

House Bill 2978
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Subchapter B, Chapter 17, Civil Practice and Remedies Code, is amended by adding Section 17.031 to read as follows:

Sec. 17.031. EXPEDITED FORECLOSURE PROCEEDINGS. For a power of sale exercised by the filing of an application for an expedited court order allowing the foreclosure of a contract lien under the Texas Rules of Civil Procedure, a citation issued to a person who is a respondent in the expedited order proceeding is considered complete when service is accomplished in accordance with Rule 736, Texas Rules of Civil Procedure, or in the manner provided for petitions under the Texas Rules of Civil Procedure.

No equivalent provision.

SENATE VERSION (IE)

SECTION 1. Subchapter B, Chapter 17, Civil Practice and Remedies Code, is amended by adding Section 17.031 to read as follows:

Sec. 17.031. EXPEDITED FORECLOSURE PROCEEDINGS. For a power of sale exercised by the filing of an application for an expedited court order allowing the foreclosure of a contract lien under the Texas Rules of Civil Procedure 736, service of citation shall be completed in accordance with Rule 736 or 106, Texas Rules of Civil Procedure, or in any other manner provided for petitions under the Texas Rules of Civil Procedure.

SECTION __.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) A citation for expedited foreclosure may be served in the manner provided by Rule 106 or 736, Texas Rules of Civil Procedure. Following the filing of a response to an application for an expedited foreclosure proceeding under Rule 736.5, 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.

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- (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 and attending the hearing by telephone.
- (e) At a hearing under Subsection (a), the court must consider any objections to the referral of the case to mediation.
- (f) If the court orders the case to mediation, the mediation must be conducted before the expiration of any deadline imposed by Rule 736, Texas Rules of Civil Procedure.
- (g) If the parties to a case that has been ordered to mediation are unable to agree on the appointment of a mediator, the court may appoint a mediator. If a mediator is appointed by the court, the court shall provide all parties with the name of the chosen mediator at the mediation hearing if the parties are unable to agree to a mediator at that hearing.
- (h) A mediator's fee shall be divided equally between the parties.
- (i) The parties may agree to waive the mediation process.
- (j) The court may not conduct a hearing under this section if the applicant has served the citation in compliance with Rule 106, Texas Rules of Civil Procedure, and a response to the application has not been filed before the deadline provided by Rule 736, Texas Rule of Civil procedure.
- (k) if a respondent fails to attend a mediation hearing after notice in accordance with Subsection (d), the court:
 - (1) may not order mediation; and
 - (2) shall grant or deny the petitioner's motion for default order under Rule 736.7, Texas Rules of Civil Procedure.
- (1) If a respondent attends a hearing and mediation is ordered,

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any mediation must take place not later than the 29th day after the date the petitioner filed a motion for default orders.
(m) Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this section. [FA1]

SECTION __.Subchapter A, Chapter 22, Government Code, is amended by adding Section 22.018 to read as follows:
Sec. 22.018. PROMULGATION OF FORMS FOR CERTAIN EXPEDITED FORECLOSURE PROCEEDINGS.
(a) The supreme court shall promulgate the following forms for use in expedited foreclosure proceedings described by Section 50(r), Article XVI, Texas Constitution:
(1) a form for application for an expedited foreclosure proceeding;
(2) a form for a supporting affidavit; and
(3) a form for any court-required citation. [FA1]

SECTION __.Not later than March 1, 2014, The Texas Supreme Court shall promulgate the form required by section 22.018, Government Code, as added by this Act. [FA1]

SECTION 2. Same as House version.

No equivalent provision.

No equivalent provision.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.