

## **BILL ANALYSIS**

C.S.H.B. 2795  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

When a borrower defaults on a secured loan, notice of a default and foreclosure is given to the record title holder of the pledged property. Under current law, title to property of a deceased individual is immediately vested in the individual's heirs upon death, which can create issues with regard to determination of title and notice if debt that is secured by the decedent's interest in real property is in default. Interested parties observe that since the heirs are not contractually obligated to pay the debt, the property is held hostage, and the lender cannot foreclose or obtain good title as would be the case if the borrower were not deceased. The parties note that in many cases, the lender must file a creditor's administration or a vendor's lien rescission lawsuit, which is a cumbersome process that results in a protracted delay detrimental to property values and neighborhoods. C.S.H.B. 2795 seeks to address this issue by establishing an efficient process through which a lender can proceed with foreclosure of a lien on certain decedents' interests in real property in an effort to eliminate litigation risks to consumers, title companies, and lenders when it comes to ownership of a deceased borrower's property.

### **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. 2795 amends the Estates Code, as effective January 1, 2014, to authorize a mortgagee or mortgage servicer, if a debt that is secured by a decedent's interest in real property under a security instrument is in default and no probate proceeding has been commenced, to proceed with foreclosure of the lien on the property in accordance with the procedure established by the bill's provisions. The bill prohibits the initiation of foreclosure of a lien on real property in accordance with those procedures earlier than the 180th day after the date of the decedent's death and authorizes initiation of the foreclosure only if the mortgagee agrees that the mortgagee has only a preferred debt and lien claim against the decedent's interest in the real property.

C.S.H.B. 2795 requires the mortgagee or mortgage servicer, concurrently with obtaining a judgment declaring heirship, to obtain an expedited court order under the Texas Rules of Civil Procedure allowing the mortgagee or mortgage servicer to proceed with foreclosure of the lien under applicable Property Code provisions and the terms of the security instrument and to give notice as required by the bill. The bill establishes that after such a foreclosure sale, the foreclosure deed divests all persons receiving notice of their right, title, and interest in the decedent's interest in the real property.

C.S.H.B. 2795 specifies the persons to whom a mortgagee or mortgage servicer foreclosing a lien under the bill's provisions is required to send notice of sale, including certain surviving obligors or surviving mortgagors; the decedent; the surviving spouse of the mortgagor, if any; heirs named in the judgment declaring heirship; the occupant of the property sought to be foreclosed; and certain persons associated with an heir who is a minor child or who is otherwise

under a legal disability. The bill specifies the addresses to which such notices must be sent and requires the mortgagee or mortgage servicer, in addition to mailing the notice by certified mail, to mail the notice by regular mail to the person's last known address. The bill requires the mortgagee or mortgage servicer, if the name, last known address, or whereabouts of the surviving spouse or an heir of a decedent or other person to whom notice is required to be given is unknown, to describe to the court, by affidavit, the due diligence exercised by the person to find or locate the whereabouts of the spouse, heir, or other person for purposes of providing notice and requires the court to determine whether citation by publication is necessary.

C.S.H.B. 2795 establishes that if an expedited court order allowing the foreclosure of a lien to proceed is required under the bill's provisions, the application for the order is required to substantially comply with rules of civil procedure governing applications for such expedited orders and to contain an estimate of the "fair market value" of the property prepared not earlier than the 120th day before the date the application is filed and supported by documentation as to fair market value.

C.S.H.B. 2795 requires an order allowing a mortgagee or mortgage servicer to proceed with the foreclosure of a lien under the bill's provisions to describe the material facts establishing the basis for foreclosure; to describe the real property to be foreclosed by the property's commonly known mailing address and legal description; to contain the name and last known address of each person who is to receive notice of sale under the bill's provisions; and to contain the recording or indexing information of the security instrument to be foreclosed.

