**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3846**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Sellers

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Introduced in the House on April 1, 2009

Currently residing in the House Committee on **Judiciary**

Summary: Repossession procedures

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/1/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\04-01-09.docx)‑69

4/1/2009 House Referred to Committee on **Judiciary** [HJ](file:///h:\HJ%20Archive\2009\04-01-09.docx)‑69

**VERSIONS OF THIS BILL**

[4/1/2009](file:///p:\pprever\2009-10\3846_20090401.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 6 TO CHAPTER 23, TITLE 37 SO AS TO PROVIDE FOR MANUFACTURED HOUSING LOAN DEFAULT AND REPOSSESSION PROCEDURES INCLUDING DEFINITIONS, NOTICE REQUIREMENTS, COURT ORDERS, CURE OF DEFAULT, VOLUNTARY AND INVOLUNTARY REPOSSESSION, AND REINSTATEMENT OF THE LOAN.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 23, Title 37 of the 1976 Code is amended by adding:

“Article 6

Manufactured Housing Loan Default and Repossession Procedures

Section 37‑23‑110. The terms used in this article have the meanings given them in this article, in this chapter, and in the Uniform Commercial Code as adopted in Title 36, except that for purposes of this article only, ‘manufactured home’ means a manufactured home that is located in this State, that is subject to a security interest or other valid encumbrance, and that is the principal residence of the manufactured home’s occupant and, when used in Section 37‑23‑120(B), the term also includes a manufactured home that is not the principal residence of the occupant.

Section 37‑23‑120. (A) To the extent that the procedures established by this article differ from the procedures established or authorized for repossession of a manufactured home pursuant to the Uniform Commercial Code of this State, the provisions of this article supersede that code and govern the repossession of the manufactured home. The procedures established by this article must be satisfied before a secured party may take any action pursuant to Chapter 69, Title 15.

(B) Affixing a manufactured home to real estate does not extinguish an otherwise valid security interest in the home. A manufactured home that is affixed to real estate while not encumbered by a valid security interest must be treated as an improvement to real estate and this article does not apply to it. If real estate to which an unencumbered manufactured home has been affixed as an improvement is subject to proceedings pursuant to Chapter 67, Title 15 or another process to recover real property, the presence of the home on the real estate does not necessitate changed or additional procedures.

Section 37‑23‑130. (A) When a default occurs under the terms of a security agreement covering a manufactured home as collateral, and the secured party desires to repossess the manufactured home, the secured party may commence the repossession only in a manner authorized by this article.

(B)(1) A secured party may commence repossession of a manufactured home by personally serving upon, or by sending by certified or registered United States mail and concurrently sending a copy of the notice by first class mail to, the occupant of the manufactured home a notice and, if the occupant is not the debtor, by sending a registered or certified letter to the last known address of the debtor under the security agreement, both setting forth the circumstances constituting the default under the security agreement and stating that the secured party, at the expiration of a thirty‑day period following receipt of the notice, shall seek a court order removing the occupant from the manufactured home and repossessing the manufactured home, unless the debtor or the occupant acting on behalf of the debtor cures the default before that time and in the manner provided by Section 37‑23‑150. If notice is mailed to a debtor in accordance with this subdivision, the secured party by affidavit shall set forth the circumstances causing the secured party to believe that the debtor could be reached at the address to which the notice was mailed. The affidavit shall state that the secured party has no reliable information causing the secured party to conclude that the debtor might receive mailed notice at another address.

(2) The notice must state: ‘Your loan is currently in default. Contact us immediately at [insert phone number] to discuss possible options for preventing repossession. We encourage you to seek assistance from the foreclosure prevention counseling program in your area. Nearby community agencies will answer your questions, offer free advice, and help you create a plan. You may contact the South Carolina Department of Consumer Affairs Office at 1‑800‑922‑1594 or www.scconsumer.gov to get the phone number and location of the nearest foreclosure prevention organization. Call today. Waiting limits your options. IF YOU DO NOT BECOME CURRENT ON YOUR LOAN WITHIN THIRTY DAYS, WE WILL SEEK A COURT ORDER REPOSSESSING THE HOME, AND BY COURT ORDER YOU WILL HAVE TO VACATE THE HOME.’

(3) If the debtor does not sign for the registered or certified letter containing the notice within seven calendar days of the first attempted delivery, the secured party may proceed with all permissible actions provided in law as though the debtor’s signature has been secured.

