

By: West

S.B. No. 1202

A BILL TO BE ENTITLED

AN ACT

relating to an order to conduct mediation following an application for expedited judicial foreclosure proceedings.

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

SECTION 1. Subchapter B, Chapter 154, Civil Practice and Remedies Code, is amended by adding Section 154.028 to read as follows:

Sec. 154.028. MEDIATION FOLLOWING APPLICATION FOR EXPEDITED FORECLOSURE. (a) Following receipt of an application for an expedited foreclosure proceeding under Rule 736.1, Texas Rules of Civil Procedure, a court may, in the court's discretion, conduct a hearing to determine whether to order mediation. A court may not order mediation without conducting a hearing. The petitioner or respondent may request a hearing to determine whether mediation is necessary or whether an application is defective.

(b) A hearing under Subsection (a) may not be conducted before the expiration of the respondent's deadline to file a response.

(c) Subject to Subsection (d), a hearing under Subsection (a) may be conducted by telephone.

(d) Not later than the 10th day before the date of a hearing under Subsection (a), the court shall send notice of the hearing to the parties concerning whether the hearing will be conducted by telephone and, if applicable, instructions for contacting the court

1 and attending the hearing by telephone.

2 (e) At a hearing under Subsection (a), the court must
3 consider any objections to the referral of the case to mediation.

4 (f) If the court orders the case to mediation, the mediation
5 must be conducted before the expiration of any deadline imposed by
6 Rule 736, Texas Rules of Civil Procedure.

7 (g) If the parties to a case that has been ordered to
8 mediation are unable to agree on the appointment of a mediator, the
9 court may appoint a mediator. If a mediator is appointed by the
10 court, the court shall provide all parties with the name of the
11 chosen mediator at the mediation hearing if the parties are unable
12 to agree to a mediator at that hearing.

13 (h) A mediator's fee shall be divided equally between the
14 parties.

15 (i) The parties may agree to waive the mediation process.

16 (j) If a party does not respond to an application filed
17 under Rule 736, Texas Rules of Civil Procedure, before the deadline
18 established by that rule, notice of any mediation hearing must be
19 made in accordance with Subsection (d), and the hearing must occur
20 not later than the 15th day after the date the petitioner files a
21 motion for default order under Rule 736.7, Texas Rules of Civil
22 Procedure. A petitioner may file a motion to cancel a hearing, and
23 the court may grant the motion if the petitioner submits an
24 affidavit stating that the respondent received actual notice and
25 did not reply before the deadline.

26 (k) If a respondent fails to attend a mediation hearing
27 after notice in accordance with Subsection (d), the court:

1 (1) may not order mediation; and

2 (2) shall grant or deny the petitioner's motion for
3 default order under Rule 736.7, Texas Rules of Civil Procedure.

4 (1) If a respondent attends a hearing and mediation is
5 ordered, any mediation must take place not later than the 29th day
6 after the date the petitioner filed a motion for default order.

7 (m) Notwithstanding Section 22.004, Government Code, the
8 supreme court may not amend or adopt rules in conflict with this
9 section.

10 SECTION 2. This Act takes effect September 1, 2013.