

## **BILL ANALYSIS**

C.S.H.B. 2392  
By: England  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under the current law for redeeming property after the foreclosure of a property owners' association's assessment lien, only the owner has the right to redeem the property. In many cases, the association lien is subordinated by restrictive covenants to a voluntary mortgage, but not in all cases and not for all voluntary liens. Since a defaulting owner is often absentee and the foreclosure is for a low dollar amount, the lender should be permitted to redeem the property, thereby paying the association and retaining its lien position. In that matter, the owner can take additional steps pursuant to its lender relationship with the owner as may already be permitted by agreement and law.

C.S.H.B. 2392 provides a lienholder a right of redemption in addition to that right held by a property owner subsequent to the foreclosure of a property owners' association's assessment. The bill establishes that the deed of trust for a redeemed property is transferred to the lot owner after redemption.

### **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. 2392 amends the Property Code to include in the persons who are entitled to redeem property after the foreclosure of a property owners' association's assessment lien each lienholder of record on the property. The bill establishes that the deed of trust for a redeemed property is transferred to the lot owner after redemption. The bill requires the written notice stating the date and time of the foreclosure sale to be sent by certified mail, return receipt requested, to the address of each holder of a lien evidenced by a deed of trust filed of record on the property subject to the foreclosure, according to the most recent deed of trust on file in the real property records of the county in which the property is located. The bill specifies that a property owners' association has no duty to determine if a deed of trust has been transferred or assigned, or, if there is no lienholder address in the deed of trust, to notify the lienholder. The bill establishes that, for purposes of this provision, the lot owner is deemed to have given approval for the association to notify the lienholder. The bill makes conforming changes and technical corrections. The bill requires an affidavit stating that a lot owner or a lienholder has redeemed a property purchased at a foreclosure sale to include the name and mailing address of the person who redeemed the property. The bill requires the purchaser of a property at a foreclosure sale to immediately record, rather than deliver to the owner, a deed transferring the property to the lot owner.

### **EFFECTIVE DATE**

September 1, 2009.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2392 clarifies language in the original by requiring notice of a foreclosure sale to be sent to the address of each holder of a lien evidenced by a deed of trust filed of record on the property subject to the foreclosure, rather than to the address of each lienholder as in the original.

C.S.H.B. 2392 adds a provision not in the original specifying that a property owners' association has no duty to determine if a deed of trust has been transferred or assigned, or, if there is no lienholder address in the deed of trust, to notify the lienholder.

C.S.H.B. 2392 adds a provision not in the original establishing that, for purposes of the bill's notification requirements, the lot owner is deemed to have given approval for the association to notify the lienholder.

C.S.H.B. 2392 differs from the original by establishing that the deed of trust for a redeemed property is transferred to the lot owner after redemption, whereas the original authorizes transferal to the owner or lienholder. The substitute adds a provision not in the original requiring the purchaser of a property at a foreclosure sale to immediately record, rather than deliver to the owner, a deed transferring the property to the lot owner.