

BILL ANALYSIS

C.S.S.B. 2121
By: West
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, if a homeowners' association forecloses its lien on a home for assessments, 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.

This bill will help lenders maintain and protect their lien position, will permit homeowners' associations to be paid their assessments, and will protect the ownership interest of the owners, who may be able to work out a plan with their lender to stay in the home.

C.S.S.B. 2121 authorizes a lienholder of record to redeem property after the foreclosure of a property owners' association's assessment lien.

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.S.B. 2121 amends the Property Code to require a property owners' association that conducts a foreclosure sale of an owner's lot to send to each lienholder of record, in addition to the lot owner, not later than the 30th day after the date of the foreclosure, a written notice stating the date and time the sale occurred and informing each lienholder of the lienholder's right to redeem the property under state law. The bill requires the notice to be sent to the address of each holder of a lien on the property subject to foreclosure evidenced by the most recent deed of trust filed of record in the real property records of the county in which the property is located and to the address of each transferee or assignee of such a deed of trust who has provided notice to a property owners' association of such assignment or transfer. The bill requires notice provided by a transferee or assignee to a property owners' association to be in writing, contain the mailing address of the transferee or assignee, and be mailed by certified mail, return receipt requested, or United States mail with signature confirmation to the association according to the mailing address of the association pursuant to the most recent management certificate filed of record. The bill exempts an association from notifying the lienholder of record if a recorded instrument does not include an address for the lienholder. The bill deems the lot owner, for purposes of these provisions, to have given approval for the association to notify the lienholder.

C.S.S.B. 2121 authorizes a lienholder of record of property in a residential subdivision to redeem the property from any purchaser at a sale foreclosing a property owners' association's assessment lien not later than the 180th after the date the association mails the written notice as required above. The bill authorizes the purchaser of the property at the foreclosure sale or a person to whom the purchaser transferred the property to presume conclusively that the lot owner or a

lienholder did not redeem the property unless the lot owner or a lienholder filed an affidavit that, in addition to existing requirements, includes the name and mailing address of the person who redeemed the property.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 2121 removes a provision of the original including a redeeming lienholder as well as a redeeming lot owner as those to whom a person who purchases property at a sale foreclosing a property owners' association's assessment lien may transfer ownership of the property during the redemption period.