C.S.H.B. 2795 applies only to foreclosure of a lien on real property of a decedent's estate if the decedent is the mortgagor of the security instrument creating the lien. The bill establishes that its provisions control to the extent of a conflict between those provisions and another Estates Code provision regarding decedents' estates and durable powers of attorney, Property Code provisions generally applicable to liens, or the Texas Rules of Civil Procedure governing expedited orders allowing the foreclosure of certain liens to proceed. The bill prohibits the supreme court from amending or adopting a rule in conflict with the bill's provisions.

#### **EFFECTIVE DATE**

January 1, 2014.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2795 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### **INTRODUCED**

SECTION 1. Subtitle C, Title 2, Estates Code, as effective January 1, 2014, is amended by adding Chapter 125 to read as follows:

##### **CHAPTER 125. ENFORCEMENT OF LIEN AGAINST CERTAIN DECEDENTS' INTERESTS IN REAL PROPERTY**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 125.001. DEFINITIONS. In this chapter, "mortgage servicer," "mortgagee,"

##### **HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Subtitle C, Title 2, Estates Code, as effective January 1, 2014, is amended by adding Chapter 125 to read as follows:

##### **CHAPTER 125. ENFORCEMENT OF LIEN AGAINST CERTAIN DECEDENTS' INTERESTS IN REAL PROPERTY**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 125.001. DEFINITIONS. In this chapter, "mortgage servicer," "mortgagee,"

"mortgagor," and "security instrument" have the meanings assigned by Section 51.0001, Property Code.

Sec. 125.002. APPLICABILITY OF CHAPTER; CONFLICT WITH OTHER LAW. (a) This chapter applies only to foreclosure of a lien on real property of a decedent's estate if the decedent is the mortgagor of the security instrument creating the lien.

(b) To the extent of a conflict between this chapter and another provision of this subtitle, Rule 736, Texas Rules of Civil Procedure, or Chapter 51, Property Code, this chapter controls.

(c) Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt a rule in conflict with this chapter.

#### SUBCHAPTER B. PROCEDURES PRIOR TO FORECLOSURE OF LIEN

Sec. 125.051. PROCEDURE IF NO WILL OR LETTERS TESTAMENTARY OR OF ADMINISTRATION. (a) If a debt that is secured by a decedent's interest in real property under a security instrument is in default and the personal representative of the decedent's estate has not received valid letters testamentary or of administration, the mortgagee or mortgage servicer may proceed with foreclosure of the lien on the property in accordance with this section.

(b) Foreclosure may not be initiated under this section earlier than the 180th day after the earlier of the date of the decedent's death or the date an independent administration of the estate is filed and may be initiated only if the mortgagee agrees in writing that the mortgagee has only a preferred debt and lien claim against the decedent's interest in the real property.

(c) If a will has not been filed in the probate court in the county in which the real property is located, the mortgagee or mortgage servicer, concurrently with obtaining a judgment declaring heirship under Chapter 202 from a probate court in the county where the real property is located, must:

(1) obtain a court order under Rule 736, Texas Rules of Civil Procedure, allowing the mortgagee or mortgage servicer to proceed with foreclosure of the lien under Chapter 51, Property Code, and the terms of the

"mortgagor," and "security instrument" have the meanings assigned by Section 51.0001, Property Code.

Sec. 125.002. APPLICABILITY OF CHAPTER; CONFLICT WITH OTHER LAW. (a) This chapter applies only to foreclosure of a lien on real property of a decedent's estate if the decedent is the mortgagor of the security instrument creating the lien.

(b) To the extent of a conflict between this chapter and another provision of this title, Rule 736, Texas Rules of Civil Procedure, or Chapter 51, Property Code, this chapter controls.

(c) Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt a rule in conflict with this chapter.

#### SUBCHAPTER B. PROCEDURES PRIOR TO FORECLOSURE OF LIEN

Sec. 125.051. PROCEDURE IN ABSENCE OF PROBATE PROCEEDING. (a) If a debt that is secured by a decedent's interest in real property under a security instrument is in default and no probate proceeding has been commenced, the mortgagee or mortgage servicer may proceed with foreclosure of the lien on the property in accordance with this section.

