

By: Ellis

S.B. No. 439

A BILL TO BE ENTITLED

AN ACT

relating to a mortgage servicer's notice of sale to a debtor and the debtor's subsequent notice to tenant.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 24.005(b), Property Code, is amended to read as follows:

(b) If the occupant is a tenant at will or by sufferance, the landlord must give the tenant at least three days' written notice to vacate before the landlord files a forcible detainer suit unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. If a property is subject to a notice of foreclosure sale under Section 51.002(b), a debtor who provides to a tenant a copy of the notice as provided by Section 51.0022 may require the tenant to vacate the property before the date of the sale stated in the notice only for failure to pay any rent or other payment, including a late fee, due under the lease agreement as of the date the tenant is required to vacate the premises. If a building is purchased at a tax foreclosure sale or a trustee's foreclosure sale under a lien superior to the tenant's lease and the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure, the purchaser must give a residential tenant of the building at least 30 days' written notice to vacate if the purchaser chooses not to continue the lease. The tenant is considered to timely pay the rent under this subsection

1 if, during the month of the foreclosure sale, the tenant pays the
2 rent for that month to the landlord before receiving any notice that
3 a foreclosure sale is scheduled during the month or pays the rent
4 for that month to the foreclosing lienholder or the purchaser at
5 foreclosure not later than the fifth day after the date of receipt
6 of a written notice of the name and address of the purchaser that
7 requests payment. Before a foreclosure sale, a foreclosing
8 lienholder may give written notice to a tenant stating that a
9 foreclosure notice has been given to the landlord or owner of the
10 property and specifying the date of the foreclosure.

11 SECTION 2. Sections 51.002(b) and (g), Property Code, are
12 amended to read as follows:

13 (b) Except as provided by Subsection (b-1), notice of the
14 sale, which must include a statement of the earliest time at which
15 the sale will begin, must be given at least 60 [~~21~~] days before the
16 date of the sale by:

17 (1) posting at the courthouse door of each county in
18 which the property is located a written notice designating the
19 county in which the property will be sold;

20 (2) filing in the office of the county clerk of each
21 county in which the property is located a copy of the notice posted
22 under Subdivision (1); and

23 (3) serving written notice of the sale by certified
24 mail on each debtor who, according to the records of the mortgage
25 servicer of the debt, is obligated to pay the debt.

26 (g) The entire calendar day on which the notice of sale is
27 given, regardless of the time of day at which the notice is given,

1 is included in computing the 60-day [~~21-day~~] notice period required
2 by Subsection (b), and the entire calendar day of the foreclosure
3 sale is excluded.

4 SECTION 3. Chapter 51, Property Code, is amended by adding
5 Section 51.0022 to read as follows:

6 Sec. 51.0022. NOTICE OF SALE TO TENANT. Not later than the
7 seventh day after the date a debtor receives a notice of sale under
8 Section 51.002(b), the debtor shall serve a copy of the notice on
9 each tenant of the property by any one of the following methods:

10 (1) personal delivery to the tenant;

11 (2) certified mail, return receipt requested, to the
12 tenant; or

13 (3) leaving the notice inside the dwelling, as defined
14 by Section 92.001, in a conspicuous place if notice in that manner
15 is authorized in a written lease.

16 SECTION 4. The changes in law made by Sections 24.005(b) and
17 51.002, Property Code, as amended by this Act, apply only to a
18 notice of sale required to be provided on or after September 1,
19 2009. A notice required to be provided before September 1, 2009, is
20 governed by the law in effect immediately before that date, and that
21 law is continued in effect for that purpose.

22 SECTION 5. This Act takes effect September 1, 2009.