

BILL ANALYSIS

C.S.H.B. 565
By: Solomons
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current Texas law, a property owners' association forecloses on a property through provisions of the Property Code that require notice to be provided through certified mail to each debtor before the property is sold at auction. C.S.H.B. 565 prohibits foreclosure on a property owners' association assessment lien unless the association goes through expedited judicial foreclosure procedures after service on the record owners of the property.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Supreme Court of Texas in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 565 amends the Property Code to prohibit a property owners' association from foreclosing a property owners' association assessment lien unless the association first obtains a court order in an application for expedited foreclosure under rules adopted by the Supreme Court of Texas. The bill requires the supreme court, as an exercise of its authority under provisions relating to court administration rules, to adopt rules establishing expedited foreclosure proceedings for use by a property owners' association in foreclosing an assessment lien of the association. The bill requires the adopted rules to be substantially similar to the rules of civil procedure adopted by the supreme court for expedited foreclosure proceedings relating to the foreclosure of the liens on certain extensions of credit and the foreclosure of a reverse mortgage lien that requires a court order. The bill requires the adopted rules to require service on the record owners of the property of a copy of the notice and application for foreclosure of the lien by the same methods of service prescribed under the Texas Rules of Civil Procedure for service of process. The bill establishes that expedited foreclosure is not required under these provisions if the owner of the property that is subject to foreclosure agrees in writing at the time the foreclosure is sought to waive expedited foreclosure. The bill prohibits such a waiver from being required as a condition of the transfer of title to real property.

C.S.H.B. 565 makes its provisions applicable only to a foreclosure sale that occurs after January 1, 2012, and requires the supreme court to adopt rules of civil procedure in accordance with the bill's provisions not later than that date.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 565 differs from the original, in provisions relating to a requirement that rules adopted under the bill's provisions prescribe certain methods of service on the record owners of a property of a copy of the notice and application for foreclosure of the lien, by requiring the same

methods of service prescribed under the Texas Rules of Civil Procedure for service of process, rather than requiring personal service as in the original.