

By: West

S.B. No. 766

A BILL TO BE ENTITLED

AN ACT

relating to notices required and the opportunity to cure default in connection with foreclosure of a lien against residential property; providing a penalty.

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

SECTION 1. Sections 24.005(b) and (f), Property Code, are 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 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 90 [~~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 if, during the month of the foreclosure sale, the tenant pays the rent for that month to the landlord before receiving any notice that a foreclosure sale is scheduled during the month or pays the rent for that month to the foreclosing lienholder or the purchaser at foreclosure not later than the fifth day after the date of receipt

1 of a written notice of the name and address of the purchaser that
2 requests payment. At least 21 days before the date of ~~[Before]~~ a
3 foreclosure sale, a foreclosing lienholder shall mail ~~[may give]~~
4 written notice of sale to the address of the property subject to
5 foreclosure ~~[a tenant]~~ stating that a foreclosure notice has been
6 given to the landlord or owner of the property and specifying the
7 date of the foreclosure. The notice must be mailed in a manner
8 described by Section 51.002(e).

9 (f) The notice to vacate shall be mailed to ~~[given in person~~
10 ~~or by mail at]~~ the address of the premises in question ~~[. Notice in~~
11 ~~person may be by personal delivery to the tenant or any person~~
12 ~~residing at the premises who is 16 years of age or older or personal~~
13 ~~delivery to the premises and affixing the notice to the inside of~~
14 ~~the main entry door. Notice by mail may be by regular mail, by~~
15 ~~registered mail, or]~~ by certified mail or by the United States
16 Postal Service using signature confirmation service ~~[, return~~
17 ~~receipt requested, to the premises in question. If the dwelling has~~
18 ~~no mailbox and has a keyless bolting device, alarm system, or~~
19 ~~dangerous animal that prevents the landlord from entering the~~
20 ~~premises to leave the notice to vacate on the inside of the main~~
21 ~~entry door, the landlord may securely affix the notice on the~~
22 ~~outside of the main entry door].~~

23 SECTION 2. Section 51.002, Property Code, is amended by
24 amending Subsections (b), (d), and (e) and adding Subsections
25 (b-2), (i), and (j) to read as follows:

26 (b) Except as provided by Subsection (b-1), notice of the
27 sale, which must include a statement of the earliest time at which

the sale will begin must be given at least 21 days before the date of the sale by:

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

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

(3) mailing ~~[serving]~~ written notice of the sale to:

(A) [by certified mail on] each debtor who, according to the records of the mortgage servicer of the debt, is obligated to pay the debt; and

(B) the address of the property subject to foreclosure.

(b-2) A debtor who receives a notice of sale under Subsection (b)(3)(A) shall, not later than the fifth day after the date the debtor receives the notice, give each tenant of the property subject to foreclosure a written notice that includes:

(1) the date of the foreclosure sale; and

(2) a copy of Section 24.005(b).

(d) Notwithstanding any agreement to the contrary, the mortgage servicer of the debt shall serve a debtor in default under a deed of trust or other contract lien on real property used as the debtor's residence with written notice by certified mail stating that the debtor is in default under the deed of trust or other contract lien and giving the debtor at least 30 ~~[20]~~ days to cure the default before notice of sale can be given under Subsection (b).

The entire calendar day on which the notice required by this subsection is given, regardless of the time of day at which the notice is given, is included in computing the 30-day ~~[20-day]~~ notice period required by this subsection, and the entire calendar day on which notice of sale is given under Subsection (b) is excluded in computing the 30-day ~~[20-day]~~ notice period.

(e) Service of a notice under this section must be by certified mail or by the United States Postal Service using signature confirmation service and is complete when the notice is deposited in the United States mail~~[, postage prepaid and addressed to the debtor at the debtor's last known address]~~. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

(i) The failure to comply with the notice requirements of Subsection (b) voids a foreclosure sale conducted under this section.

(j) A debtor who fails to comply with Subsection (b-2) is liable to a tenant for an amount equal to two months' rent under the lease.

SECTION 3. Section 51.0075(e), Property Code, is amended to read as follows:

(e) The name and a street address for a trustee or substitute trustees shall be disclosed on each ~~[the]~~ notice required by Section 51.002(b).

SECTION 4. Section 86.021(a), Local Government Code, is amended to read as follows:

(a) A constable shall execute and return as provided by law

1 each process, warrant, and precept that is directed to the
2 constable and is delivered by a lawful officer. [~~Notices required~~
3 ~~by Section 24.005, Property Code, relating to eviction actions are~~
4 ~~process for purposes of this section that may be executed by a~~
5 ~~constable.~~]

6 SECTION 5. Section 154.005(d), Local Government Code, is
7 repealed.

8 SECTION 6. The change in law made by this Act applies only
9 to a notice required to be provided on or after September 1, 2009. A
10 notice required to be provided before September 1, 2009, is
11 governed by the law in effect immediately before that date, and that
12 law is continued in effect for that purpose.

13 SECTION 7. This Act takes effect September 1, 2009.