

BILL ANALYSIS

C.S.H.B. 1471
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas foreclosure law does not do enough to help homeowners avoid foreclosure. Notice requirements are inadequate and existing procedures favor lenders. Federal law provides resources for borrowers facing foreclosure, but short notice periods and short periods to cure defaults on loans make it difficult for borrowers to access these federal resources. Currently, notice is required to be sent only by certified mail. However, if a borrower is not home when the mail arrives, the borrower may not receive the notice and may remain unaware of the gravity of the problem. The current notice given to tenants of foreclosed buildings does not allow a tenant enough time to arrange for a new place to live.

C.S.H.B. 1471 extends the right of a Texas homeowner to cure a default from 20 days to 45 days and requires notice of a foreclosure to be sent by regular mail, in addition to certified mail as currently required. The bill adds a provision preventing waivers of borrowers rights in loan documents. The bill extends the time period that a tenant of a foreclosed building has to move out of the building from 30 days to 90 days when the property the tenant inhabits is foreclosed.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1471 amends the Property Code to require the written notice that a mortgage servicer of debt is currently required to serve a debtor in default under a deed of trust or other contract lien on real property used as the debtor's residence to be by both certified mail and first class regular mail, rather than only by certified mail, and to be addressed to the debtor at the debtor's last known address. The bill also increases, from 20 days to 45 days, the minimum period of time the mortgage servicer is required to give the debtor to cure the default before notice of the sale of the property can be given. The bill makes these provisions applicable only to a sale of residential real property in which notice of default is provided on or after December 1, 2009.

C.S.H.B. 1471 extends, from 30 days' written notice to 90 days' written notice, the minimum notice that a purchaser of a building purchased at a tax foreclosure sale or a trustee's foreclosure sale under a lien superior to the lease of a residential tenant of the building is required to give to a tenant who timely pays rent and is not otherwise in default under the tenant's lease after foreclosure if the purchaser chooses not to continue the lease. The bill makes void a provision of a contract, agreement, or other document that purports to waive a right of a debtor or exempt a mortgage servicer, mortgagee, trustee, substitute trustee, or government official from a duty under provisions relating to liens.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1471 removes language from the original that requires a mortgage servicer of debt to serve a debtor in default under a deed of trust or other contract lien on residential real property, leaving existing language requiring service to a debtor in default under a deed of trust or other contract lien on real property used as the debtor's residence.