

By: Guillen

H.B. No. 635

A BILL TO BE ENTITLED

AN ACT

relating to a grace period to cure a default before foreclosure of certain contract liens on the residence of certain surviving spouses of military servicemembers.

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

SECTION 1. The heading to Section 51.015, Property Code, is amended to read as follows:

Sec. 51.015. SALE OF CERTAIN PROPERTY OWNED BY MEMBER OF THE MILITARY OR SURVIVING SPOUSE.

SECTION 2. Section 51.015, Property Code, is amended by amending Subsections (b), (d), and (e) and adding Subsections (c-1) and (c-2) to read as follows:

(b) This section applies only to an obligation:

(1) that is secured by a mortgage, deed of trust, or other contract lien on real property or personal property that is a dwelling owned by a military servicemember or is the residence of the surviving spouse of a military servicemember who was killed during active duty military service;

(2) that originates before the date on which the servicemember's active duty military service commences; and

(3) for which the servicemember or surviving spouse is still obligated.

(c-1) Notwithstanding Section 51.002(d) or any agreement to the contrary, if a mortgagee receives notice that a debtor in

1 default under a deed of trust or other contract lien on real  
2 property used as the debtor's residence is the surviving spouse of a  
3 military servicemember killed during active duty military service  
4 in the 12 months preceding the date of default, the mortgagee shall  
5 give the debtor at least 180 days from the date of default to cure  
6 the default before:

7           (1) filing an action to foreclose a lien or otherwise  
8 enforce an obligation described by Subsection (b); or

9           (2) giving notice of sale under Section 51.002(b).

10       (c-2) In an action to foreclose a lien or otherwise enforce  
11 an obligation described by Subsection (b) filed during the 12  
12 months after the date on which a servicemember was killed during  
13 active duty military service or during a cure period prescribed by  
14 Subsection (c-1), the court shall on the application of the  
15 surviving spouse of the servicemember stay the proceedings until  
16 the expiration of the cure period prescribed by Subsection (c-1).

17       (d) A sale, foreclosure, or seizure of property under a  
18 mortgage, deed of trust, or other contract lien described by  
19 Subsection (b) may not be conducted during the military  
20 servicemember's period of active duty military service, ~~or~~ during  
21 the nine months after the date on which that service period  
22 concludes, or, for a property that is the residence of the  
23 servicemember's surviving spouse, during the 12 months after the  
24 date on which the servicemember was killed during active duty  
25 military service unless the sale, foreclosure, or seizure is  
26 conducted under:

27           (1) a court order issued before the sale, foreclosure,

1 or seizure; or

2 (2) an agreement that complies with Subsection (e).

3 (e) A military servicemember or the surviving spouse of a  
4 military servicemember who was killed during active duty military  
5 service may waive the servicemember's or surviving spouse's rights  
6 under this section only as provided by this subsection. The waiver  
7 must be:

8 (1) in writing in at least 12-point type;

9 (2) executed as an instrument separate from the  
10 obligation to which the waiver applies; and

11 (3) made under a written agreement:

12 (A) executed during or after the servicemember's  
13 period of active duty military service or, if executed by the  
14 surviving spouse, after the date on which the servicemember was  
15 killed during active duty military service; and

16 (B) specifying the legal instrument to which the  
17 waiver applies and, if the servicemember is not a party to the  
18 instrument, the servicemember concerned.

19 SECTION 3. The change in law made by this Act applies only  
20 to a security interest that attaches on or after the effective date  
21 of this Act. A security interest that attaches before the effective  
22 date of this Act is governed by the law in effect on the date the  
23 security interest attached, and that law is continued in effect for  
24 that purpose.

25 SECTION 4. This Act takes effect September 1, 2011.