

By: Raymond

H.B. No. 2795

Substitute the following for H.B. No. 2795:

By: Thompson of Harris

C.S.H.B. No. 2795

A BILL TO BE ENTITLED

AN ACT

relating to enforcement of a lien against certain decedents' interests in real property.

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

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 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 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.

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

1 foreclosing a lien under Section 125.051 must send notice of sale
2 to:

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

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

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

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

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

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

22 (b) In addition to mailing the notice by certified mail as
23 required by Section 51.002(b), Property Code, the mortgagee or
24 mortgage servicer shall mail the notice by regular mail to the
25 person's last known address.

26 (c) If the name, last known address, or whereabouts of the
27 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. An order allowing the mortgagee or mortgage servicer to proceed with the foreclosure of a lien under this chapter must:

(1) describe the material facts establishing the basis for foreclosure;

(2) describe the real property to be foreclosed by the property's commonly known mailing address and legal description;

(3) contain the name and last known address of each person who is to receive the notice under this subchapter; and

(4) contain the recording or indexing information of the security instrument to be foreclosed.

SECTION 2. Chapter 125, Estates Code, as added by this Act,

1 applies only to the estate of a decedent who dies on or after the
2 effective date of this Act. The estate of a decedent who dies
3 before the effective date of this Act is governed by the law in
4 effect on the date of the decedent's death, and the former law is
5 continued in effect for that purpose.

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