

By: Lucio

S.B. No. 979

A BILL TO BE ENTITLED

AN ACT

relating to foreclosure sales of residential real property;
providing a penalty.

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, in consultation with interested stakeholders as the attorney general considers appropriate, shall prescribe the form and content of the written notice that must be sent by a mortgage servicer to a debtor under Sections 51.002 and 51.0022, Property Code.

(b) The notice must:

(1) be written in plain language in English and Spanish;

(2) be entitled "Rights of Homeowners or Tenants of Homeowners Facing Foreclosure" or the Spanish equivalent of that title, as applicable; and

(3) include:

(A) an explanation of foreclosure, including a description of the various processes of foreclosure of a mortgage lien on residential property as applicable to each type of mortgage lien;

(B) a statement that state law requires that the

1 debtor in default under a residential mortgage lien be given at
2 least 45 days to cure the default;

3 (C) a description of the handling of payments
4 made after the time for cure has expired;

5 (D) the debtor's right to the return of payments
6 in certain circumstances;

7 (E) a statement that the debtor and the public
8 must be given at least 21 days' notice of the foreclosure sale and
9 that a foreclosure sale may occur only on the first Tuesday of a
10 month;

11 (F) a description of the options available to the
12 debtor in default to prevent the foreclosure;

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

17 (H) a description of the rights and remedies of a
18 tenant whose landlord loses the property to foreclosure, including
19 a tenant's right to credit a security deposit toward rent under
20 certain circumstances and to withhold rent from a landlord during
21 and after the foreclosure process; and

22 (I) a description of and contact information for
23 resources available to the debtor to assist in preventing the
24 foreclosure or in filing an action concerning the foreclosure
25 process or the lien being foreclosed, including local bar
26 associations, the State Bar of Texas, and nonprofit legal
27 assistance programs.

1 (c) The attorney general shall update the notice prescribed
2 under this section at least annually and maintain the most current
3 version of the notice on the attorney general's Internet website.

4 SECTION 2. Section 24.005(b), Property Code, is amended to
5 read as follows:

6 (b) If the occupant is a tenant at will or by sufferance, the
7 landlord must give the tenant at least three days' written notice to
8 vacate before the landlord files a forcible detainer suit unless
9 the parties have contracted for a shorter or longer notice period in
10 a written lease or agreement. If a building is purchased at a tax
11 foreclosure sale or a trustee's foreclosure sale under a lien
12 superior to the tenant's lease and the tenant timely pays rent and
13 is not otherwise in default under the tenant's lease after
14 foreclosure, the purchaser must give a residential tenant of the
15 building at least 90 [~~30~~] days' written notice to vacate and must
16 otherwise comply with Section 51.011 [~~if the purchaser chooses not~~
17 ~~to continue the lease. The tenant is considered to timely pay the~~
18 ~~rent under this subsection if, during the month of the foreclosure~~
19 ~~sale, the tenant pays the rent for that month to the landlord before~~
20 ~~receiving any notice that a foreclosure sale is scheduled during~~
21 ~~the month or pays the rent for that month to the foreclosing~~
22 ~~lienholder or the purchaser at foreclosure not later than the fifth~~
23 ~~day after the date of receipt of a written notice of the name and~~
24 ~~address of the purchaser that requests payment. Before a~~
25 ~~foreclosure sale, a foreclosing lienholder may give written notice~~
26 ~~to a tenant stating that a foreclosure notice has been given to the~~
27 ~~landlord or owner of the property and specifying the date of the~~

1 ~~foreclosure~~].

