

BILL ANALYSIS

Senate Research Center

H.B. 2207
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Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Some Texans buy their homes without knowing that the home comes with an underlying mortgage or lien. An increasingly popular "get-rich-quick" scheme encourages profiteers to buy homes that are distressed or subject to foreclosure, and merely cure the default without informing the lender that the property has been sold. These profiteers then sell to a buyer who would not qualify for a traditional mortgage because of poor credit or who has little money for a down payment.

Buyers may not know the amount of the underlying mortgage or its terms. Both buyers and mortgage lenders are victimized by these transactions. The buyer could be foreclosed upon if the seller did not make the underlying mortgage payments or if the mortgage contains a "due on sale" clause that gives the mortgage lender the right to accelerate the underlying note when the lender did not approve the sale. Because a title insurance policy is rarely provided in these transactions, the buyers are not informed of the lien or the risks.

H.B. 2207 requires buyers to obtain proper notice before buying real estate that does not have a title insurance policy or all recorded liens paid within 30 days of the sale. H.B. 2207 does not outlaw the transactions, but ensures that sellers disclose the lien and risks to the buyer.

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 Subchapter A, Chapter 5, Property Code, by adding Section 5.016, as follows:

Sec. 5.016. CONVEYANCE OF RESIDENTIAL PROPERTY ENCUMBERED BY LIEN. (a) Prohibits a person from conveying an interest in or enter into a contract to convey an interest in residential real property that will be encumbered by a recorded lien at the time the interest is conveyed unless, on or before the seventh day before the earlier of the effective date of the conveyance or the execution of an executory contract binding the purchaser to purchase the property, an option contract, or other contract, the person provides the purchaser and each lienholder a separate written disclosure statement in at least 12-point type that contains certain information.

(b) Provides that a violation of this section does not invalidate a conveyance. Authorizes a purchaser, except as provided by Subsections (c) and (d), if a contract is entered into without the seller providing the notice required by this section, to terminate the contract for any reason on or before the seventh day after the date the purchaser receives the notice in addition to other remedies provided by this section or other law.

(c) Provides that this section does not apply to certain transfers.

(d) Provides that a violation of this section is not actionable if the person required to give notice reasonably believes and takes any necessary action to ensure that

each lien for which notice was not provided will be released on or before the 30th day after the date on which title to the property is transferred.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: January 1, 2008.