

Department of Finance and Administration

Legislative Impact Statement

Bill: HB2043

Bill Subtitle: CONCERNING THE PROCEDURES FOR OBTAINING OR CANCELING THE TITLE TO A MOBILE HOME OR MANUFACTURED HOME.

Basic Change :

Representative Linck

The bill provides for DFA to cancel the title or certificate of origin for a manufactured home or mobile home to be affixed to real property upon receiving an affidavit of affixation to be recorded in the county in which it is to be affixed. The affidavit must contain information regarding the manufacturer, vehicle description, owner of the real estate to which the home is affixed, a legal description of the real estate, security interests in the home, release of security interests. If a title or certificate of origin is not available for cancellation, the bonded title procedures must be followed or a court order directing DFA to cancel the title.

The bill adds a new section to the Arkansas Code for issuance of title upon severance of a manufactured home or mobile home that has been affixed to real property. New definitions are created to define "Lender applicant" and "Owner Applicant". The Department is required to issue a new certificate of title upon application from a lender applicant or owner applicant as defined in the bill, proof of payment of the current year's personal property taxes if any, and payment of required title and registration fees. Other requirements are a notarized statement from the owner applicant that there are no liens on the home, if there are none; if there are no liens other than that of a lender in possession of a home, a notarized statement from a lender applicant that there are none. If liens exist other than that of a lender in possession of a home, a statement is required from an Arkansas licensed attorney or an authorized agent of a title insurance company licensed in Arkansas, that certifies the order of priority for the new certificate of title of each lien upon the home. Also required is a copy of an affidavit of severance to be recorded in the county where the home was affixed. A title may also be issued if a court order is presented directing the Department to issue title, or if the bonded title procedures have been followed.

Revenue Impact :

None

Taxpayer Impact :

Taxpayers may apply for issuance of a new title for a manufactured or mobile after cancellation of the title or certificate of origin of a home that has been severed from the real estate to which it was affixed.

Resources Required :

No additional resources required.

Time Required :

Adequate time is provided

Procedural Changes :

Revise Motor Vehicle Procedures Manual and distribute to Revenue Offices.

Other Comments :

The bill provides that a notarized statement from the applicant is required, to state that there are no liens on the home, if there are none. Such statement does not provide adequate protection to the DFA from liability if a lien does exist, and there is no provision in the bill to release DFA from liability in the

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Claims Commission should an existing lien later be identified.

Legal Analysis :

HB2043 amends current law to clarify that an owner of a manufactured or mobile home may register the home and be issued a certificate of title upon payment of registration and title fees.

The bill amends current law to clarify existing requirements for, as well as place additional requirements on, owners seeking to cancel the title to a manufactured or mobile home to be affixed to real estate. Specifically the bill codifies the existing requirement that a party seeking cancellation surrender the existing manufacturer's certificate of origin or original title with a completed application for cancellation. In addition it clarifies that the manufacturer's certificate of origin or original title must be assigned to the party seeking cancellation of the title. The bill adds a requirement that parties seeking cancellation must also provide an affidavit of affixation that includes: a description of the home, a statement that the party executing the affidavit is the owner of the real estate to which the home will be affixed (or is authorized by the owner of the real estate to execute the affidavit), the street address and legal description of the real estate to which the home will be affixed, and a statement to the effect that any lien or security interest in the home will be released or has been released. Lastly, the bill provides that DFA may also cancel an existing manufacturer's certificate of origin or existing title if it receives the manufacturer's certificate of origin or title assigned to the party seeking to affix the home, a completed application for cancellation, a copy of an affidavit of affixation and either a court order requiring cancellation or the posting of a bond under Ark. Code Ann. §27-14-409. Concerns with the proposed amendment to §1603 are as follows:

- 1) The bill does not require that liens or security interests be released prior to cancellation of title, nor does it require the consent of a lienholder or security interest holder to cancellation of title. This will expose DFA to potential liability to lienholders if the title is cancelled without their consent or without proof their liens or interests in the home have been released.
- 2) The bill does not make it clear that the party completing the affidavit of affixation should also be the party to whom title to the home has been assigned.
- 3) The provisions requiring a court order or bonded title process are only needed in the event that a party seeking cancellation does not have the original manufacturer's certificate of origin or original title to surrender.

The bill adds a new providing that a new title can be issued to a lender in possession of the home (repossession) or an owner/purchaser of the home if the home is being severed from the real property to which it is affixed. In order to obtain a new title, the lender or owner/purchaser must submit: 1) an application for title, 2) proof of payment of the current year's property taxes, 3) a notarized statement that there are either no liens against the home or that the only lien is that of the lender in possession or, in the event there are liens against the home other than that of a lender in possession, a statement from a licensed attorney or agent of a title insurance company that certifies the order of priority for the new certificate of title for each lien or encumbrance; and 4) a copy of an affidavit of severance which must include the name and mailing address of the applicant and a description of the home as well as any supporting documents concerning liens against the home which may be requested by DFA. In the alternative, DFA may also issue a new title to a home for which a title has been cancelled if it

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receives a court order directing issuance of a title along with an affidavit of severance or if an applicant follows the bonded title procedure at Ark. Code Ann. §27-14-409(c) and submits an affidavit of severance. Concerns with § 1604 are as follows:

- 1) The amendment does not require proof of assessment prior to issuance of a title.
- 2) Reliance on a notarized statement by an owner, purchaser, or a lender in possession, absent proof that liens do not exist or have been released, subjects DFA to potential liability if it issues clear title to the home. To avoid such liability, the party applying for the title should provide proof that liens do not exist (or that any liens have been released) via licensed attorney or title insurer certification or the applicant should obtain a court order or follow the bonded title process.
- 3) The bill would require the Department to list all existing liens or encumbrances upon the home on the new title, which could include liens and encumbrances (such as state tax liens) that are ordinarily not identified on titles.

DFA may promulgate rules and the bill does not contain an emergency clause.