2 SECTION 3. Section 51.002, Property Code, is amended by
3 amending Subsection (d) and adding Subsections (d-1) and (d-2) to
4 read as follows:

5 (d) Notwithstanding any agreement to the contrary, the
6 mortgage servicer of the debt shall serve a debtor in default under
7 a deed of trust or other contract lien on residential real property
8 ~~[used as the debtor's residence]~~ with written notice by certified
9 mail, and first class regular mail, addressed to the debtor at the
10 debtor's last known address stating that the debtor is in default
11 under the deed of trust or other contract lien and giving the debtor
12 at least 45 ~~[20]~~ days to cure the default before notice of sale can
13 be given under Subsection (b). The entire calendar day on which the
14 notice required by this subsection is given, regardless of the time
15 of day at which the notice is given, is included in computing the
16 45-day ~~[20-day]~~ notice period required by this subsection, and the
17 entire calendar day on which notice of sale is given under
18 Subsection (b) is excluded in computing the 45-day ~~[20-day]~~ notice
19 period.

20 (d-1) In addition to the notice of sale sent by certified
21 mail under Subsection (b)(3), the mortgage servicer must send the
22 notice of sale by first class regular mail addressed to the debtor
23 at the debtor's last known address and by first class regular mail
24 sent to the property's physical address and addressed to
25 "Occupant."

26 (d-2) The mortgage servicer must include with each notice
27 sent by regular or certified mail under Subsection (b)(3), (d), or

1 (d-1) a copy of the notice prescribed by the attorney general under
2 Section 402.035, Government Code.

3 SECTION 4. Chapter 51, Property Code, is amended by adding
4 Sections 51.0022, 51.010, 51.011, and 51.012 to read as follows:

5 Sec. 51.0022. RETURN OF CERTAIN PAYMENTS; PROVISION OF
6 CERTAIN NOTICE. (a) Before giving a notice of sale under Section
7 51.002(b), a mortgage servicer must return to the debtor any
8 payments received from the debtor after the last notice of default
9 was sent to the debtor under Section 51.002(d).

10 (b) If the mortgage servicer receives a payment from the
11 debtor after giving notice of sale under Section 51.002(b), and the
12 foreclosure sale occurs on the date in the notice of sale, the
13 mortgage servicer shall return those payments on or before the 10th
14 day after the date of the sale.

15 (c) A payment returned under this section by mail must
16 include a copy of the notice prescribed by the attorney general
17 under Section 402.035, Government Code. If a payment is returned
18 under this section by electronic means, the mortgage servicer shall
19 mail a notice of the payment's return to the debtor by first class
20 regular mail with a copy of the notice prescribed by the attorney
21 general under Section 402.035, Government Code.

22 (d) This section applies only to a lien on residential real
23 property occupied by the debtor as the debtor's homestead.

24 Sec. 51.010. JUDICIAL FORECLOSURE REQUIRED FOR CERTAIN
25 DEBTS. (a) A deed of trust or other contract lien on residential
26 real property occupied by the debtor as the debtor's homestead may
27 not be foreclosed and a power of sale under the contract may not be

1 exercised without a court judgment foreclosing the lien and
2 ordering the sale of the property by a sheriff or constable if the
3 debt in default:

4 (1) had an annual percentage rate, as defined by the
5 federal Truth in Lending Act (15 U.S.C. Section 1601 et seq.), that
6 was at least three percentage points more than the prime rate as
7 published by the Wall Street Journal two weeks before the date the
8 debt was incurred;

9 (2) allows the contract interest rate to increase:

10 (A) by more than two percentage points in any
11 one-year period; or

12 (B) more often than once a year;

13 (3) has a universal default provision that allows for
14 a change in the interest rate when there is:

15 (A) a default by the debtor on any obligation to
16 the lender or any other lender; or

17 (B) a decrease in the debtor's credit score;

18 (4) has a prepayment penalty;

19 (5) allows negative amortization;

20 (6) provides for a scheduled payment that is more than
21 twice as large as the average of earlier scheduled monthly
22 payments; or

23 (7) allows for the payment of interest only.

24 (b) This section does not apply to an interim construction
25 loan.