(b) Foreclosure of a lien on real property in accordance with this section may not be initiated earlier than the 180th day after the date of the decedent's death and may be initiated only if the mortgagee agrees that the mortgagee has only a preferred debt and lien claim against the decedent's interest in the real property.

(c) The mortgagee or mortgage servicer, concurrently with obtaining a judgment declaring heirship under Chapter 202, must:

(1) obtain a court order under Rule 736, Texas Rules of Civil Procedure, allowing the mortgagee or mortgage servicer to proceed with foreclosure of the lien under Chapter 51, Property Code, and the terms of

security instrument; and  
(2) give notice in accordance with  
Subchapter C.

(d) After a foreclosure sale following the  
procedure in Subsection (c), the foreclosure  
deed divests all persons receiving notice  
under Subchapter C of their right, title, and  
interest in the decedent's interest in the real  
property.

(e) If a will has been filed in the probate  
court in the county in which the decedent's  
real property is located but no letters  
testamentary have been issued to a personal  
representative of the decedent's estate, the  
mortgagee or mortgage servicer must:

(1) obtain a court order under Rule 736,  
Texas Rules of Civil Procedure, allowing the  
mortgagee or mortgage servicer to proceed  
with foreclosure of the lien under Chapter  
51, Property Code, and the terms of the  
security instrument; and

(2) give notice in accordance with  
Subchapter C.

(f) After a foreclosure sale following the  
procedure in Subsection (e), the foreclosure  
deed divests all persons receiving notice  
under Subchapter C of their right, title, and  
interest in the decedent's interest in the real  
property.

Sec. 125.052. PROCEDURE IF LETTERS  
TESTAMENTARY OR OF  
ADMINISTRATION ISSUED. (a) If a debt  
that is secured by a decedent's interest in real  
property under a security instrument is in  
default and the personal representative of the  
decedent's estate has received valid letters  
testamentary or of administration, the  
mortgagee or mortgage servicer may  
proceed with foreclosure of the lien on the  
property in accordance with this section.

(b) Not earlier than the 180th day after the  
date the personal representative of the  
decedent's estate receives valid letters  
testamentary or of administration, the  
mortgagee or mortgage servicer may  
proceed with foreclosure of the lien under  
Chapter 51, Property Code, and the terms of  
the security instrument if the mortgagee or  
mortgage servicer gives notice to the  
personal representative.

Sec. 125.053. PROCEDURE IF WILL  
PROBATED AS MUNIMENT OF TITLE.  
If a debt that is secured by a decedent's  
interest in real property under a security  
instrument is in default and the decedent's

the security instrument; and  
(2) give notice in accordance with  
Subchapter C.

(d) After a foreclosure sale following the  
procedure in Subsection (c), the foreclosure  
deed divests all persons receiving notice  
under Subchapter C of their right, title, and  
interest in the decedent's interest in the real  
property.

will has been admitted to probate as a muniment of title in accordance with Chapter 257, the mortgagee or mortgage servicer may proceed with foreclosure of the lien under Chapter 51, Property Code, and the terms of the security instrument if the mortgagee or mortgage servicer gives notice to the devisees who acquired the decedent's interest in the real property under the terms of the will.

#### SUBCHAPTER C. NOTICE AND OTHER REQUIREMENTS

Sec. 125.101. NOTICE. (a) For purposes of Section 51.002(b), Property Code, a mortgagee or mortgage servicer foreclosing a lien under this chapter must send notice of sale to:

(1) each surviving obligor of the debt secured by the real property or surviving mortgagor of the security instrument encumbering the real property to the street address of the property sought to be foreclosed;

(2) the decedent, with the notation "Decedent," to the street address of the property sought to be foreclosed;

(3) for foreclosure initiated under Section 125.051(c), each heir of the decedent named in the judgment obtained under Section 202.201, at the heir's last known address;

(4) for foreclosure initiated under Section 125.051(e), the persons the probate court determines acquire the decedent's interest in the property under the terms of the decedent's will, at the persons' last known addresses;

(5) the "Occupant" at the street address of the property sought to be foreclosed; and

(6) if an heir is a minor child or otherwise under a legal disability, the person who is the parent, natural guardian, next friend, or person with a power of attorney for the heir or if a guardianship has been opened for the heir, the name and last known address of the guardian of the heir's estate.

