

BILL ANALYSIS

C.S.H.B. 1429
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, there is no clear requirement in Texas law that a landlord give a tenant a copy of the tenant's lease, although a licensed real estate broker must provide a signer of real estate documents with a copy of those documents.

Under Texas law, the primary protection a tenant has from retaliation by a landlord is the exercise of a right granted to the tenant in the lease or under local, state, or federal law; when the tenant gives a notice for repair or remedy; or when the tenant makes a complaint to a governmental entity. Tenant organizations offer additional protection to tenants, and in several states tenant organizing is a protected category in retaliation statutes.

Under federal law relating to protecting tenants in foreclosure situations, most tenants have a right to occupy the rental property for the remainder of the lease or for a prescribed time period from the date notice is given to vacate, whichever is longer. A tenant's lease may be terminated if the tenant is given the required notice that the buyer wants to use the property as the buyer's primary residence.

C.S.H.B. 1429 seeks to clarify a tenant's right to a copy of a lease, which provides the tenant with the tenant's rights regarding remedies for violations of the lease. The bill establishes a tenant's right to participate in a tenant organization and the right to address any issue regarding the property without fear of retaliation. The bill aligns state law with federal law relating to a notice to vacate in certain situations.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1429 amends the Property Code to create temporary provisions, effective January 1, 2012, and set to expire December 31, 2014, requiring a purchaser who purchases at a judicial or nonjudicial foreclosure sale a building that is occupied by a tenant who is a bona fide residential tenant at will or by sufferance to give the tenant at least 90 days' written notice to vacate, and establishing that, for purposes of provisions of law relating to a notice to vacate prior to filing an eviction suit, a residential tenant is bona fide only if the tenant occupies the premises on the date of the foreclosure sale and is not the mortgagor of the purchaser at the foreclosure sale or the child, spouse, or parent of the mortgagor. The bill specifies, in a provision authorizing a foreclosing lienholder to give written notice to a tenant before a foreclosure sale, that the notice is given to a tenant at will or by sufferance or to a tenant under a written lease or oral rental agreement and includes that provision as a temporary provision effective January 1, 2012, and expiring December 31, 2014.

C.S.H.B. 1429, effective January 1, 2012, removes provisions of law requiring a purchaser who

purchases a building at a tax foreclosure sale or a trustee's foreclosure sale and who chooses not to continue the lease of a residential tenant of the building to give the tenant at least 30 days' written notice to vacate if the purchased lien is superior to the tenant's lease after foreclosure and the tenant timely pays rent and is not otherwise in default under the tenant's lease. The bill establishes an effective date of January 1, 2015, for the reenactment of those provisions and for the previously described provision of law authorizing a foreclosing lienholder, before a foreclosure sale, to give written notice to a tenant stating that a foreclosure notice has been given to the landlord or owner of the property and specifying the date of the foreclosure.

C.S.H.B. 1429 creates temporary provisions, set to expire December 31, 2014, authorizing the purchaser of a premises at a judicial or nonjudicial foreclosure sale to require a bona fide tenant of the premises to vacate only after the purchaser provides to the tenant at least 90 days' written notice to vacate and authorizing a bona fide tenant of a premises purchased at such a sale to occupy the premises until the later of the date provided by the notice sent by the purchaser to vacate or the end of the remaining lease term or, if the purchaser intends to occupy the premises as a primary residence, the date provided by the notice to vacate. The bill provides in the temporary provisions that a bona fide tenant of a premises purchased at such a sale is authorized to occupy the premises only if the tenant owes no delinquent or unpaid rent or other sums owed to the landlord on the date of the foreclosure sale and is a party to a lease agreement that is effective on the date of the foreclosure sale. The bill provides in the temporary provisions that a tenant is bona fide only if the lease was the result of an arms-length transaction; the lease requires receipt of rent that is not substantially less than fair market rent for the premises; and the tenant is not the mortgagor of the purchaser at the foreclosure sale or the child, spouse, or parent of the mortgagor.

