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S.B. No. 1770

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 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

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

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

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

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

23 (2) give notice in accordance with Subchapter C.

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

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

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

9 (2) give notice in accordance with Subchapter C.

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

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

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

1 Sec. 125.053. PROCEDURE IF WILL PROBATED AS MUNIMENT OF
2 TITLE. If a debt that is secured by a decedent's interest in real
3 property under a security instrument is in default and the
4 decedent's will has been admitted to probate as a muniment of title
5 in accordance with Chapter 257, the mortgagee or mortgage servicer
6 may proceed with foreclosure of the lien under Chapter 51, Property
7 Code, and the terms of the security instrument if the mortgagee or
8 mortgage servicer gives notice to the devisees who acquired the
9 decedent's interest in the real property under the terms of the
10 will.

11 SUBCHAPTER C. NOTICE AND OTHER REQUIREMENTS

12 Sec. 125.101. NOTICE. (a) For purposes of Section
13 51.002(b), Property Code, a mortgagee or mortgage servicer
14 foreclosing a lien under this chapter must send notice of sale to:

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

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

21 (3) for foreclosure initiated under Section
22 125.051(c), each heir of the decedent named in the judgment
23 obtained under Section 202.201, at the heir's last known address;

24 (4) for foreclosure initiated under Section
25 125.051(e), the persons the probate court determines acquire the
26 decedent's interest in the property under the terms of the
27 decedent's will, at the persons' last known addresses;

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

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

8 (b) In addition to mailing the notice by certified mail as
9 required by Section 51.002(b), Property Code, the mortgagee or
10 mortgage servicer shall mail the notice by regular mail to the
11 person's last known address or to the person's probate attorney of
12 record, if known.

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

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

24 (1) substantially comply with the requirements of Rule
25 736.1; and

26 (2) contain an estimate of the "fair market value" of
27 the property prepared not earlier than the 120th day before the date

1 the application is filed and supported by documentation from two of
2 the following:

- 3 (A) a current appraisal;
4 (B) a broker's price opinion (BPO);
5 (C) a valuation from an official taxing
6 authority; or
7 (D) an automated valuation model appraisal
8 (AVM).

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

12 Sec. 125.103. CONTENTS OF ORDER. An order allowing the
13 mortgagee or mortgage servicer to proceed with the foreclosure of a
14 lien under this chapter must:

- 15 (1) describe the material facts establishing the basis
16 for foreclosure;
17 (2) describe the real property to be foreclosed by the
18 property's commonly known mailing address and legal description;
19 (3) contain the name and last known address of each
20 person who is to receive the notice under this subchapter; and
21 (4) contain the recording or indexing information of
22 the security instrument to be foreclosed.

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

1 continued in effect for that purpose.

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