the home is located.

Local Government Code, sec. 232.007(a)(1) defines “manufactured home rental community” as a plot or tract of land that is separated into two or more spaces or lots that are rented, leased, or offered for rent or lease, for a term of less than 60 months without a purchase option, for the installation of manufactured homes for use and occupancy as residences.

DIGEST: CSHB 1869 would amend the Manufactured Housing Standards Act by adding a new section that would:

- ! specify that manufactured housing that was located outside of a municipality, attached to the land, and connected to a public utility was real property and was to be taxed as such;
- ! require the homes that were real property to be installed in a such way that they satisfied the lending requirements of the Federal Housing Administration (FHA);
- ! require the closing of the sale of a manufactured house to occur at either a financial institution, an attorney’s office, or a title company; and
- ! establish a cause of action for violating the section.

The bill would exempt manufactured homes placed in a manufactured home rental community, as defined by Local Govt. Code, sec. 232.007, from the requirements of the new section.

The bill also would amend Property Code, sec. 2.001, to state that when a manufactured home was permanently installed on real property titled in the name of the homeowner, it would become real property upon installation. Filing a certificate of attachment would not be necessary for status as real property. The Texas Department of Housing and Community Affairs (TDHCA) could not issue a document of title to a manufactured home that was new or was being resold after repossession if the home was to be installed by a retailer directly onto the consumer’s land.

Disclosures. The bill would establish disclosure requirements for both sellers of and lenders for manufactured housing. Retailers at their first meeting with a prospective buyer would have to tell the buyer:

- ! about the regulation of manufactured housing by HUD;
- ! that there could be zoning requirements and restrictive covenants that could apply to the land where the buyer would locate the home;
- ! that there could be potential limitations on the land's access to water;
- ! that the buyer potentially would have to install a septic system;
- ! that the buyer could be required to pay home owners' association fees, depending on where their lot was located; and
- ! that the home and land would be subject to annual property taxation, with the home likely increasing the value of the land, that the change in the land's use by placing the home on it could change the land's valuation, sometimes retroactively, and that if the buyer were buying a vacant lot, the seller would be required to tell the buyer whether the land was subject to retroactive re-valuation.

Retail sellers of manufactured housing could not transfer title to the home without written disclosure to the buyer that:

- ! stated the total purchase price, adjusted for interest, points, and fees;
- ! stated the term of the loan;
- ! indicated the buyer's responsibility to pay property taxes, maintain private roads and a contract for a septic system, and obtain property and mortgage insurance;
- ! compared the interest rate for a loan where the home was considered real property versus a loan where the home was considered personal property; and
- ! compared the average resale value after five years of a home classified as real property versus one classified as personal property expressed as a percentage of the original purchase price.

Any lender who was not a federally-insured financial institution or a mortgagee approved by the U.S. Department of Housing and Urban Development (HUD) and who did not provide the federal Truth in Lending disclosures regarding the terms of the transaction, would be required to provide, if the information was available, a written disclosure comparing

both (1) the interest rate for a loan where the home was considered real property versus a loan where the home was considered personal property, and (2) the average resale value after five years of a home classified as real property versus one classified as personal property expressed as a percentage of the original purchase price.

The bill would specify that the lender or retailer's failure to make the required disclosures would not affect the validity of the conveyance or impair the buyer's title or the lender's lien position.

The bill would take effect September 1, 2001, and would apply only to a manufactured home purchased by a consumer on or after the effective date.

SUPPORTERS
SAY:

CSHB 1869 would do a number of positive things, including protect consumers and lenders and facilitate counties' property tax collection.

Benefits to consumers. The bill would protect consumers who purchased manufactured housing in a number of ways. First, it would ensure that when a consumer purchased a home and placed it on his or her land that the home would become real property. This is important because it would allow the home and land to be financed at lower interest rates and would cause the home to depreciate less than if the home was personal property.

