

Department of Finance and Administration

Legislative Impact Statement

Bill: HB2043

As Engrossed: 3/20/2013

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

Basic Change :

Representative Linck

The bill adds to existing requirements for cancellation of the title or certificate of origin for a manufactured home or mobile home to be affixed to real property, and adds a new section to the Arkansas Code to provide for issuance of a title upon severance of a manufactured home or mobile home that has been affixed to real property. The Engrossment deletes certain provisions from the bill as originally written that caused concerns for DFA with regard issuance of a title where an unknown outstanding lien or security interest might exist on the severed home. The Engrossment adds new provisions that would alleviate such concerns.

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 :

None.

Legal Analysis :

The bill requires additional information from owners of mobile or manufactured homes seeking to affix the home to real property and surrender or cancel the title for the home. If an owner has the original manufacturer's certificate of origin (MCO) or title, either of those documents may be cancelled upon receipt of the following: 1) the assigned original MCO or title; 2) an application for cancellation; and 3) an affidavit of affixation which must include the name of the manufacturer of the home, a description of the home, a statement the home owner is the owner of the real estate to which the home is being affixed, the address of the real property to which the home is being affixed, and a statement that the home has no liens or encumbrances, or that any such liens or encumbrances will be or have been released (DFA's application for cancellation already requires lien holders to approve cancellation of the title). If the owner of the home does not have the original assigned MCO or title, or cannot get approval of any lien-holder to cancel the title, the only way the title can be cancelled is if the owner does one of two things. First, it can present a court order requiring DFA to issue a title for cancellation along with

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the necessary application for cancellation and affidavit of affixation. Alternatively, it can utilize the bonded title process, post a bond, and present the necessary application for cancellation and affidavit of affixation.

Lastly, the bill adds a new section to Chapter 14 of Title 27 of the code to create a mechanism (outside the bonded title process or obtaining a court order) for a new title to be issued for a mobile or manufactured home that is being severed from real property and for which a title has previously been cancelled under state law. Under this section, an owner applicant can obtain a new title if he or she submits: 1) an application for title with payment of all necessary fees; 2) proof of payment of the current year's property taxes; 3) a statement that the home has no liens or encumbrances, which must be accompanied by a statement from a licensed attorney or title insurer verifying there are no liens or encumbrances upon the home; and 4) an affidavit of severance which must include the name and address of the applicant and a description of the home.

A lender applicant (generally triggered by a repossession event) can obtain a new title if it submits: 1) an application for title with payment of all necessary fees; 2) proof of payment of the current year's property taxes; 3) a statement that the home has no liens or encumbrances, other than that of the lender applicant, which must be accompanied by a statement from a licensed attorney or title insurer verifying there are no liens or encumbrances upon the home other than that of the lender applicant; and 4) an affidavit of severance which must include the name and address of the applicant and a description of the home. The lien of a lender applicant shall be recorded on the new title if the lender supplies the required document(s) creating and evidencing the lien.

If there are liens or encumbrances upon the home at the time of severance, other than that of a lender applicant, or if it cannot be determined whether the home is encumbered, then a party can only obtain a title to the severed home in one of two ways. First, it can present a court order requiring DFA to issue a title, along with the necessary application and payment of fees, proof of tax payment, and the affidavit of severance. Alternatively, it can use the bonded title process, post a bond, and present the necessary application and fees, proof of tax payment, and the affidavit of severance.

The bill as engrossed alleviates concerns voiced by DFA that it could face liability in the event it issued clear title to a severed home and it was later determined that the home was encumbered by a lien or liens. The bill does not contain an emergency clause.