

By: Shapleigh

S.B. No. 609

A BILL TO BE ENTITLED

AN ACT

relating to the foreclosure of a contract lien on certain residential real property.

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

SECTION 1. Subchapter B, Chapter 402, Government Code, is amended by adding Section 402.035 to read as follows:

Sec. 402.035. RESIDENTIAL PROPERTY FORECLOSURE NOTICE. (a) The attorney general shall adopt a model form for a notice of default required under Section 51.002(d), Property Code.

(b) The notice must include:

(1) a plain-language definition of the term "foreclosure";

(2) a statement that state law requires that the debtor in default be given at least 45 days to cure the default;

(3) a description of the debtor's rights and the options available to the debtor to prevent the foreclosure;

(4) a description of and warning against any fraudulent foreclosure rescue activities that may be encountered by the debtor in connection with the foreclosure, including any unconscionable actions or courses of action under Subchapter E, Chapter 17, Business & Commerce Code; and

(5) a description of and contact information for resources available to the debtor to assist in preventing the foreclosure or in filing a complaint concerning the foreclosure

1 process, including housing and consumer advocates, the State Bar of
2 Texas, and nonprofit legal assistance programs.

3 (c) The attorney general shall maintain an updated version
4 of the model notice form adopted under this section on the attorney
5 general's Internet website.

6 SECTION 2. Section 51.002(d), Property Code, is amended to
7 read as follows:

8 (d) Notwithstanding any agreement to the contrary, the
9 mortgage servicer of the debt shall serve a debtor in default under
10 a deed of trust or other contract lien on real property used as the
11 debtor's residence with written notice by certified mail. The
12 notice of default required by this subsection must state [~~stating~~]
13 that the debtor is in default under the deed of trust or other
14 contract lien and must give [~~giving~~] the debtor at least 45 [~~20~~]
15 days to cure the default before notice of sale can be given under
16 Subsection (b). The notice of default must include any other
17 information in the model notice form adopted by the attorney
18 general under Section 402.035, Government Code. The entire
19 calendar day on which the notice required by this subsection is
20 given, regardless of the time of day at which the notice is given,
21 is included in computing the 45-day [~~20-day~~] notice period required
22 by this subsection, and the entire calendar day on which notice of
23 sale is given under Subsection (b) is excluded in computing the
24 45-day [~~20-day~~] notice period.

25 SECTION 3. Chapter 51, Property Code, is amended by adding
26 Sections 51.0022 and 51.010 to read as follows:

27 Sec. 51.0022. CONTACT REQUIREMENT. (a) In addition to

1 giving a notice of default under Section 51.002(d), a mortgage
2 servicer shall make a good faith attempt to contact a debtor in
3 default described by Section 51.002(d) in person or by telephone
4 before notice of sale may be given under Section 51.002(b).

5 (b) The notice of sale of the property filed under Section
6 51.002(b) must include an affidavit by the mortgage servicer that
7 affirms:

8 (1) the mortgage servicer contacted the debtor in
9 person or by telephone to notify the debtor of the default; or

10 (2) the mortgage servicer made a good faith attempt to
11 contact the debtor to notify the debtor of the default and was
12 unsuccessful.

13 Sec. 51.010. HOMEOWNER'S TIME TO VACATE. A person who
14 purchases residential real property at a foreclosure sale under
15 this chapter and gives a notice to vacate under Section 24.005 to a
16 person who owned the property immediately before the foreclosure
17 sale and occupies the property at the time of the foreclosure sale
18 may not require the former owner to vacate the property before the
19 31st day after the date of the foreclosure sale.

20 SECTION 4. (a) Not later than November 1, 2009, the attorney
21 general shall adopt the model notice form under Section 402.035,
22 Government Code, as added by this Act.

23 (b) The changes in law made by this Act to Chapter 51,
24 Property Code, apply only to a sale of residential real property in
25 which notice of default under Section 51.002, Property Code, is
26 provided on or after December 1, 2009. A sale in which notice of
27 default is provided before December 1, 2009, is subject to the law

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1 in effect immediately before the effective date of this Act, and
2 that law is continued in effect for that purpose.

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