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BILL



ANALYSIS

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Senate Bill 425 (as enrolled)
Sponsor: Senator Michael D. Bishop
Senate Committee: Banking and Financial Institutions
House Committee: Commerce

PUBLIC ACT 44 of 2003

Date Completed: 8-19-03

RATIONALE

A January 2003 decision of the United States Court of Appeals for the Sixth Circuit addressed the way in which a security interest in a mobile home affixed to real property must be created and enforced in Michigan (*Boyd v Chase Manhattan Mortgage Corp.*, 315 F.3d 644). Under the Mobile Home Commission Act (MHCA), mobile home owners are required to obtain a certificate of title from the Mobile Home Code Commission in the Department of Consumer and Industry Services. If a mobile home owner creates a security interest in the mobile home (e.g., obtains a loan secured by the home), the Act requires the owner to deliver the certificate of title to the creditor, who then "perfects" its security interest by filing the certificate with the Commission. This gives the creditor priority over other creditors of the mobile home owner who also obtain an interest in the home.

Despite these requirements, for a number of years, mobile homes affixed to real property (e.g., attached to a foundation) have been treated as other "fixtures" to real property for purposes of financing and the perfection of security interests. That is, buyers or owners obtained mortgages in the homes, and mortgage companies perfected their security interest by recording a mortgage with a register of deeds. The U.S. Court of Appeals ruled, however, that the MHCA provides the exclusive method of perfecting a security interest in a mobile home, including a home affixed to real property.

This decision raised concerns among realtors and others. If security interests in affixed mobile homes were not recorded, a potential lender would not be able to conduct a title search in order to discover security interests in a home. In addition, if a creditor failed to perfect its security interest by filing a

certificate of title with the Commission, that creditor's lien would not necessarily be enforceable against another creditor with a security interest in the mobile home. As a result, lenders reportedly discontinued making mortgage loans for the purchase or refinancing of mobile homes affixed to real property, meaning borrowers had to take out higher-interest personal property loans.

In order to provide more affordable financing for mobile homes affixed to real estate, and to enable the holder of a lien or security interest in both a mobile home and land to enforce the lien or interest in the way other real property liens are enforced, some people believe that the MHCA's provisions for titling and enforcing a security interest in a mobile home should not apply to mobile homes affixed to real property. (Please see **BACKGROUND** for further information about the *Boyd* case.)

CONTENT

The bill amended the Mobile Home Commission Act to provide for the cancellation of certificates of title to mobile homes affixed to real property, and allow the homes to be conveyed only as part of the real property. The bill does all of the following:

-- Allows the owner of a mobile home that is affixed to his or her real property to deliver to the Department of Consumer and Industry Services (DCIS) a certificate of title for the home as well as an affidavit containing information about it and, if applicable, the consent of each holder of a security interest in the home to the termination of the security interest.

- **Requires the DCIS to cancel the certificate of title when it receives an affidavit of affixture, and prohibits the Department from issuing a certificate of title for the mobile home, unless it is detached from the property.**
- **Provides that, when the DCIS receives the owner's affidavit, any security interest in the home is terminated, the Act's provisions for titling and security interests do not apply, and the home is considered part of the real property and may be conveyed only as part of the property, unless it is detached.**
- **Requires the owner to deliver a copy of the affidavit to the county register of deeds for recording.**
- **Allows the mobile home owner to detach the home from the real property by filing an affidavit of detachment and applying for a certificate of title.**
- **Provides that, if a mobile home was affixed to real property before the bill's effective date, the holder of a lien or security interest in both the home and the real property may enforce the lien or security interest by accepting a deed in lieu of foreclosure or as provided by law for enforcing liens on real property.**
- **Requires a mobile home owner to pay a fee when submitting an affidavit of affixture or an affidavit of detachment.**

The bill also states, "It is the intent of this legislature that a security interest or lien on a mobile home affixed to real property may be perfected in the manner provided under law for perfecting a lien on real property, and not exclusively by a notation of the security interest or lien on the certificate of title."

The bill took effect on July 14, 2003.

Specifically, under the bill, if a mobile home is affixed to real property in which an owner of the mobile home has an ownership interest, the owner may deliver to the DCIS the certificate of title for the mobile home, the manufacturer's certificate of origin if the Department has not issued a certificate of title, or sufficient proof of ownership under the Act's certificate-of-title provisions. The owner also must deliver a fee in an amount prescribed under the Act for a certificate of

title, and an affidavit of affixture on a form provided by the DCIS that contains all of the following:

- The owner's name and address.
- A description of the mobile home that includes the manufacturer's name, the year of manufacture, the model, the manufacturer's serial number, and, if applicable, the number assigned by the DCIS.
- A statement that the mobile home is affixed to the real property.
- The legal description of the real property.
- The name of each holder of a security interest in the mobile home, together with the written consent of each holder to the termination of the security interest and the cancellation of the certificate of title, if applicable.

When the DCIS receives the affidavit and certificate of title, it must cancel the certificate of title. The Department may not issue a certificate of title for the mobile home, except as provided in the bill for a mobile home that the owner intends to detach from his or her real property. The DCIS must maintain the affidavit for 10 years after the date of filing.

The mobile home owner must deliver a duplicate original of the executed affidavit to the register of deeds of the county in which the real property is located. The register of deeds must record the affidavit.

When the DCIS receives the affidavit, all of the following apply:

- The mobile home is considered part of the real property.
- Sections 30 to 30h of the Act (which pertain to the titling of, and security interest in, mobile homes) do not apply to that mobile home.
- Any security interest in the mobile home is terminated.
- A lien holder may perfect and enforce a new security interest or lien on the mobile home only in the manner provided by law for perfecting and enforcing a lien on real property.
- The owner may convey the mobile home only as part of the real property to which it is affixed.