(b) In addition to mailing the notice by certified mail as required by Section 51.002(b), Property Code, the mortgagee or

#### SUBCHAPTER C. NOTICE AND OTHER REQUIREMENTS

Sec. 125.101. NOTICE. (a) For purposes of Section 51.002(b), Property Code, a mortgagee or mortgage servicer foreclosing a lien under Section 125.051 must send notice of sale to:

(1) each surviving obligor of the debt secured by the real property or surviving mortgagor of the security instrument encumbering the real property at the street address of the property sought to be foreclosed and at any other address in the records of the mortgagee or mortgage servicer identified by the decedent mortgagor, surviving mortgagor, or surviving obligor as an address for notice;

(2) the decedent, with the notation "Decedent," at the street address of the property sought to be foreclosed;

(3) the surviving spouse of the mortgagor, if any;

(4) each heir of the decedent named in the judgment obtained under Section 202.201, at the heir's last known address;

(5) the "Occupant" at the street address of the property sought to be foreclosed; and

(6) if an heir is a minor child or otherwise under a legal disability, the person who is the parent, natural guardian, next friend, or person with a power of attorney for the heir or if a guardianship has been created by a court for the heir, the name and last known address of the heir's guardian of the estate.

(b) In addition to mailing the notice by certified mail as required by Section 51.002(b), Property Code, the mortgagee or

mortgage servicer shall mail the notice by regular mail to the person's last known address or to the person's probate attorney of record, if known.

(c) If the name, last known address, or whereabouts of the surviving spouse or an heir of a decedent or other person is unknown, the mortgagee or mortgage servicer by affidavit shall describe to the court the due diligence exercised by the person to find or locate the whereabouts of the spouse or heir for purposes of providing notice under this section and the court shall determine whether citation by publication is necessary.

Sec. 125.102. CONTENTS OF APPLICATION FOR RULE 736 ORDER; SERVICE OF CITATION. (a) If a court order under Rule 736, Texas Rules of Civil Procedure, is required under this chapter, the application for the order must:

(1) substantially comply with the requirements of Rule 736.1; and

(2) contain an estimate of the "fair market value" of the property prepared not earlier than the 120th day before the date the application is filed and supported by documentation from two of the following:

(A) a current appraisal;

(B) a broker's price opinion (BPO);

(C) a valuation from an official taxing authority; or

(D) an automated valuation model appraisal (AVM).

(b) A respondent in a proceeding under Rule 736, Texas Rules of Civil Procedure, and this chapter must be served with citation in accordance with Section 5, Part II, Texas Rules of Civil Procedure.

Sec. 125.103. CONTENTS OF ORDER.

SECTION 2. Chapter 125, Estates Code, as added by this Act, applies only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose.

mortgage servicer shall mail the notice by regular mail to the person's last known address.

(c) If the name, last known address, or whereabouts of the surviving spouse or an heir of a decedent or other person to whom notice is required to be given under this section is unknown, the mortgagee or mortgage servicer by affidavit shall describe to the court the due diligence exercised by the person to find or locate the whereabouts of the spouse, heir, or other person for purposes of providing notice under this section and the court shall determine whether citation by publication is necessary.

Sec. 125.102. CONTENTS OF APPLICATION FOR RULE 736 ORDER. If a court order under Rule 736, Texas Rules of Civil Procedure, is required under this chapter, the application for the order must:

(1) substantially comply with the requirements of Rule 736.1; and

(2) contain an estimate of the "fair market value" of the property prepared not earlier than the 120th day before the date the application is filed and supported by documentation as to fair market value.

Sec. 125.103. CONTENTS OF ORDER.

SECTION 2. Same as introduced version.

SECTION 3. This Act takes effect January 1, 2014.

SECTION 3. Same as introduced version.