The bill would require consumers to receive a number of disclosures from sellers that would alert them to the full cost of their home, including loan closing costs, and the expenses associated with owning it, including property taxes, home owners' association dues, and insurance. It also would force the retailers to provide information about such potential pitfalls as zoning and restrictive covenants and such potential costs as road and sewer maintenance and bringing water to the property. It also would require the seller and lender to offer the consumer information comparing the interest costs of a real versus personal property loan and comparing the depreciation of the homes that were made realty versus those that were held as personal property.

All of these protections are necessary because people who buy manufactured housing often have never purchased a home before, so they may not know what to consider in figuring their monthly costs. Currently, sellers do not have to tell them about these matters, and if they do not know

to ask, they may not receive the information until after they have purchased the home. This could even cause them to lose their home.

The bill also would protect consumers who placed their home outside of an incorporated municipality by requiring that the home be installed in a way that would cause it to qualify for FHA lending and that the closing of the transaction occur at the offices of a neutral third party. This would ensure that the homeowner could resell their home, since doing so would require a lender to finance the new buyer's purchase. Closing at the office of a neutral third party would prevent the buyer from being subjected to high pressure sales tactics.

Benefits to local taxing authorities. By making all manufactured homes that are installed on the owner's land become part of the land, the bill would help ensure that taxing authorities could collect the property taxes owed them. Currently, manufactured homes are subject to ad valorem taxation just as site-built homes are, but manufactured homes can be removed without paying the taxes, which harms taxing authorities and the citizens they serve because they have less property available for securing their tax liens. This could mean that a school district, for instance, educates a child for whom it receives no property taxes.

Benefits to lenders. By requiring closing in the office of a title company, bank, or attorney, the bill would help remedy frauds that are being perpetrated against lenders by unscrupulous manufactured home retailers and land developers. Specifically, a TDHCA study showed that land developers were loaning homeowners a portion of their down payment, the retailers were accepting the money knowing its source, and no one was disclosing to the lender that the down payment was borrowed. Consolidating the land and home purchase into one transaction and closing the transaction at one of the proposed locations would help remedy this problem. Though this would increase closing costs, it would ultimately keep more buyers in their homes by ensuring that they could truly afford their home.

The bill would clearly state that a manufactured home only became realty upon installation and not before, so it would not create confusion in the regulation of manufactured home retailers.

OPPONENTS
SAY:

This bill would force every manufactured home buyer who placed their home on land that they own to hold the home as real property. Home buyers already have this option, but should not be forced to structure their purchase in this way. Even with higher interest rates for personal property loans, many purchasers may want to be able to sever their home from their land — either to move or to sell the manufactured home and replace it with another manufactured or site-built home — without having the loan on the home tied to the loan on the land.

Just because Texas classifies manufactured homes as real property doesn't mean that banks, savings and loans, and mortgage companies that make loans on real property would choose to finance manufactured homes. Such institutions have been reluctant to finance manufactured homes even when the buyer plans to attach them to land and finance the land and home together. Thus, the personal property lenders often have been the only source of financing for manufactured homes, but those lenders may not be able or willing to make the real property loans that the bill would seem to require. Given this, CSHB 1869 could harm consumers more than help them by causing financing for manufactured homes to dry up.

Because the bill may be unclear about when the manufactured home would become real property, the bill could have far reaching negative effects for manufactured home retailers. For instance, retailers are not licensed to sell real property. If the bill made their products realty, they no longer would be able to do business. Likewise, much of the regulation of manufactured home retailers assumes that the products are personal property. Changing that classification could make the regulations either inapplicable or illogical.

NOTES:

The committee substitute added:

- ! requirements that the retailer disclose interest charges, points and fees, and insurance;
- ! disclosure requirement for retailers at the first meeting with the buyer;
- ! the section establishing a civil cause of action for violation of the section requiring closings at an attorney's, title company's, or financial institution's office;
- ! the requirement that the land be outside a city for certain provisions to apply;

- ! the exemption for certain financial institutions that comply with Truth and Lending disclosure requirements;
- ! the provision that insures non-compliance does not negate the sale or impair the buyer's or lender's interest; and
- ! adds the changes to the Property Code.

The substitute also deleted provisions in the original that would have allowed the buyer to designate the home as personal property and established rules for that situation.