26 Sec. 51.011. TENANT'S TIME TO VACATE; PAYMENT OF RENT. (a)

27 A person who purchases residential real property at a foreclosure

1 sale under this chapter and gives a notice to vacate under Section
2 24.005 to a tenant who occupies the property at the time of the
3 foreclosure sale under a lease agreement entered into after the
4 date the lien that was the subject of the foreclosure sale attached
5 to the property may not require the tenant to vacate the property
6 before the 90th day after the date the notice is sent.

7 (b) Except as provided by Subsection (c), on a written
8 demand by the purchaser, a tenant described by Subsection (a) must
9 pay rent to the purchaser of the property as required by the lease
10 agreement that applied to the tenant on the date of the foreclosure
11 sale and otherwise comply with the terms of that lease.

12 (c) A tenant who, before the foreclosure sale, has paid rent
13 for a rental period that includes the date of the foreclosure sale
14 is not required to pay rent to the purchaser until rent for the
15 first rental period commencing after the foreclosure sale is due.

16 (d) Unless the purchaser acknowledges and delivers in
17 writing a statement that the new owner is responsible for the
18 tenant's security deposit and specifying the exact dollar amount of
19 the deposit, the tenant is entitled to credit the security deposit
20 toward the rent owed the purchaser without the necessity of
21 judicial action.

22 Sec. 51.012. WAIVER. A provision of a contract, agreement,
23 or other document that purports to waive a right of a debtor or
24 exempt a mortgage servicer, mortgagee, trustee, substitute
25 trustee, or government official from a duty under this chapter is
26 void.

27 SECTION 5. Subchapter A, Chapter 92, Property Code, is

1 amended by adding Section 92.021 to read as follows:

2 Sec. 92.021. WITHHOLDING OF RENT ON NOTICE OF FORECLOSURE.

3 (a) Notwithstanding any other law or a provision of a lease
4 agreement, if a tenant receives written notice that the leased
5 premises are subject to a foreclosure sale, the tenant is
6 authorized to withhold the payment of rent without any adverse
7 action, penalty, fee, or charge until:

8 (1) the property is purchased at a foreclosure sale;

9 or

10 (2) the default giving rise to the foreclosure sale
11 has been cured, the sale has been canceled, the tenant has been
12 given at least 10 days' notice and proof of the cure and
13 cancellation, and the tenant has been provided a method to confirm
14 the facts directly with the lienholder who initiated the
15 foreclosure sale.

16 (b) A landlord who violates this section or threatens to
17 violate this section is liable to the tenant for:

18 (1) actual damages;

19 (2) a civil penalty of three times the monthly rent;

20 and

21 (3) reasonable attorney's fees.

22 (c) A landlord who violates this section or threatens to
23 violate this section commits an offense. An offense under this
24 subsection is a Class A misdemeanor.

25 SECTION 6. (a) Not later than November 1, 2009, the attorney
26 general shall prescribe the form and content of the notice under
27 Section 402.035, Government Code, as added by this Act.

1 (b) Section 24.005(b), Property Code, as amended by this
2 Act, and Section 51.011, Property Code, as added by this Act, apply
3 only to a notice to vacate residential real property purchased at a
4 foreclosure sale on or after the effective date of this Act. Notice
5 to vacate residential real property purchased at a foreclosure sale
6 before the effective date of this Act is governed by the law in
7 effect immediately before the effective date of this Act, and that
8 law is continued in effect for that purpose.

9 (c) Except as provided by this section, Chapter 51, Property
10 Code, as amended by this Act, applies only to a sale of residential
11 real property in which notice of default under Section 51.002,
12 Property Code, is provided on or after December 1, 2009. A sale in
13 which notice of default is provided before December 1, 2009, is
14 subject to the law in effect immediately before the effective date
15 of this Act, and that law is continued in effect for that purpose.

16 (d) Section 92.021, Property Code, as added by this Act,
17 applies only to a lease agreement entered into or renewed on or
18 after the effective date of this Act. A lease agreement entered
19 into or renewed before the effective date of this Act is governed by
20 the law in effect immediately before the effective date of this Act,
21 and that law is continued in effect for that purpose.

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