C.S.H.B. 1429 requires a landlord, not later than the third business day after the date the lease is signed by each party to the lease, to provide at least one copy of the lease to at least one tenant who is a party to the lease. The bill requires a landlord, if more than one tenant is a party to the lease and not later than the third business day after the date a landlord receives a written request for a copy of a lease from a tenant who has not received a copy of the lease, to provide one copy of the lease to the requesting tenant. The bill authorizes a tenant, if a landlord fails to comply with requirements to provide a lease to the tenant and certain other parties, if applicable, and after giving written notice to the landlord of the failure to comply with the requirements, to bring an action to recover actual damages resulting from the failure to provide a copy of the lease, court costs, and reasonable attorney's fees.

C.S.H.B. 1429 includes, in the actions by a tenant for which a landlord is prohibited from taking specified retaliatory actions against the tenant within six months after the date of the tenant's action, that the tenant establishes, attempts to establish, or participates in a tenant organization.

EFFECTIVE DATE

January 1, 2012.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1429 differs from the original by establishing that provisions of the bill relating to requirements for a purchaser who purchases at a judicial or nonjudicial foreclosure sale a building that a tenant occupies, the conditions that make a person a bona fide residential tenant, and the authorization for a foreclosing lienholder to give certain notice to a tenant are temporary provisions effective January 1, 2012, and expiring December 31, 2014. The substitute differs from the original by temporarily removing and then reenacting provisions of law, effective January 1, 2015, relating to a purchaser's requirement to give a residential tenant that meets specified guidelines certain written notice if the building is purchased at a tax foreclosure sale or a trustee's foreclosure sale under a lien superior to the tenant's lease, whereas the original removed those provisions. The substitute contains a provision not included in the original

authorizing a foreclosing lienholder, before a foreclosure sale, to give written notice to a tenant stating that a foreclosure notice has been given to the landlord or owner and the property and specifying the date of the foreclosure, and making that authorization effective January 1, 2015.

C.S.H.B. 1429 contains a provision not included in the original providing that, if the purchaser of a premises purchased at a judicial or nonjudicial foreclosure sale intends to occupy the premises as a primary residence, a bona fide tenant is authorized to occupy the premises until the date provided by the notice to vacate under the bill's provisions. The substitute differs from the original by making provisions relating to the effect of a foreclosure on tenancy temporary provisions set to expire December 31, 2014.

C.S.H.B. 1429 differs from the original by requiring a landlord, not later than the third business day after the date the lease is signed by each party to the lease, to provide at least one copy of the lease to at least one tenant who is a party to the lease or, if more than one tenant is a party to the lease and not later than the third business day after the date a landlord receives a written request for a copy of a lease from a tenant who has not received a copy of the lease, to provide one copy of the lease to the requesting tenant, whereas the original requires a landlord to provide a copy of the lease to each tenant who is a party to the lease on the date on which the tenant signs the lease. The substitute differs from the original by authorizing a tenant, if a landlord fails to comply with specified requirements relating to providing a copy of the lease to certain parties and after giving written notice to the landlord of the failure to comply with those requirements, to bring an action to recover actual damages resulting from the failure to provide a copy of the lease, court costs, and reasonable attorney's fees, whereas the original authorizes a tenant, if the landlord fails to comply with the requirement relating to providing a copy of the lease to each tenant who is a party to the lease, to unilaterally terminate the lease and vacate the premises without a court proceeding and bring an action to recover from the landlord a civil penalty of an amount equal to one month's rent plus \$1,000, actual damages, court costs, and reasonable attorney's fees.

C.S.H.B. 1429 omits provisions included in the original that expand the actions by a tenant for which a landlord is prohibited from taking specified retaliatory actions against the tenant within six months after the date of the tenant's action to include a tenant's raising in good faith any issue regarding the condition or use of the property and that include as a prohibited retaliatory action the landlord's directly or indirectly interfering or threatening to interfere with a tenant's peaceful enjoyment of the premises.

C.S.H.B. 1429 differs from the original by providing that the bill's effective date is January 1, 2012, rather than September 1, 2011.