

1-1 By: Raymond (Senate Sponsor - West) H.B. No. 2795
1-2 (In the Senate - Received from the House May 9, 2013;
1-3 May 9, 2013, read first time and referred to Committee on
1-4 Jurisprudence; May 17, 2013, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 17, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	West	X		
1-10	Rodriguez	X		
1-11	Campbell	X		
1-12	Carona	X		
1-13	Garcia	X		
1-14	Hancock	X		
1-15	Paxton	X		

1-16 COMMITTEE SUBSTITUTE FOR H.B. No. 2795 By: Paxton

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to enforcement of a lien against certain decedents'
1-20 interests in real property.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Subtitle C, Title 2, Estates Code, as effective
1-23 January 1, 2014, is amended by adding Chapter 125 to read as
1-24 follows:

1-25 CHAPTER 125. ENFORCEMENT OF LIEN AGAINST CERTAIN DECEDENTS'
1-26 INTERESTS IN REAL PROPERTY

1-27 SUBCHAPTER A. GENERAL PROVISIONS

1-28 Sec. 125.001. DEFINITIONS. In this chapter, "mortgage
1-29 servicer," "mortgagee," "mortgagor," and "security instrument"
1-30 have the meanings assigned by Section 51.0001, Property Code.

1-31 Sec. 125.002. APPLICABILITY OF CHAPTER; CONFLICT WITH OTHER
1-32 LAW. (a) This chapter applies only to foreclosure of a lien on real
1-33 property in which a decedent had an interest if the decedent was the
1-34 mortgagor of the security instrument creating the lien and an
1-35 obligor of the debt secured by the lien.

1-36 (b) To the extent of a conflict between this chapter and
1-37 another provision of this title, Rule 736, Texas Rules of Civil
1-38 Procedure, or Chapter 51, Property Code, this chapter controls.

1-39 SUBCHAPTER B. FORECLOSURE OF LIEN

1-40 Sec. 125.051. PROCEDURE PRIOR TO FORECLOSURE. (a) If a
1-41 debt that is secured by a decedent's interest in real property under
1-42 a security instrument is in default and no probate proceeding has
1-43 been commenced, the mortgagee or mortgage servicer may proceed with
1-44 foreclosure of the lien on the real property in accordance with this
1-45 section.

1-46 (b) Foreclosure of a lien on real property under this
1-47 section may not be initiated earlier than the 180th day after the
1-48 date of the decedent's death.

1-49 (c) Foreclosure of a lien on real property under this
1-50 section is considered an election by the mortgagee to have the claim
1-51 allowed, approved, and fixed as a preferred debt and lien claim
1-52 against the decedent's interest in the real property securing the
1-53 debt and paid according to the terms of the contract that secured
1-54 the lien. No further claim for the debt may be made by the mortgagee
1-55 against any other assets of the decedent's estate.

1-56 (d) The mortgagee or mortgage servicer, concurrently with
1-57 obtaining a judgment declaring heirship under Chapter 202, must:

1-58 (1) obtain a court order under Rule 736, Texas Rules of
1-59 Civil Procedure, allowing the mortgagee or mortgage servicer to
1-60 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.

Sec. 125.052. EFFECT OF FORECLOSURE. A deed given pursuant to a foreclosure of a lien on real property in accordance with this chapter divests all persons receiving notice under Subchapter C of any right or title to or 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 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, sent to:

(A) the street address of the property subject to the foreclosure; and

(B) the last known 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," sent to the street address of the property subject to the foreclosure;

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

(4) each heir of the decedent named in the judgment obtained under Chapter 202, sent to the heir's last known address;

(5) the "Occupant," sent to the street address of the property subject to the foreclosure; and

(6) if an heir is a minor child or otherwise under a legal disability, the person who is a natural guardian, a guardian, or, if known to the mortgagee or mortgage servicer, an agent or attorney in fact under a power of attorney signed by the heir, sent to the person's last known address.

(b) The mortgagee or mortgage servicer shall mail a notice required under Subsection (a) both by regular mail and by registered or certified mail.

(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 are unknown, the mortgagee or mortgage servicer shall 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 under this section and the court shall determine whether citation by publication is necessary.

Sec. 125.102. CONTENTS OF APPLICATION FOR RULE 736 ORDER. An application pursuant to this chapter for a court order under Rule 736, Texas Rules of Civil Procedure, 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.

Sec. 125.104. ATTACHMENT OF ORDER TO TRUSTEE'S DEED. A conformed copy of the court order obtained under Rule 736, Texas Rules of Civil Procedure, pursuant to this chapter must be attached to the trustee's or substitute trustee's deed when recorded in the real property records.

SUBCHAPTER D. DISPOSITION OF EXCESS PROCEEDS OF FORECLOSURE SALE

3-1 Sec. 125.151. PAYMENT OF EXCESS PROCEEDS INTO COURT
 3-2 REGISTRY. Not later than the 90th day after the date of a
 3-3 foreclosure sale conducted pursuant to this chapter, the trustee or
 3-4 substitute trustee shall pay into the court registry any proceeds
 3-5 of the foreclosure sale remaining after the payment of:

3-6 (1) the costs of the foreclosure;
 3-7 (2) any trustee fees or attorney's fees permitted
 3-8 under a security instrument evidencing a lien foreclosed under this
 3-9 chapter; and

3-10 (3) the debt owed to any lienholder who obtained an
 3-11 order under this chapter in the order of priority of those liens.

3-12 Sec. 125.152. WITHDRAWAL FROM COURT REGISTRY. Excess
 3-13 proceeds paid into a court registry as required by Section 125.151
 3-14 may be withdrawn as follows:

3-15 (1) the personal representative of the decedent's
 3-16 estate may withdraw the excess proceeds to be administered as a part
 3-17 of the decedent's estate; or

3-18 (2) if no person is serving as personal representative
 3-19 of the decedent's estate, the decedent's heirs named in a judgment
 3-20 in a proceeding to declare heirship under Chapter 202 may withdraw
 3-21 the excess proceeds on the earlier of:

3-22 (A) the expiration of the fourth anniversary of
 3-23 the date of the decedent's death; or

3-24 (B) the date of entry of an order of no
 3-25 administration under Chapter 451.

3-26 Sec. 125.153. PAYMENT TO COMPTROLLER. If any money paid
 3-27 into the court registry under this subchapter remains on deposit
 3-28 with the court four years and six months after the date of the
 3-29 decedent's death, the court shall order the remaining amount to be
 3-30 paid to the comptroller in accordance with Chapter 551.

3-31 SECTION 2. Chapter 125, Estates Code, as added by this Act,
 3-32 applies only to the estate of a decedent who dies on or after the
 3-33 effective date of this Act. The estate of a decedent who dies
 3-34 before the effective date of this Act is governed by the law in
 3-35 effect on the date of the decedent's death, and the former law is
 3-36 continued in effect for that purpose.

3-37 SECTION 3. This Act takes effect January 1, 2014.

3-38 * * * * *