

1-1 By: Herrero, et al. (Senate Sponsor - Hinojosa) H.B. No. 3857
1-2 (In the Senate - Received from the House May 15, 2009;
1-3 May 18, 2009, read first time and referred to Committee on
1-4 Jurisprudence; May 23, 2009, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 23, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to foreclosure of liens on real property and certain
1-9 personal property owned by members or dependents of the military;
1-10 providing a criminal penalty.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Chapter 51, Property Code, is amended by adding
1-13 Section 51.015 to read as follows:

1-14 Sec. 51.015. SALE OF CERTAIN PROPERTY OWNED BY MEMBER OF THE
1-15 MILITARY. (a) In this section:

1-16 (1) "Active duty military service" means:

1-17 (A) service as a member of the armed forces of the
1-18 United States; and

1-19 (B) with respect to a member of the Texas
1-20 National Guard or the National Guard of another state or a member of
1-21 a reserve component of the armed forces of the United States, active
1-22 duty under an order of the president of the United States.

1-23 (2) "Dwelling" means a residential structure or
1-24 manufactured home that contains one to four family housing units.

1-25 (3) "Military servicemember" means:

1-26 (A) a member of the armed forces of the United
1-27 States;

1-28 (B) a member of the Texas National Guard or the
1-29 National Guard of another state serving on active duty under an
1-30 order of the president of the United States; or

1-31 (C) a member of a reserve component of the armed
1-32 forces of the United States who is on active duty under an order of
1-33 the president of the United States.

1-34 (4) "Person" has the meaning assigned by Section
1-35 311.005, Government Code.

1-36 (b) This section applies only to an obligation:

1-37 (1) that is secured by a mortgage, deed of trust, or
1-38 other contract lien on real property or personal property that is a
1-39 dwelling owned by a military servicemember;

1-40 (2) that originates before the date on which the
1-41 servicemember's active duty military service commences; and

1-42 (3) for which the servicemember is still obligated.

1-43 (c) In an action filed during a military servicemember's
1-44 period of active duty military service or during the nine months
1-45 after the date on which that service period concludes to foreclose a
1-46 lien or otherwise enforce an obligation described by Subsection
1-47 (b), the court may after a hearing and on the court's own motion,
1-48 and shall on the application by a servicemember whose ability to
1-49 comply with the obligations of the contract secured by the lien is
1-50 materially affected by the servicemember's military service:

1-51 (1) stay the proceedings for a period of time as
1-52 justice and equity require; or

1-53 (2) adjust the obligations of the contract secured by
1-54 the lien to preserve the interests of all parties.

1-55 (d) A sale, foreclosure, or seizure of property under a
1-56 mortgage, deed of trust, or other contract lien described by
1-57 Subsection (b) may not be conducted during the military
1-58 servicemember's period of active duty military service or during
1-59 the nine months after the date on which that service period
1-60 concludes unless the sale, foreclosure, or seizure is conducted
1-61 under:

1-62 (1) a court order issued before the sale, foreclosure,
1-63 or seizure; or

1-64 (2) an agreement that complies with Subsection (e).

2-1 (e) A military servicemember may waive the servicemember's
 2-2 rights under this section only as provided by this subsection. The
 2-3 waiver must be:

2-4 (1) in writing in at least 12-point type;
 2-5 (2) executed as an instrument separate from the
 2-6 obligation to which the waiver applies; and

2-7 (3) made under a written agreement:
 2-8 (A) executed during or after the servicemember's
 2-9 period of active duty military service; and

2-10 (B) specifying the legal instrument to which the
 2-11 waiver applies and, if the servicemember is not a party to the
 2-12 instrument, the servicemember concerned.

2-13 (f) A person commits an offense if the person knowingly
 2-14 makes or causes to be made a sale, foreclosure, or seizure of
 2-15 property that is prohibited by Subsection (d). An offense under
 2-16 this subsection is a Class A misdemeanor.

2-17 (g) On application to a court, a dependent of a military
 2-18 servicemember is entitled to the protections of this section if the
 2-19 dependent's ability to comply with an obligation that is secured by
 2-20 a mortgage, deed of trust, or other contract lien on real property
 2-21 or personal property that is a dwelling is materially affected by
 2-22 the servicemember's military service.

2-23 (h) A court that issues a stay or takes any other action
 2-24 under this section regarding the enforcement of an obligation that
 2-25 is subject to this section may grant a similar stay or take similar
 2-26 action with respect to a surety, guarantor, endorser, accommodation
 2-27 maker, comaker, or other person who is or may be primarily or
 2-28 secondarily subject to the obligation.

2-29 (i) If a judgment or decree is vacated or set aside wholly or
 2-30 partly under this section, the court may also set aside or vacate,
 2-31 as applicable, the judgment or decree with respect to a surety,
 2-32 guarantor, endorser, accommodation maker, comaker, or other person
 2-33 who is or may be primarily or secondarily subject to the obligation
 2-34 that is subject to the judgment or decree.

2-35 (j) This section does not prevent a waiver in writing by a
 2-36 surety, guarantor, endorser, accommodation maker, comaker, or
 2-37 other person, whether primarily or secondarily liable on an
 2-38 obligation, of the protections provided under Subsections (h) and
 2-39 (i). A waiver described by this subsection is effective only if it
 2-40 is executed as an instrument separate from the obligation with
 2-41 respect to which it applies. If a waiver under this subsection is
 2-42 executed by an individual who after the execution of the waiver
 2-43 enters active duty military service, or by a dependent of an
 2-44 individual who after the execution of the waiver enters active duty
 2-45 military service, the waiver is not valid after the beginning of the
 2-46 period of the active duty military service unless the waiver was
 2-47 executed by the individual or dependent during the applicable
 2-48 period described by 50 U.S.C. App. Section 516, as that section
 2-49 existed on January 1, 2009.

2-50 SECTION 2. The change in law made by this Act applies only
 2-51 to a sale, foreclosure, or seizure of property under a judgment in
 2-52 an action filed on or after the effective date of this Act or with
 2-53 respect to which a notice of default is given under Section
 2-54 51.002(d), Property Code, on or after the effective date of this
 2-55 Act. A sale, foreclosure, or seizure under a judgment in an action
 2-56 filed before the effective date of this Act or with respect to which
 2-57 notice of default is given before the effective date of this Act is
 2-58 governed by the law in effect immediately before the effective date
 2-59 of this Act, and that law is continued in effect for that purpose.

2-60 SECTION 3. This Act takes effect immediately if it receives
 2-61 a vote of two-thirds of all the members elected to each house, as
 2-62 provided by Section 39, Article III, Texas Constitution. If this
 2-63 Act does not receive the vote necessary for immediate effect, this
 2-64 Act takes effect September 1, 2009.

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