If a mobile home was affixed to real property before the bill's effective date, the holder of a lien or security interest in both the mobile home and the real property may enforce its lien or security interest by accepting a deed in lieu of foreclosure or in the manner provided by law for enforcing liens on the real property. If the holder of the lien or security interest becomes the owner of the mobile home in this manner, the holder must submit an affidavit of affixture to the DCIS after the redemption period for the foreclosure expires, or the deed in lieu of foreclosure is recorded, and the Department must cancel the mobile home's certificate of title.

If an owner of both a mobile home and the real property to which it is affixed intends to detach the mobile home from the real property, the owner first must record an affidavit of detachment in the office of the register of deeds in the county in which the owner's duplicate original affidavit was recorded. The owner also must apply for a certificate of title for the mobile home on a form prescribed by the DCIS. The application must include a duplicate original executed affidavit of detachment, proof that there are no security interests or liens on the mobile home or the written consent of each lien holder of record to the detachment, and a fee in an amount prescribed under the Act for a certificate of title.

An owner of an affixed mobile home may not detach it from the real property before the DCIS issues a certificate of title for the home. If the Department issues a certificate of title, the mobile home is no longer considered an improvement to real property and Sections 30 to 30h apply.

The bill states that a mobile home is "affixed" to real property if the wheels, towing hitches, and running gear are permanently removed and the mobile home is attached to a foundation or other support system.

The bill defines "ownership interest" as the fee simple interest in real property or an interest as the lessee under a ground lease for the real property that has a term that continues for at least 20 years after the register of deeds records the owner's affidavit.

MCL 125.2330i

BACKGROUND

Boyd v Chase Manhattan Mortgage Corp. involved the bankruptcy of Damon J. And Regina M. Kroskie, who owned a mobile home located on their own land. In January 1999, they refinanced their real estate and mobile home by borrowing \$80,000 from R-B Financial Mortgages, Inc., which secured the debt by recording a traditional mortgage with the Wexford County register of deeds. The mortgage was assigned to Chase Manhattan Mortgage Corporation. In November 1999, the Kroskies filed for Chapter 7 bankruptcy.

The bankruptcy trustee, Boyd, filed a motion for summary judgment to avoid Chase Manhattan's purported lien on the mobile home, and the United States Bankruptcy Court for the Western District of Michigan granted the motion. The U.S. District Court for the Western District of Michigan reversed that judgment. On further appeal, the U.S. Court of Appeals for the Sixth Circuit affirmed the judgment of the Bankruptcy Court.

The mobile home in question sat on a cement block foundation on the Kroskies' land and was connected to electrical lines, a private well, and a septic system. The parties agreed that the home was legally a fixture to the real estate. The Bankruptcy Court held that Chase Manhattan was an unsecured creditor with regard to the Kroskies' mobile home, because the MHCA "provides the exclusive method for perfecting a security interest in mobile homes", and neither R-B Financial nor Chase Manhattan had filed anything with the Mobile Home Code Commission.

According to the U.S. Court of Appeals for the Sixth Circuit, recording a mortgage with the county register of deeds, as Chase Manhattan had done, would perfect its interest in all fixtures on the land in question under general real property principles. Under the MHCA, however, a creditor could perfect a security interest in a mobile home only by filing an application with the Mobile Home Commission.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Since 1979, mobile homes affixed to real property evidently had been sold and financed in the same way as a house, and title insurers treated affixed mobile homes the same as houses. A creditor's security interest in an affixed mobile home was asserted through the filing of a mortgage on that real estate. As a result of the U.S. Sixth Circuit Court's *Boyd* decision, however, this practice changed dramatically. Because the Court agreed with the Bankruptcy Court that "Michigan's Mobile Home Commission Act...provides the exclusive method for perfecting a security interest in mobile homes", a mortgage lender could not perfect a security interest in a mobile home by recording a mortgage on real property with the county register of deeds. If the lender attempted to do so, the security interest was unenforceable against other creditors who filed with the Commission. As a result, secondary mortgage lenders stopped buying mobile home mortgages from financial institutions and mortgage companies. Those lenders, in turn, stopped offering mortgage loans and refinancing to purchasers and owners of mobile homes attached to their own land. Those borrowers instead had to secure higher-interest personal property loans.

The bill allows the cancellation of a certificate of title on a mobile home affixed to real property, provides that the MHCA's titling and security interest provisions do not apply to that mobile home, and allows the home to be conveyed only as part of the real property. This allows a creditor to perfect its security interest in the home, together with the real property to which it is affixed, by filing a mortgage with the register of deeds for recording, just as mortgage lenders in Michigan did for more than 20 years before the *Boyd* decision. Thus, the bill benefits both lenders, by opening up a market that essentially was closed off after *Boyd*, and borrowers, who once again can obtain more affordable financing for their mobile homes.

Opposing Argument

The bill does not go far enough. It applies only to a mobile home affixed to land in which the mobile home owner has an ownership interest. Most opportunities for purchasing a mobile home, however, are in mobile home communities in which the home owner rents a lot from the developer or other land owner. People who wish to buy or refinance mobile

homes in these more traditional settings also should have the benefit of lower-cost mortgage loans. Security interest provisions that allow for affordable home ownership should apply to all mobile homes.

Response: The bill reinstates the financing practices that existed in Michigan before the *Boyd* decision. Mobile homes situated in a traditional mobile home park were never treated the same as houses. Unless a mobile home is a fixture on the owner's land, it should continue to be treated legally as personal property, such as a car or a boat.

In addition, according to testimony before the Senate Committee on Banking and Financial Institutions, developers increasingly are building manufactured home subdivisions, in which the buyer purchases both the home and the land on which it is situated. In those instances, the bill will help home buyers to secure lower-interest mortgage loans.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Maria Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.