Section 37‑23‑140. Except in cases of voluntary repossession as provided in Section 37‑23‑180, upon expiration of the thirty‑day period specified in the notices required by Section 37‑23‑130 a secured party must apply to the circuit court in the county in which the manufactured home is located for an order directing the seizure and delivery of the manufactured home. The application must be accompanied by a copy of the security agreement entitling the secured party to repossession of the manufactured home, a copy of the notices required pursuant to Sections 37‑23‑130 and 37‑23‑160, and an affidavit of service stating that those notices were properly served upon the occupant and, if the occupant of the home is not the debtor, the debtor. The notices do not satisfy any of the notice requirements pursuant to Chapter 69, Title 15.

Section 37‑23‑150. A debtor, or an occupant of a manufactured home acting on behalf of a debtor, within the thirty‑day period specified in the notices required by Section 37‑23‑130, may cure a default by tendering full payment of the sums then in arrears under the terms of the security agreement, or by otherwise remedying the default, and by paying the reasonable costs, not to exceed the sum of one hundred dollars, incurred by the secured party to enforce the security agreement. Cure of a default in accordance with the provisions of this section suspends the secured party’s right to seek repossession of the manufactured home pursuant the provisions of this article.

Section 37‑23‑160. (A)(1) If the debtor does not cure the default within the thirty‑day period specified in Section 37‑23‑150, the secured party must send a registered or certified letter and concurrently send a copy of the notice by first class mail to the occupant of the home and, if the debtor is different from the occupant, to the debtor, stating that the debtor has thirty days to reinstate the loan by paying the defaulted amount plus additional allowable fees incurred by the secured party in order to regain possession of the home.

(2) If the debtor does not sign for the registered or certified letter containing the notice within seven calendar days of the first attempted delivery, the secured party may proceed with all permissible actions provided by law as though the debtor’s signature had been secured.

(B)(1) The notice must contain, at a minimum, the:

(a) name of the secured party, the debtor, each current assignee of the loan, if any, and the original or maximum principal amount secured by the loan;

(b) date of the loan;

(c) amount in arrears on the loan as of the date of the notice;

(d) description of the manufactured home upon which the loan is secured, conforming substantially to that contained in the loan documents; and

(e) amount of allowable fees incurred by the secured party in order to regain possession of the home prior to the court order.

(2) The notice also must state: ‘Your manufactured home is currently being repossessed. Contact us immediately at [insert phone number] to discuss possible options for reinstating your loan. We encourage you to seek counseling with the foreclosure prevention counselor in your area. Nearby community agencies will answer your questions, offer free advice, and help you create a plan. You can contact the South Carolina Department of Consumer Affairs Office at 1‑800‑922‑1594 or www.scconsumer.gov to get the phone number and location of the nearest counseling organization. Call today. Waiting limits your options. IF YOU DO NOT BECOME CURRENT ON YOUR LOAN WITHIN THIRTY DAYS, INCLUDING ANY ADDITIONAL FEES, YOU NO LONGER WILL BE ENTITLED TO REINSTATE YOUR LOAN. WE ARE SEEKING A COURT ORDER REPOSSESSING THE HOME, AND BY COURT ORDER YOU WILL HAVE TO VACATE THE HOME.’

(C) At any time after the expiration of the thirty‑day period required pursuant to Section 37‑23‑130, the creditor may proceed with a court action pursuant to Section 37‑23‑140, so long as the right to reinstate has not been exercised. The exercise of the right to reinstatement in accordance with the provisions of this section suspends the secured party’s right to seek repossession of the manufactured home pursuant to the provisions of this article and immediately terminates any court action filed pursuant to this article or Chapter 69, Title 15.

(D) For the purposes of this section, allowable costs that may be recovered include insurance; delinquent taxes upon the premises; interest to date of payment; cost of services of process or notices; filing fees; attorney fees not to exceed one hundred fifty dollars and other lawful disbursements necessarily incurred in connection with the proceedings by the party repossessing.

Section 37‑23‑170. A secured party, in the manner provided by the Uniform Commercial Code of this State, shall record a certified copy of the court order returning possession of a manufactured home to the secured party to perfect title to the manufactured home in the secured party, except in cases of voluntary repossession.

Section 37‑23‑180. The secured party and the debtor and occupant, if the debtor is not the occupant, may agree in writing on a voluntary surrender of the title and possession of the manufactured home to the secured party before or after the end of the thirty‑day period specified in Section 37‑23‑130. The secured party may file the agreement and other documents necessary to transfer the title in the manner required by law. If this provision is exercised, notice pursuant to Section 37‑23‑130(B), is not applicable.”

SECTION 2. This act takes effect upon approval by the Governor.

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