

By: Wray

H.B. No. 2069

A BILL TO BE ENTITLED

AN ACT

relating to the foreclosure of a lien on real property of a decedent.

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

SECTION 1. Section 51.0001(2), Property Code, is amended to read as follows:

(2) "Debtor's last known address" means:

(A) for a debt secured by the debtor's residence, the debtor's residence address unless the debtor provided the mortgage servicer a written change of address before the date the mortgage servicer mailed a notice required by Section 51.002 or 51.0022; or

(B) for a debt other than a debt described by Paragraph (A), the debtor's last known address as shown by the records of the mortgage servicer of the security instrument unless the debtor provided the current mortgage servicer a written change of address before the date the mortgage servicer mailed a notice required by Section 51.002 or 51.0022.

SECTION 2. Sections 51.002(b) and (d), Property Code, are amended to read as follows:

(b) Except as provided by Subsection (b-1), notice of the sale, which must include a statement of the earliest time at which the sale will begin, must be given at least 21 days, or 45 days if Section 51.0022(d) or (e) applies, before the date of the sale by:

1 (1) posting at the courthouse door of each county in
2 which the property is located a written notice designating the
3 county in which the property will be sold;

4 (2) filing in the office of the county clerk of each
5 county in which the property is located a copy of the notice posted
6 under Subdivision (1); and

7 (3) serving written notice of the sale by certified
8 mail on each debtor who, according to the records of the mortgage
9 servicer of the debt, is obligated to pay the debt or serving
10 written notice under Section 51.0022, if applicable.

11 (d) Notwithstanding any agreement to the contrary and
12 except as provided by Section 51.0022, the mortgage servicer of the
13 debt shall serve a debtor in default under a deed of trust or other
14 contract lien on real property used as the debtor's residence with
15 written notice by certified mail stating that the debtor is in
16 default under the deed of trust or other contract lien and giving
17 the debtor at least 20 days to cure the default before notice of
18 sale can be given under Subsection (b). The entire calendar day on
19 which the notice required by this subsection is given, regardless
20 of the time of day at which the notice is given, is included in
21 computing the 20-day notice period required by this subsection, and
22 the entire calendar day on which notice of sale is given under
23 Subsection (b) is excluded in computing the 20-day notice period.

24 SECTION 3. Chapter 51, Property Code, is amended by adding
25 Section 51.0022 to read as follows:

26 Sec. 51.0022. FORECLOSURE SALE OF REAL PROPERTY OF DECEASED
27 DEBTOR. (a) This section applies to the sale under Section 51.002

of real property of a debtor who is deceased and whose debt secured by the deed of trust or other contract lien is in default, regardless of whether the property is a homestead.

(b) Except as provided by Subsection (c), if an independent administration regarding the deceased debtor's estate is pending, the mortgage servicer shall send the notice required to be sent to the debtor under Section 51.002(b)(3) or (d) to the independent personal representative of the debtor's estate at the most recent address for the representative as reflected in the records of the probate court in which the administration is pending.

(c) The mortgage servicer of the debt is not required to send notice under Section 51.002(d) to any person if the debtor:

(1) is deceased; and

(2) is the sole obligor of the debt.

(d) If there is a surviving spouse of the deceased debtor, the mortgage servicer shall send to the surviving spouse, not later than the 45th day before the date of a sale under Section 51.002, the notice otherwise required to be sent to the debtor under Section 51.002(b)(3) if:

(1) an administration of the debtor's estate was not opened or is not pending; and

(2) the sale will be held before the fourth anniversary of the debtor's date of death.

(e) If an administration of the deceased debtor's estate was not opened before the fourth anniversary after the debtor's date of death, not later than the 45th day before the date of a sale under Section 51.002, the mortgage servicer shall:

1 (1) address the notice of sale required by Section
2 51.002(b)(3) to the deceased debtor and unknown heirs of the debtor
3 and:

4 (A) post the notice on the outside of any main
5 entry door of the debtor's real property if the property is a
6 residence;

7 (B) send the notice by certified mail to the last
8 known address of the person who paid the most recent debt service
9 installment that was accepted by the mortgage servicer as reflected
10 in the servicer's records; or

11 (C) if providing notice under Paragraph (A) or
12 (B) is not possible, send the notice by certified mail to the
13 debtor's last known address; and

14 (2) file in the office of the county clerk of each
15 county in which the property is located an affidavit stating the
16 method used to provide the notice under Subdivision (1) and the
17 reason that method was used.

18 (f) A public sale under Section 51.002 of the real property
19 of a deceased debtor may not be held before the 180th day after the
20 date of the debtor's death.

21 (g) If notice is given in accordance with this section, a
22 subsequent opening of an administration of the debtor's estate,
23 whether dependent or independent, does not affect the validity of a
24 sale under Section 51.002 that is properly completed.

25 SECTION 4. The changes in law made by this Act apply only to
26 a default under a deed of trust or other contract lien that occurs
27 on or after the effective date of this Act. A default that occurs

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1 before the effective date of this Act is governed by the law as it
2 existed when the default occurred, and the former law is continued
3 in effect for that purpose.

4 SECTION 5. This Act takes effect September 1, 2019.